

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT DECISION DATE: August 29, 2024
WCAT DECISION NUMBER: A2400285
WCAT PANEL: Andrew Waldichuk

RE: Kevin Wayne Ramsay v. Daniel Joseph Shortt
Vancouver Registry No. VLC-S-M-2010445
Certification to Court
WCAT No. A2400285

Applicant: Daniel Joseph Shortt
(the "Defendant")

Respondent: Kevin Wayne Ramsay
(the "Plaintiff")

Representatives:

For Applicant: Daniel T. Patterson
Morelli Chertkow LLP

For Respondent: Tyler F. Dennis
Preszler Injury Lawyers

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

- [1] On December 22, 2018, at approximately 6:30 a.m., the plaintiff, Kevin Wayne Ramsay, was involved in a motor vehicle accident at or near the intersection of Highway 19 and Tamarac Street in the City of Campbell River when the propane delivery tractor-trailer he was driving was struck by a van driven and owned by the defendant Daniel Joseph Shortt.
- [2] At the time of the accident, the plaintiff, a six-axle propane truck driver, was driving the tractor-trailer to make a delivery of propane at a depot in Campbell River. The defendant, an event sound and lighting technician, had left the hotel where he stayed after working at a musical event and was traveling back to the City of Victoria, where another event was scheduled to take place later in the day.
- [3] Pursuant to section 311 of the *Workers Compensation Act* (Act), if a court action is commenced based on a personal injury, death, or a disability caused by occupational disease, the Workers' Compensation Appeal Tribunal (WCAT) may be asked by the court or a party to the action to make a determination and to certify that determination to the court.
- [4] Counsel for the defendant initiated this application by letter of January 29, 2024. The defendant seeks a determination regarding his status and that of the plaintiff at the time of the December 22, 2018 accident. The plaintiff, who is represented by counsel, is participating in the application.
- [5] WCAT invited the plaintiff's putative employer, Superior Propane, and the defendant's putative employer, 622810 Canada Inc. dba Masters Digital (Masters Digital), to participate in this application as interested persons. No response was received from Superior Propane. Masters Digital stated in a March 22, 2024 email to WCAT that it saw no reason to participate in the proceedings.
- [6] The plaintiff and the defendant were examined for discovery on October 6, 2022. Copies of the discovery transcripts were provided to WCAT.

- [7] The plaintiff commenced a claim with the Workers' Compensation Board (Board), operating as WorkSafeBC, with respect to the accident. As outlined in a January 7, 2019 Board letter, the plaintiff's claim is suspended.
- [8] A trial of the court action, originally scheduled for April 22, 2024, was adjourned and WCAT has not been advised of a new trial date.
- [9] An oral hearing was not requested in this application. WCAT invited the parties to the court action to provide written submissions, which were received. I find that this application involves questions of law and policy which can be properly considered on the basis of the available evidence and written submissions, without the need for an oral hearing.

Issue(s)

- [10] Determinations are requested with respect to the status of the plaintiff and the defendant at the time of the December 22, 2018 accident.

Jurisdiction

- [11] Part 7 of the Act applies to proceedings under section 311, except that no time frame applies to the making of the WCAT decision (section 311(3)). Pursuant to section 303(1) of the Act, WCAT is not bound by legal precedent. WCAT must make its decision based on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable (section 303(2)). Section 308 of the Act gives WCAT 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 7 of the Act, including all matters that WCAT is requested to determine under section 311. The WCAT decision is final and conclusive and is not open to question or review in any court (section 309(1)). The court determines the effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

Status of the Plaintiff, Kevin Wayne Ramsay

- [12] The plaintiff testified during his examination for discovery that he recalled starting work at 5:00 a.m. on the day of the accident and had driven the propane truck from the City of Nanaimo to Campbell River. He was in the midst of making a propane delivery to a

depot in Campbell River when the accident occurred. He agreed that his trip was “strictly for work.”¹

[13] According to the plaintiff’s application for workers’ compensation and the report of injury from Superior Propane, both of which are found on the plaintiff’s Board claim file, the plaintiff was working four days a week, ten hours a day, and paid a salary at the time of the accident.

[14] Section 1 of the Act contains the following definition:

“**worker**” includes the following:

(a) a person who has entered into or works under a contract of service or apprenticeship, whether the contract is written or oral, express or implied, and whether by way of manual labour or otherwise;

...

(e) an independent operator to whom the compensation provisions apply by the Board direction under section 4(2)(a);

[15] Policy item #AP1-1-5 of the *Assessment Manual*, “Coverage under Act – Workers,” as it read at the time of the accident, stated that workers include individuals not employing other individuals and include those who are paid on an hourly, salaried, or commission basis.

[16] Judging by the parties’ submissions, there is no dispute in this application that the plaintiff was a worker, as defined under section 1 of the Act, and his injuries arose out of and in the course of his employment with Superior Propane, which I certify.

Status of the Defendant, Daniel Joseph Shortt

[17] The defendant testified as follows during his examination for discovery. He started working for Masters Digital in November 2018 (Q 41-43). He was an employee of Masters Digital but “very, very independent” (Q 124). Kathy Archer (of Masters Digital) was his supervisor (Q 123).

¹ All quotations are reproduced as written, unless otherwise indicated.

- [18] As a lead technician, doing event sound and lighting, the plaintiff had been in Campbell River to be part of the sound crew for a band called Bobby Dazzler (Q 34-35, Q 79-80) The accident happened five blocks away from the hotel where the defendant was staying (Q 26). It was “early, around 6:30 a.m.” and the van he was driving was full of equipment (Q 28, Q 78).
- [19] The defendant was going to another event “down in Victoria” – specifically, a Christmas event at the Oak Bay Beach Hotel – at the time of the accident (Q 30, Q 37). He was supposed to arrive at the event at 2:00 p.m. (Q 31). The defendant would have gone to a warehouse to unload the equipment from the Campbell River event, reload new equipment for the Oak Bay Beach Hotel event, and then go to the event (Q 32). The sound equipment that the plaintiff had in the back of the van belonged to “the company” (Q 133). He did not keep track of his mileage while traveling, as he thought he was paid adequately (Q 39-40). Furthermore, there was no requirement for him to keep track of his time when he was at work or on a trip with a band (Q 134). There was no log or anything like that to document such things as where he had been (Q 135).
- [20] When the defendant was asked if he was going to have breakfast, given that the accident happened at “6:30”, he responded that it was his plan to stop in the City of Duncan, “a few hours away,” at an A&W restaurant.
- [21] The defendant has also provided an affidavit, dated April 4, 2024, in which he included the additional evidence:
- At the time of the accident, the defendant was residing in Victoria, British Columbia.
 - The van that the defendant was driving on the day of the accident – which he described as his van – was insured and used primarily for business purposes.
 - The defendant owned a Honda Civic at that time, which he drove for personal use.
 - Working as a lead technician for Masters Digital, the defendant’s duties included traveling to events throughout Vancouver Island to set up and run sound and lighting equipment for clients of Masters Digital.
 - Prior to becoming an employee of Masters Digital, the defendant owned and operated a sound company called Shortt Sound. Masters Digital and Shortt Sound had entered into an agreement on November 1, 2018 whereby Masters Digital purchased Shortt Sound and “the employment” of the defendant.

- Based on the sale agreement, the defendant was a salaried employee with Masters Digital, earning \$2,400.00 (gross) biweekly. His salary compensated him for his time spent traveling to and from event locations. Driving to the events was part of his job.
- The defendant was in Campbell River on the day of the accident because Masters Digital had sent him from Victoria to Campbell River to perform sound work for a band known as Bobby Dazzler. They were a client of Masters Digital.
- The Bobby Dazzler performance occurred on December 21, 2018. The defendant's sole reason for being in Campbell River was to attend to the sound and lighting requirements for the performance.
- After the performance, the defendant went to a nearby hotel, where the band also happened to be staying, and spent the night. He woke up the following morning (December 22, 2018) and left the hotel at approximately 6:30 a.m. to start driving back to Victoria. He had another job in Victoria on December 22, 2018 at the Oak Bay Beach Hotel.
- The defendant was scheduled to be at the Oak Bay Beach Hotel event at 2:00 p.m. on the day of the accident. His drive from Campbell River to the Masters Digital's warehouse was approximately 3 hours and 20 minutes long. The equipment in his vehicle belonged to Masters Digital.
- When the defendant departed from the hotel in Campbell River, the drive to Duncan, where he was going to stop at A&W for breakfast, would have taken approximately 2 hours and 10 minutes. Other than stopping for breakfast, there was no deviation from the route back to Victoria for any personal reasons.
- Although the defendant had stated during his examination for discovery that he did not track his mileage, his agreement with Masters Digital paid a vehicle allowance of \$100.00 biweekly and a payment of 55 cents per kilometre for out-of-town jobs, based on an estimation of kilometres traveled using *Google Maps*.

[22] The defendant's November 1, 2018 agreement with Masters Digital was attached as an exhibit to his affidavit. As outlined in the agreement, which was signed by the defendant and Tim Archer of Masters Digital, the purchase of Shortt Sound took effect on November 1, 2018. Furthermore, Masters Digital was to pay the defendant \$55,000.00 for Shortt Sound, which included: all audio equipment, a small van, ladders and tools, a client list, and "Dan the Sound Man's Goodwill."

- [23] The sale agreement set out an 18-month schedule, commencing in November 2018, over which Masters Digital would make payments to the defendant. At paragraph 3 of the agreement, it was specified that Masters Digital would hire the defendant as a salaried employee with a gross payroll of \$2400.00 biweekly. The first pay period started on November 15, 2018. Lastly, under the agreement, the defendant was to maintain a working relationship with Masters Digital for a minimum of two years.
- [24] After receiving the defendant's April 4, 2024 submission, WCAT invited the defendant to address the March 22, 2024 email that the WCAT Registry received from Kathy Archer of Masters Digital in response to the company being asked if it wished to participate in the application as an interested person. Kathy Archer wrote the following in her email:

Thank you for taking my call this morning.

According to our records, Dan Shortt was not working as an employee on a Masters Digital job at the time of the accident, Dec 22, 2018, in Campbell River.

We see no reason to participate in the proceedings.

- [25] The defendant responded to Kathy Archer's email by providing WCAT with an affidavit, dated April 18, 2024, in which he stated the following:
- In disagreeing with the contents of Kathy Archer's email, the defendant stated that he immediately started to work for Masters Digital once he sold his company, Shortt Sound, to Masters Digital.
 - Following November 1, 2018, the defendant did not accept any contracts for work outside of his employment with Masters Digital as a sound engineer. Moreover, he did not perform such duties for any previous contracts except in the ordinary course of his employment with Masters Digital.
 - In reference to a document outlining an agreement between Blue Thunder Contracting and the musical group Bobby Dazzler, dated November 13, 2018, with respect to the musical event in Campbell River on December 21, 2018 (attached as an exhibit to the defendant's affidavit), the defendant highlighted how he sold his business to Masters Digital prior to the date of that agreement. He did not enter into any personal contracts to provide sound engineering services because he did not want to risk breaching the terms of the sale agreement with Masters Digital.

- [26] The defendant also attached as an exhibit to his affidavit a copy of his bank chequing account statement for December 2018 and a copy of his savings account statement for November and December 2018. He explained in his affidavit how Masters Digital had provided him with cheques for the value of the equipment that it purchased in the sale agreement. Those cheques were deposited into the defendant's business account. He had closed his business account in 2019 following the conclusion of the payment terms in the sale agreement, such that he could not provide WCAT with a copy of his business account statement. Nonetheless, it is the defendant's evidence that he would transfer money out of his business account and put it into his personal savings account.
- [27] Contained within the copy of what appears to be the defendant's chequing account statement are entries (electronic funds transfer) on December 13 and 27, 2018, both in the amount of \$1,897.18, and identified as "PAY Masters Digital." The copy of the defendant's savings account statement contains six credit entries during November 2018: three in the amount of \$1,000.00; two in the amount of \$500.00; and one in the amount of \$700.00. But as the defendant stated in his affidavit, without any information in the statement about the source of the money, he thought it had been transferred from his business account.
- [28] In deciding this matter, I find that the March 22, 2024 email from Kathy Archer of Masters Digital has resulted in an interesting wrinkle that does not often occur in a certificate to court application. The defendant points to how Kathy Archer's email was provided in the context of Masters Digital's decision to not participate in the application, rather than in a submission from Masters Digital in the context of presenting evidence.
- [29] I find that Kathy Archer's email is relevant evidence that both parties have been given an opportunity to address. That said, there would appear to be two interpretations of the email: one suggesting that the defendant was not an employee of Masters Digital on the day of the accident and the other suggesting the defendant was not performing a job for Masters Digital in Campbell River. Inasmuch as the plaintiff's submission seems to follow the latter interpretation, the defendant, by maintaining he was a worker on December 22, 2018, appears to be arguing that Kathy Archer's email does not preclude a finding that he was in an employment relationship with Masters Digital when the accident occurred. Moreover, I note that the binding nature of the sale agreement between the defendant and Masters Digital has not been questioned by either party in this application.
- [30] In dealing with the issue of whether the defendant was under a contract of service with Masters Digital on the day of the accident – making him a worker pursuant to section 1

of the Act – I give significant weight to the November 1, 2018 sale agreement between the defendant and Masters Digital. It supports a finding that the defendant had entered into an employment relationship with Masters Digital prior to the accident. Masters Digital's purchase of the defendant's business, Shortt Sound, took effect on November 1, 2018 and the defendant commenced a working relationship, as a salaried employee, with Masters Digital as of that date. I also give significant weight to the copy of the defendant's chequing account statement for December 2018. It shows that Masters Digital paid the defendant \$1,897.18, by electronic funds transfer, on December 13, 2018 and two weeks later on December 27, 2018. The accident occurred during the intervening period, further supporting a finding that the defendant was in an employment relationship with Masters Digital at that time. In consideration of the foregoing, I find on the weight of the evidence that the defendant was a worker, as defined under section 1 of the Act, at the time of the accident. The more contentious issue is whether he was in the course of his employment upon departing from the hotel in Campbell River.

[31] Policy item C3-14.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), "Arising Out of and In the Course of a Worker's Employment," is the principal policy that provides guidance on whether or not an injury or death has arisen out of and in the course of a worker's employment. It explains that "arising out of a worker's employment" generally refers to the cause of the injury or death, whereas "in the course of a worker's employment" generally refers to whether the injury or death happened at a time and place and during an activity that is "consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment."

[32] As well, policy item C3-14.00 provides a non-exhaustive list of factors that are considered in determining whether an injury or death has arisen out of and in the course of a worker's employment:

- Did the injury or death occur on the employer's premises?
- Did the injury or death occur while the worker was doing something for the benefit of the employer's business?
- Did the injury or death occur in the course of action taken in response to instructions from the employer?
- Did the injury or death occur while the worker was using equipment or materials supplied by the employer?

- Did the injury or death occur while the worker was in the process of receiving payment or other consideration from the employer?
- Did the injury or death occur during a time period in which the worker was being paid a salary or other consideration, or did the injury or death occur during paid working hours?
- Was the injury or death caused by an activity of the employer or of a fellow employee?
- Did the injury or death occur while the worker was performing activities that were part of the worker's job?
- Did the injury or death occur while the worker was being supervised by the employer or a representative of the employer having supervisory authority?

[33] Policy item C3-19.00 of the RSCM II, "Work-Related Travel," provides the general rule that injuries occurring in the course of travel from a worker's home to the normal place of employment are not compensable.

[34] Under the heading "**D. Business Trips**," policy item C3-19.00 provides the following:

The general factors listed under Item C3-14.00 are used to determine whether a trip undertaken by a worker is sufficiently connected to the worker's employment as to be a business trip. For example, if the trip is taken for the employer's benefit, on the instructions of the employer, or paid for by the employer, these are all factors that weigh in favour of finding that the trip is a business trip.

An employment connection generally exists continuously during a business trip, except where the worker makes a distinct departure of a personal nature.

This means that injuries or death that result from a hazard of the environment into which a worker has been put by the business trip, including hazards of any overnight accommodation itself, are generally considered to arise out of and in the course of a worker's employment. However, injuries or death resulting from a hazard introduced to the premises by the worker for the worker's personal benefit may not be considered to arise out of and in the course of the worker's employment, if no other factors demonstrate an employment connection.

Personal activities associated with and incidental to business trips, such as traveling, eating in restaurants, staying in overnight accommodations (including sleeping, washing etc.) are normally regarded as within the scope of a worker's employment where a worker is on a business trip.

On the other hand, when a worker makes a distinct departure of a personal nature while on a business trip, this may be regarded as outside the scope of the worker's employment. There is an obvious intersection and overlap between employment and personal affairs while a worker is on a business trip. However, a "distinct departure" is more than a brief and incidental diversion.

If a worker simply stops for a short refreshment break, this may be regarded as a brief and incidental diversion from the business trip and an employment connection may still be found. The employment connection may be broken where the injury or death occurs as a result of the worker's involvement in social or recreational activities that are not incidental to the business trip.

In the marginal cases, it is impossible to do better than weigh the business trip features of the situation against the personal features to reach a conclusion as to whether the injury or death arises out of and in the course of a worker's employment.

[emphasis added]

- [35] The defendant submits that he was working at the time of the accident because his travel was part of a business trip, as envisioned by policy item C3-19.00. In applying the factors under policy item C3-14.00, he maintains that the trip was taken solely for the benefit of Masters Digital and on the instructions of Masters Digital, with Masters Digital remunerating him for his mileage and paying for his accommodation, in the context of his transporting and using equipment supplied by Masters Digital to perform his sound engineering duties. The defendant further argues that at the time of the accident he had entered a public roadway with the intention of returning to Masters Digital's premises in Victoria to unload the equipment from the van and reload it with equipment to attend another event, as instructed by Masters Digital. He had just commenced his return trip to Victoria when the accident occurred and had not embarked on any deviation from the direct route. His planned minor deviation to go to an A&W restaurant in Duncan would not have taken place until he was a couple of hours down the road.

- [36] By contrast, the plaintiff, in view of the March 22, 2024 email from Kathy Archer, submits that the defendant was not on a job for Masters Digital at the time of the accident and his affidavit evidence does not suggest otherwise. Moreover, the plaintiff points to the lack of detail in the defendant's evidence about such things as the location of where he would be unloading and reloading the van after returning to Victoria. Based on a *Google Maps* printout of the route between Campbell River and Victoria, as provided by the defendant, the plaintiff further submits that if the defendant departed Campbell River at 6:30 a.m. and drove to Victoria without stopping in Duncan, he would have arrived in Victoria at approximately 9:40 a.m. This would have been well before the 2:00 p.m. event at the Oak Bay Beach Hotel, allowing him to engage in a variety of personal activities. As such, the plaintiff argues that the defendant was likely on his way home after leaving Campbell River and would have had several hours to rest and do nothing related to any sort of work.
- [37] In addition, as I understand the plaintiff's argument, if I were to accept that the defendant was on a job for Masters Digital in Campbell River, consideration should be given any deviations for personal reasons the defendant may have taken while traveling to Victoria. The plaintiff submits that the defendant's planned stop for breakfast in Duncan represented a significant deviation from his direct route to his "employer's alleged warehouse." As the plaintiff says: "This deviation implies that at the time of the accident, he was not acting within the scope of his employment, thereby excluding him from coverage." It is also the plaintiff's position that the defendant's intention to engage in a personal act – stopping for breakfast – indicates that his travel at the time of the accident was not strictly for work purposes, consistent with the argument that he was not in the course of employment. Finally, the plaintiff submits that Masters Digital did not expect the defendant to return to a warehouse at any particular time or at all, and from its perspective the defendant's trip had nothing to do with his employment.
- [38] In rebuttal, the defendant notes that neither the plaintiff nor Masters Digital has provided any evidence to support Kathy Archer's claim that the defendant was not working as an employee on a Masters Digital job at the time of the accident. He relies on his affidavit evidence to support his position that he was working in Campbell River on a project for the benefit of Masters Digital. As the defendant puts it, his inability to access and produce records that are in the possession of Masters Digital is not evidence of a lack of credibility on his part or an ulterior motive.
- [39] As well, the defendant argues, in keeping with policy item C3-19.00, that even if he was on his way home to rest, the employment connection existed until he completed the travel that was required for the business trip to Campbell River. Furthermore, in

response to the plaintiff's assertion that the defendant's planned stop for breakfast in Duncan was a significant deviation from his direct route to the warehouse in Victoria, the defendant submits that he had not yet deviated from his intended route to Victoria by going to the A&W restaurant in Duncan, given that he had just started his return trip when the accident occurred.

- [40] I have no way of knowing whether Kathy Archer of Masters Digital understood the significance of her March 22, 2024 email with respect to this application. Having said that, I find that it is not determinative of the defendant's status at the time of the accident; it must be weighed against the defendant's discovery and affidavit evidence.
- [41] Again, I give weight to the November 1, 2018 sale agreement between the defendant and Masters Digital. Tim Archer signed it on behalf of Masters Digital. It is, in my view, persuasive evidence that the defendant was working for Masters Digital at the Bobby Dazzler musical event on December 21, 2018 in Campbell River. While I assume that Kathy Archer knew of Tim Archer entering into the November 1, 2018 sale agreement with the defendant on behalf of Masters Digital, the fact that Tim Archer did not compose the March 22, 2024 email alleging that the defendant was not working as an employee on a Masters Digital job at the time of the accident somewhat weakens the plaintiff's position in this application, in my view.
- [42] I accept the defendant's evidence that after November 1, 2018 he did not accept any contracts for work outside his employment with Masters Digital as a sound engineer or work in that capacity under any previous contracts except in the ordinary course of his employment with Masters Digital. There is no compelling evidence to the contrary.
- [43] At the same time, consistent with my analysis above, I accept that Masters Digital was paying the defendant in December 2018, as shown on his bank statement. That evidence, despite the absence of any evidence, documentary or otherwise, of the defendant ever being paid a mileage allowance based on his kilometres traveled, weighs in favour of a finding that the defendant was working for Masters Digital when he was in Campbell River on the day of the accident.
- [44] Also supporting the defendant's position is the November 13, 2018 agreement between Blue Thunder Contracting and the musical group Bobby Dazzler. It shows that the band was responsible for sound and lighting equipment, as well as a sound technician. This buttresses the defendant's evidence that he was in Campbell River to work at the Bobby Dazzler event on December 21, 2018. I also give weight to the evidence about the defendant driving a van, which was insured for business use, when the accident

occurred and how he had a Honda Civic for personal use. Presumably, the defendant was driving the same van that was included in the sale of Shortt Sound to Masters Digital on November 1, 2018.

- [45] I find that the evidence of the defendant being in Campbell River on a business trip for Masters Digital outweighs the evidence that he was not. The Notice of Civil Claim says that the accident happened at or near the intersection of Highway 19 and Tamarac Street in Campbell River when the plaintiff was driving the propane truck in a northerly direction on Highway 19. He testified during his discovery that the defendant's vehicle approached from the right, suggesting the defendant was driving on Tamarac Street. The *Google Maps* printout in this application contains route details on how to travel from the intersection of Highway 19 and Tamarac Street in Campbell River to Victoria. It shows that the defendant, by approaching the intersection of Highway 19 and Tamarac Street, would have been on a direct route to Victoria once he reached Highway 19.
- [46] The plaintiff's argument about the defendant's time of departure from Campbell River on December 22, 2018 and the possibility of it leaving him with plenty of time to engage in personal activities before being at the Oak Bay Beach Hotel event by 2:00 p.m. has no impact on my analysis under policy item C3-19.00. It does not change the likelihood that the defendant was on a business trip for Masters Digital in Campbell River and was returning to Victoria on that business trip at the time of the accident.
- [47] In addition, the plaintiff's argument that the defendant's planned stop for breakfast in Duncan represented a significant deviation from his direct route to Victoria is without merit because, as the defendant argues, he was at the start of his journey to Victoria when the accident happened and it would have been a couple of hours before he turned off the direct route to find the A&W restaurant in Duncan. There is no compelling evidence that the defendant, upon reaching the intersection of Highway 19 and Tamarac Street, was about to take some sort of back route, rather than Highway 19, to the A&W restaurant in Duncan. I find that the defendant had not made a distinct departure of a personal nature from his direct route to Victoria prior to the accident.
- [48] As explained in policy item C3-19.00, an employment connection generally exists continuously during a business trip, except where the worker makes a distinct departure of a personal nature. Having weighed the evidence, I find that the defendant, owing to the fact he was traveling to Victoria after leaving Campbell River, while on a business trip for Masters Digital, without having made a distinct departure of a personal nature from his direct route to Victoria, was in the course of his employment at the time of the accident. As a result, I find that any action or conduct of the defendant, which caused

the alleged breach of duty of care, arose out of and in the course of his employment within the scope of the compensation provisions of the Act.

Conclusion

[49] I find that at the time of the December 22, 2018 accident:

- (a) the plaintiff, Kevin Wayne Ramsay, was a worker within the meaning of the compensation provisions of the Act;
- (b) any injury suffered by the plaintiff, Kevin Wayne Ramsay, arose out of and in the course of his employment within the scope of the compensation provisions of the Act;
- (c) the defendant, Daniel Joseph Shortt, was a worker within the meaning of the compensation provisions of the Act; and
- (d) any action or conduct of the defendant, Daniel Joseph Shortt, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of compensation provisions of the Act.

Andrew Waldichuk
Vice Chair

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 2019, CHAPTER 1, AS AMENDED

BETWEEN:

KEVIN WAYNE RAMSAY

PLAINTIFF

AND:

DANIEL JOSEPH SHORTT

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, DANIEL JOSEPH SHORTT, in this action for a determination pursuant to section 311 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, December 22, 2018:

1. The Plaintiff, KEVIN WAYNE RAMSAY, was a worker within the meaning of the compensation provisions of the *Workers Compensation Act*.
2. Any injury suffered by the Plaintiff, KEVIN WAYNE RAMSAY, arose out of and in the course of his employment within the scope of the compensation provisions of the *Workers Compensation Act*.
3. The Defendant, DANIEL JOSEPH SHORTT, was a worker within the meaning of the compensation provisions of the *Workers Compensation Act*.
4. Any action or conduct of the Defendant, DANIEL JOSEPH SHORTT, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of compensation provisions of the *Workers Compensation Act*.

CERTIFIED this 29th day of August, 2024

Andrew Waldichuk
VICE CHAIR

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 2019, CHAPTER 1, AS AMENDED

BETWEEN:

KEVIN WAYNE RAMSAY

PLAINTIFF

AND:

DANIEL JOSEPH SHORTT

DEFENDANT

SECTION 311 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
150-4600 Jacombs Road
Richmond, BC V6V 3B1
FAX 604-664-7898
TELEPHONE 604-664-7800

A2400285