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

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
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Noteworthy Decision Summary

Decision: WCAT-2004-04112-AD **Panel**: Jane MacFadgen **Decision Date:** July 30, 2004

Section 11 determination – A self-employed housecleaner, who was not registered with the Workers' Compensation Board but sometimes hired other cleaners to help her on a casual basis and had hired two on the date of a MVA, was an employer within the meaning of the Workers Compensation Act (Act) on that date – Lack of registration does not affect a party's status as an employer under the Act

A vehicle operated by the defendant struck the plaintiff's vehicle. The defendant was a self-employed house-cleaner who provided cleaning services to multiple clients. She was not registered with the Workers' Compensation Board (Board) and did not have personal optional protection (POP) at the time of the MVA. Although the business was mainly a one-person business with the defendant doing most of the work, she regularly hired casual workers on an as needed basis to assist her on specific cleaning contracts. The cleaners she took with her varied, depending on who was available. There were no written contracts or set times to work, she paid them $10 an hour in cash for the time spent cleaning and did not pay them for travel time. She had retained two of these casual workers to work with her on a specific cleaning job on the date of the MVA, and the accident occurred while she was en route to pick them up so they could accompany her to the client's house. The defendants requested a determination with respect to the status of the parties under section 11 of the *Workers Compensation Act* (Act). The main issue was whether the defendant was an employer at the time of the MVA.

The defendant directed when, where and how the cleaners she hired on a casual basis worked, and paid them on an hourly basis. The panel was satisfied that she had engaged the two individuals in a contract of serve for the cleaning job on the date of the MVA, and accordingly concluded that, on the date of the MVA, she fell within the definition of employer. A number of previous appeal decisions have stated that lack of registration does not affect a party's status as an employer under the Act. Commissioners *Decision 169,* which had the status of Board policy at the time of the MVA but has now been retired, should be limited to its facts. This is because the definition of employer in section 1 of the Act is very broad, and makes no reference to registration as a prerequisite to employer status, and section 2(1) states in absolute terms that Part 1 applies to all employers, as employers, except where exempted by order of the Board. The clear language in sections 1 and 2 is not displaced by *Decision 169* in a case such as this where the party clearly meets the section 1 definition of an employer, and has made no active representation to the Board regarding its employer status which would estop it from now asserting a change in its status in the context of a section 11 determination.

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WCAT Decision Number: **WCAT-2004-04112-ad**
WCAT Decision Date: July 30, 2004

Panel: Jane MacFadgen, Vice Chair

WCAT Reference Number: **031094-A**

Section 11 Determination
In the Supreme Court of British Columbia
Vancouver Registry No. M010308
Michael George MACLEAN v. Paul Richard CASE and Erna Susan CASE

Applicants: Paul Richard CASE and Erna Susan CASE
(the "defendants")

Respondent: Michael George MACLEAN
(the "plaintiff")

Representatives:

For Applicant: Mr. Doug Harrington
HARRIS & BRUN

For Respondent: Mr. Art Vertlieb, Q.C.
VERTLIEB ANDERSON MACKAY

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WCAT Decision Number: **WCAT-2004-04112-ad**
WCAT Decision Date: **July 30, 2004**
Panel: Jane MacFadgen, Vice Chair

Section 11 Determination
In the Supreme Court of British Columbia
Vancouver Registry No. M010308
Michael George MACLEAN v. Paul Richard CASE and Erna Susan CASE

Introduction

On February 24, 2000, the vehicle operated by the defendant, Erna Susan Case (Ms. Case), struck the plaintiff's vehicle. Ms. Case and the defendant Paul Richard Case (Mr. Case) co-owned the vehicle which she was driving.

The defendants requested a determination with respect to the status of the plaintiff and the defendants under section 11 of the *Workers Compensation Act* (Act). The plaintiff's alleged employer, Pro Mac Manufacturing Ltd. (Pro Mac), was invited to participate in this proceeding, but did not do so.

Issue(s)

The issues are: (1) whether the plaintiff was a worker within Part 1 of the Act on February 24, 2000; (2) if so, whether the plaintiff's accident and injuries arose out of and in the course of his employment; (3) whether the defendant Ms. Case was an employer engaged in an industry within the meaning of Part 1 of the Act on February 24, 2000; (4) if so, whether the action or conduct of the defendant Ms. Case, which caused the alleged breach of duty of care, arose out of and in the course of employment; and (5) whether the defendant Mr. Case was a worker within the meaning of Part 1 of the Act on February 24, 2000.

Jurisdiction

This application for a determination under section 11 of the Act was filed with the Appeal Division before March 3, 2003. Effective March 3, 2003, section 11 of the Act was repealed, and the Workers' Compensation Review Board and the Appeal Division were replaced by the Workers' Compensation Appeal Tribunal (WCAT). These changes resulted from Bill 63, the *Workers Compensation Amendment Act (No. 2), 2002*.

WCAT has jurisdiction to provide a certificate to the court under section 257 of the amended Act, but section 39(1)(c) of the transitional provisions in Bill 63 provides that section 11 proceedings that were pending before the Appeal Division on March 3, 2003, must be continued and completed as proceedings before WCAT. Accordingly, WCAT is considering this application under the former section 11. In doing so, WCAT must apply the policies of the board of directors pursuant to sections 250(2) and 251 of the amended Act.

As of the date of the accident, the governors had authority under section 82 of the Act to approve and superintend the policies of the Board. Those duties were then being discharged by a panel of administrators under section 83.1 of the Act. Governors' policy included the *Rehabilitation Services and Claims Manual*, *Assessment Policy Manual,* and Decisions No. 1 - 423 of the *Workers' Compensation Reporter*.[1]

Since then a number of relevant *Workers' Compensation Reporter* (*WCR*) decisions were "retired" and the *Assessment Policy Manual* was replaced by the *Assessment Manual* as of January 1, 2003. My decision refers to the law and policy that existed as of the date of the accident, except where otherwise stated. I note, however, that for the most part, the changes referred to above do not alter the substance of the applicable law and policy.

Section 11 of the Act obliged the Workers' Compensation Board (Board) to make determinations and provide a certificate to the court with respect to certain matters which are relevant to a legal action. The court determines the effect of the certificate on the legal action.

Background and Evidence

Counsel for the defendants has made submissions concerning the status of the plaintiff and the two defendants. The submission by counsel for the plaintiff addressed only the status of the defendant Ms. Case.

The evidence submitted includes a transcript of the May 16, 2002 examinations for discovery of Mr. and Ms. Case; Ms. Case's May 8, 2000 statement; the plaintiff's March 20, 2000 statement and insurance claim application form; the August 12, 2003 affidavit by the insurance adjuster; the plaintiff's date book for February 21 - 25, 2000; and the transcript of the May 28, 2002 examination for discovery of the plaintiff. The evidence before me also includes the Board's claim files for the plaintiff and Ms. Case, related to the February 24, 2000 motor vehicle accident (MVA).

[1] See Governors' Decision No. 86 (10 *WCR* 781), and the Panel of Administrators' Decision No. 1 (11 *WCR* 465)

I have summarized the key evidence related to each of the issues which I am requested to determine under the relevant headings below.

Reasons and Findings

Status of the Plaintiff

Section 1 of the Act defines "worker" to include a person who has entered into or works under a contract of service, written or oral, express or implied, whether by way of manual labour or otherwise.

Counsel for the plaintiff has not disputed the assertion by counsel for the defendants that the plaintiff was a worker within the meaning of Part 1 of the Act.

At the time of the MVA the plaintiff was employed as a technical salesperson by Pro Mac, a firm registered with the Board. The April 11, 2000 report of injury which Pro Mac submitted to the Board stated that the plaintiff was a salaried, full-time employee.

I find that the plaintiff was a worker within the meaning of Part 1 of the Act at the time of the MVA.

Did the MVA arise out of and in the course of the plaintiff's employment?

In his examination for discovery, the plaintiff stated that his job duties involved extensive travel throughout North America. He spent about three weeks out of a month travelling. The employer paid for his accommodation and a meal allowance, and reimbursed him for his work-related mileage. The plaintiff set his own work hours, but on average, worked 60 hours a week.

The plaintiff's March 20, 2000 statement indicated that he had driven to Vernon on business the day before the February 24, 2000 MVA, and was on his way from the hotel in Vernon to a mill in Armstrong when the MVA occurred. His date book noted that he had visited clients in Westbank and Kelowna on February 23, 2000, and had an appointment with a customer in Armstrong scheduled for 9 a.m. on February 24. The plaintiff had been driving on the highway toward Armstrong for about 15 or 20 minutes when the MVA occurred.

On his insurance claim application, dated March 20, 2000, the plaintiff indicated that his injuries were sustained in the course of his employment. Pro Mac's April 11, 2000 report to the Board indicated that the plaintiff's actions at the time of injury were part of his regular work for the purpose of its business.

Counsel for the defendants submits that the plaintiff was in the course of his employment at the time of the MVA, as he was a worker employed to travel and the MVA occurred in the course of his travel. Counsel for the plaintiff did not make a submission on this issue.

Rehabilitation Services and Claims Manual, Volume I (RSCM I) policy #18.00 states that where a worker is employed to travel, accidents in the course of travel are covered. Policy #18.40 provides that employees whose job involves travelling on a particular occasion or generally are covered while travelling. Policy #18.41 sets out the general principle that the activities of travelling, eating in restaurants, and staying in hotels overnight fall within the scope of the employment of a worker who is required to travel.

I find that the plaintiff was employed to travel and had the status of a travelling worker in the course of his employment at the time of the MVA, as discussed in policy #18.40. Travel was an integral part of his job duties and he was reimbursed for his work-related mileage, accommodation and meals. At the time of the MVA he had left the hotel and restaurant and was travelling en route to see a customer.

Since the plaintiff sustained injuries as a result of an accident which occurred in the course of his employment, section 5(4) of the Act creates a rebuttable presumption that his injuries also arose out of his employment. In the absence of evidence which rebuts the statutory presumption, I find the plaintiff's injuries arose out of and in the course of his employment.

Status of the defendant Ms. Case

In her examination for discovery, Ms. Case stated that she had been self-employed cleaning homes for a number of years. She called her business Mount (or Mt.) Rose Cleaning. It was not a limited company, and she did not have a business partner. Her cleaning business was not registered with the Board at the time of the MVA, although she had previously registered with the Board when she operated an industrial cleaning business, about 15 years earlier (Q. 87-90).

In her May 8, 2000 statement for the insurer, Ms. Case stated that she had no direct employees; her cleaners worked for her on a contract basis. Memos in the plaintiff's and Ms. Case's claim files and a March 15, 2004 memo from the policy manager of the Board's Assessment Department confirmed that Ms. Case was not registered at the time of the MVA. As she did not have personal optional protection (POP) at the time of the MVA, she was not considered a worker under the Act. Her registration with the Board, subsequent to the MVA (as Ms. Case, dba Mountain Rose Cleaning Service), was back-dated to provide coverage for workers only.

Ms. Case did not advertise her business, or have a separate business phone or office. She had a separate bank account for the business. She and her husband (the defendant Mr. Case) co-owned the vehicle which she was driving at the time of the MVA. Ms. Case drove the vehicle 90% of the time. It was insured for business use although there was no business-related signage on the vehicle (Q. 136, 142-144). Ms. Case used her clients' cleaning equipment and supplies to clean their homes, but she also carried a vacuum cleaner and cleaning products in her vehicle, in case she needed them (Q. 313-329).

Ms. Case reported any income from cleaning houses and related expenses on her personal income tax returns (Q. 147-48). It was mainly a one-person business, with Ms. Case doing most of the work. She had no employees or regular staff, but she had a list of people she drew on to work as cleaners to help her as needed, on a casual basis (Q. 156, 170-171, 192, 198-99). There were no written contracts or set times to work (Q. 200, 300). She paid them $10 an hour in cash for the time spent cleaning (Q. 222, 227). They were not paid for travel time or while they were at lunch (Q.231-34).

The MVA occurred while Ms. Case was driving on the highway from her home in Vernon to Winfield to pick up two people who were going to help her clean the house and premises of one of Ms. Case's regular customers in Winfield. As this customer's premises were very large, Ms. Case normally had two people go with her on this cleaning job, which she did once a week. The cleaners she took with her varied, depending on who was available (Q. 190). The customer paid her $120 for the job, and Ms. Case paid the two other cleaners $20 cash each, based on them cleaning for two hours. She kept records of what she paid them (Q. 200, 227-28).

Ms. Case intended to drop off the two other cleaners after they had finished the first customer's house, and then proceed to her next cleaning job at the house of another regular customer.

Counsel for the defendants submits that at the time of the MVA Ms. Case was an employer engaged in an industry within the meaning of Part 1 of the Act. The submission argued that she met the criteria for an independent firm set out in *Assessment Policy Manual* item 20:30:20 as she operated her own cleaning business, and provided cleaning services to multiple clients simultaneously. She employed hourly paid casual workers to assist her in her cleaning business on a regular basis, including on the day of the accident. She reported the wages paid to these workers as an expense to the cleaning business.

Ms. Case was not registered with the Board and did not have personal optional protection (POP) at the time of the MVA and was, therefore, not entitled to coverage as a worker. Her registration was for workers only because the Board had required her to

register retroactively as an employer under the Act to cover workers. Ms. Case had not obtained POP coverage for herself as a worker.

Although registration with the Board was mandatory for an independent firm which was an employer, the fact that Ms. Case was not registered with the Board at the time of the MVA did not affect her status as an employer as defined under the Act. The Act did not permit individuals who employed workers to avoid the operation of the Act; such individuals were employers whether or not they registered with the Board. Defendants' counsel submitted that *Appeal Division Decisions #93-0336* and *#2003-0182* stood for the proposition that, although an employer may be required by law to be registered with the Board, a lack of registration did not affect its status as an employer.

Plaintiff's counsel submitted that Ms. Case was neither an employer nor a worker within the meaning of the Act at the time of the MVA. She was an independent operator who was not registered with the Board. Whether or not she employed people did not change her status. While workers and employers had compulsory coverage under the Act, independent operators had to apply and be accepted by the Board in order to obtain POP coverage. It was only by means of POP coverage that an independent operator could be a worker or employer under the Act. Otherwise, they remained independent operators, not covered by the Board.

The Act creates three categories: employer, worker and independent operator. "Worker" and "employer" are defined in section 1 of the Act, but the term "independent operator" is not defined in the Act. The Act includes under the definition of "worker" an independent operator admitted by the Board under section 2(2). Neither counsel has argued that Ms. Case was a worker, or an independent operator who had purchased POP coverage from the Board so as to attain the status of a worker under section 2(2) of the Act, at the time of the MVA.

As outlined above, the issue in dispute is whether Ms. Case was an employer at the time of the MVA. Section 1 of the Act defines "employer" as including "every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry".

Section 2(1) provides that Part I of the Act applies to all employers, as employers, and all workers in B.C., except employers or workers exempted by order of the Board. Section 2(2) states that the Board may direct that Part 1 of the Act applies to an independent operator who is neither an employer nor a worker, as though the independent operator was a worker, or to an employer as though the employer was a worker. Section 2(3) provides that the application of section 2(2) to an employer does not exempt the employer, as an employer, from the application of Part 1.

RSCM I policy #6.10 states that where a person contracts with another to provide labour in an industry covered by the Act, the Board considers that the contract may create one of three types of relationship: the persons doing the work may be independent firms, labour contractors, or workers. The Board's published policies detail the various exemptions from and extensions of coverage under the Act to various classes of persons and firms. A person employed by the owner in or around a private residence, for less than eight working hours a week, is exempt from coverage (*Decision 60* of the Governors, 10 *Workers' Compensation Reporter* 167; *Assessment Policy Manual* item 20:10:20). This general exemption order would apply to the home owner as a direct employer of domestic workers, but not to Ms. Case in relation to her employment of casual workers in her cleaning business.

I find that, as the proprietor of a cleaning business providing cleaning services to multiple clients, Ms. Case is appropriately characterized for workers' compensation purposes as an independent firm under item 20:30:20 of the *Assessment Policy Manual*, in effect at the time of the MVA. That policy states that an independent firm includes a service industry firm contracting to two or more clients simultaneously and employing workers. The policy provides that where an independent firm is an employer, registration with the Board is mandatory. The proprietor of the firm is not automatically covered unless POP is in effect. Contrary to the argument of plaintiff's counsel, POP coverage has no bearing on the independent operator's status as an employer under the Act.

The evidence before me establishes that Ms. Case regularly hired casual workers on an as needed basis to assist her on specific cleaning contracts. She directed when, where and how these cleaners worked, and paid them on an hourly basis. Ms. Case had retained two of these casual workers to work with her on a specific cleaning job on the date of the MVA, and the accident occurred while she was en route to pick them up so they could accompany her to the client's house. I am satisfied that Ms. Case had engaged these two individuals in a contract of service for this cleaning job on the date of the MVA. I accordingly conclude that, on the date of the MVA, Ms. Case fell within the definition of employer under the Act.

As outlined above, Ms. Case was not registered as an employer with the Board at the time of the MVA. A number of previous appeal decisions, including *Appeal Division Decision #2003-0182*, have stated that lack of registration does not affect a party's status as an employer within the meaning of Part 1 of the Act. As the panel in *Appeal Division Decision #93-0336* (9 *WCR* 705) stated, at page 710:

> I appreciate the apparent unfairness of that conclusion — that Bow Ridge could fail to remain registered as an employer in B.C. and pay no assessments in B.C., and yet be entitled to the protections found in Section 10 of the Act. However, the *Act* and the policy of the Board are

> clear. An employer in a compulsory industry in B.C. is an employer under the *Act* whether or not it is registered – otherwise the protection of its workers under the *Act* would be uncertain. An employer who fails to register is subject to certain penalties, but no exception is made in the *Act* or Board policy regarding Section 10 protections. That is, there is nothing that allows an employer who fails to register to be found to be an employer for the purposes of assessments and penalties but not for the purposes of Section 10. An employer under Part 1 of the Act is an employer for all of Part 1.

Subsequent to *Decision #93-0336*, the Board amended RSCM I policy #111.40, "Certification to Court", to add the following two paragraphs in late 1994. These paragraphs lent support to the plaintiff's argument that a party's status as an employer is contingent on it having assumed the responsibilities commensurate with the status it seeks:

> The Board has determined that a party to a Section 11 determination cannot claim to be an independent operator (and not an employer) when the obligations of an employer under the Act are being considered, and then claim to be an employer in respect of the same time period when there subsequently appears to be some advantage in that position.
>
> There are several examples in our legal system of the principle being applied that a person cannot disclaim or fail to meet her or his obligations under a statute and at the same time claim its benefits. That principle has no application where a statute otherwise provides. Nor is it in any event a principle of universal application. But where a statute does not otherwise provide, it is a principle that is sometimes applied where the adjudicating tribunal finds it consistent with the policy objectives of the Act, and in other respects appropriate.

Policy #111.40, however, was deleted effective March 3, 2003, as a result of Resolution 2003/01/21-01 of the board of directors of the Board. Because the resolution specifically states that this policy change applies to all decisions made on or after March 3, 2003, I conclude that policy #111.40 does not apply to my decision.

The first quoted paragraph of policy #111.40 is drawn from Decision 169, a 1975 commissioners' decision published at 2 *WCR* 262. Although Decision 169 has now been retired, it had the status of a policy of the predecessor of the board of directors of the Board at the time of the MVA. In Decision 169, a defendant sought a section 11 determination that he was an employer within the scope of Part I of the Act at the time of a fatal MVA. The defendant proprietor did not have anyone in his service at the time of the MVA. He had in the past, however, hired temporary, short-term workers from

time to time for small jobs. Based on the zero payroll return which he had submitted to the Board indicating he had no workers that year, the Board's assessment department had not levied any assessments against him for workers for the year of the MVA. In effect, based on the defendant's representations, the Board had concluded he was not an employer during that year.

When he was later sued as a defendant related to the MVA, he claimed to have been an employer, and sought to submit a revised payroll report to the Board. The commissioners concluded that the defendant could not now change his position and claim to have been an employer under Part 1 of the Act when there subsequently appeared to be some advantage in that status. They stated that it would be contrary to the policy and purposes of the Act to consider the evidence recently adduced by the defendant relating to his engagement of casual help. They determined that the Board should not reopen its earlier decision that the defendant was not an employer during the year in question.

Appeal Division Decision #99-1912[2] concluded that Decision 169 did not stand for the proposition that employer status was unavailable in a section 11 determination when an employer was not registered with the Board. The panel limited the application of Decision 169 to its particular facts, i.e. the party seeking a determination that it was an employer had previously made an express representation to the Board denying employer status, on which the Board had relied, and it was unclear whether or not the proprietor was in fact an employer at the time of injury.

Other decisions (e.g. *Appeal Division Decisions #2000-1740* and *#2001-2255*[3]) have suggested that Decision 169 may stand for the broader proposition that even if a defendant were in fact an employer at the time of injury, if the defendant failed to meet his obligations to register in that period, the Board will not make a determination of his status that will give him the benefit of immunity from a civil suit.

After considering the alternative interpretations of Decision 169, I adopt the restricted interpretation set out in *Decision #99-1912*, which limits Decision 169 to its unique facts. I do so because the definition of employer in section 1 of the Act is very broad, and makes no reference to registration as a prerequisite to employer status, and section 2(1) states in absolute terms that Part I of the Act applies to <u>all employers, as employers</u>, except where exempted by order of the Board. I note that the current form of section 2(1), creating a scheme of universal coverage (subject to exemption by Board order for exceptional industries or occupations), was enacted in 1993, eighteen years after Decision 169.

[2] Accessible at http://www.worksafebc.com/appeal_decisions/appealsearch.
[3] Accessible at http://www.worksafebc.com/appeal_decisions/appealsearch.

I conclude that Decision 169 does not apply on the facts of this case. I find that the clear language of sections 1 and 2 regarding the application of Part 1 of the Act to an employer is not displaced by Decision 169 in a case such as this where the party clearly meets the section 1 definition of an employer, and has made no active representation to the Board regarding its employer status which would estop it from now asserting a change in its status in the context of a section 11 determination.

I therefore conclude that the fact that Ms. Case had not registered with the Board as an employer at the time of the MVA does not affect her legal status as an employer under Part 1 of the Act. I find that the defendant Ms. Case was an employer engaged in an industry within the meaning of Part 1 of the Act on February 24, 2000.

Did the MVA arise out of and in the course of Ms. Case's employment?

Defendants' counsel submitted that Ms. Case was an employer active in the course of her employment at the time of the accident as her actions were in furtherance of her cleaning business. Her business was mobile, and travel to her cleaning appointments at clients' premises was integral to her business. Further, at the time of the MVA she was on her way to pick up two employees and then transport them to their first cleaning job of the day. She was driving a vehicle insured for use in her business. She worked out of her own home and used this vehicle to travel to her cleaning appointments. Although she co-owned the vehicle with Mr. Case, she drove it 90% of the time. She deducted vehicle expenses from her business income on her income tax returns.

Plaintiff's counsel made no submission on the issue of whether Ms. Case was in the course of employment at the time of the MVA. Its submission was directed to the issue of her status as a worker or employer.

Although RSCM I policies #18.00 – #18.42 discuss travelling to and from work in the context of determining whether a worker is in the course of employment while engaged in travel, the same analysis applies when determining whether an employer's travel falls within the scope of her employment. In light of the evidence summarized above, I conclude that Ms. Case was not engaged in a routine commute to work at the time of the MVA. I find that her travel to pick up two workers to take to the job site at the time of the MVA constituted business-related travel in the course of employment, as contemplated by RSCM I policy #18.40.

I therefore find that Ms. Case's action or conduct, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act.

Status of defendant Mr. Case

Defendants' counsel submits that the defendant Mr. Case was a worker within the meaning of the Act at the time of the accident. The defendants do not seek a determination on the issue of whether or not he was acting in the course and scope of his employment at the time of the MVA. Plaintiff's counsel has made no submission on the issue of Mr. Case's status.

In his May 16, 2002 examination for discovery, Mr. Case stated that he was not self-employed, and he had no involvement in Ms. Case's cleaning business. He sold construction equipment for CTF Supply Ltd., and had done so for the past three years. The March 30, 2004 memo from the Board's Assessment Department indicated that CTF Supply Ltd. was registered with the Board at the time of the MVA.

Given Mr. Case's evidence that he was not self-employed, and that he had worked for a an employer that was registered with the Board, I find that Mr. Case was a worker within the meaning of Part 1 of the Act on February 24, 2000.

Conclusion

I find that at the time of the February 24, 2000 motor vehicle accident:

1. The plaintiff, Michael George MacLean, was a worker within the meaning of Part 1 of the Act;
2. The plaintiff's accident and injuries arose out of and in the course of his employment;
3. The defendant, Erna Susan Case, was an employer engaged in an industry within the scope of Part 1 of the Act;
4. The action or conduct of the defendant, Erna Susan Case, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act; and
5. The defendant, Paul Richard Case, was a worker within the meaning of Part 1 of the Act.

Jane MacFadgen
Vice Chair

JM:gw

NO. M010308
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:

Michael George MACLEAN

PLAINTIFF

AND:

Paul Richard CASE and Erna Susan CASE

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the defendants, Paul Richard CASE and Erna Susan CASE, in this action for a determination pursuant to Section 11 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 Board;

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 on February 24, 2000:

1. The plaintiff, Michael George MACLEAN, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the plaintiff, Michael George MACLEAN arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The defendant, Erna Susan CASE, was an employer engaged in an industry within the scope of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the defendant, Erna Susan CASE, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act.*

5. The defendant, Paul Richard CASE, was a worker within the meaning of Part 1 of the *Workers Compensation Act.*

CERTIFIED this day of July, 2004.

_____

JANE MACFADGEN
VICE CHAIR

NO. M010308
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:

MICHAEL GEORGE MACLEAN

PLAINTIFF

AND:

PAUL RICHARD CASE and ERNA SUSAN CASE

DEFENDANTS

SECTION 11 CERTIFICATE

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