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

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Noteworthy Decision Summary

Decision: WCAT-2005-02939 **Panel:** Herb Morton **Decision Date:** June 6, 2005

Section 257 determinations – Statutory interpretation – Presumption against retroactive application – Section 42 of the Workers Compensation Amendment Act (No. 2), 2002 – Section 250 and 257 of the Workers Compensation Act

Section 42 of the transitional provisions in the *Workers Compensation Amendment Act, (No. 2), 2002* (the Amendment Act), read in conjunction with section 250 of the *Workers Compensation Act* (Act), requires WCAT to apply the current policies of the board of directors to all new WCAT appeals. There is no provision to apply the former policies of the board of governors in effect at the time of the accident to new applications under section 257 of the Act. However, there is a strong presumption against a retroactive interpretation of the Act. Policies in effect at the time of the accident should be applied in new applications under section 257, notwithstanding the wording of section 42.

WCAT was asked to make a section 257 determination as to the parties' status as worker or employer. A preliminary issue was whether policies in effect at the time of the accident applied to the determination, or whether current policies applied.

According to section 250 of the Act, WCAT must apply board of directors' policies in its decision-making. However, section 42 of the transitional provisions in the Amendment Act states that WCAT will apply the former board of governors' policies to Workers' Compensation Review Board (Review Board) and Appeal Division appeals transferred to WCAT in 2003. There is no provision to apply the former board of governors' policies to new applications under section 257 of the Act. The new statutory provisions require WCAT to apply the current policies of the board of directors to all new WCAT appeals, irrespective of the nature of the events or time period giving rise to the proceeding. The application of new policies to determine the status of parties to accidents which occurred in the past could result in a different outcome, which in turn could affect the question as to whether their right to pursue legal action against another party is barred by section 10.

In *Harris v. BC (WCAT)*, the court found that WCAT's decision to apply policies in effect at the time of the injury, instead of current policies, in a determination as to whether the plaintiff was a worker was not patently unreasonable. The court's reasoning supports a narrow interpretation of sections 250 of the Act and section 42 of the Amendment Act, so as to avoid having to apply current policy in addressing the status of parties at the time of events that occurred in the past.

In the present case, the panel found that it was appropriate to apply a strong presumption against such a retroactive interpretation of the Act. The panel noted that none of the parties had argued for the application of the current policies of the board of directors to the determination of the status of the parties at the time of the accident. *WCAT Decision #2005-01937* recently concluded that policies in effect at the time of the accident should be applied in determining the status of the parties, notwithstanding the wording of section 42. The panel applied the same approach for the reasons set out above.

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WCAT Decision Number: **WCAT-2005-02939**
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Panel: Herb Morton, Vice Chair

WCAT Reference Number: **042415-A**

Section 257 Determination
In the Supreme Court of British Columbia
New Westminster Registry No. S81822
Lambina Stanculescu v. Attilio Bortignon

Applicant: Attilio Bortignon
(the "defendant")

Respondent: Lambina Stanculescu
(the "plaintiff")

Interested Persons: Diane BOURASSA
Olivia THUNDERBLANKET
Gail WILSON
Norma McPHERSON

Representatives:

For Applicant: Linda P. Stevens
STEVENS KALE

For Respondent: Kirk H. Wirsig
HANSON WIRSIG MATHEOS
(and Vahan A. Ishkanian)

For Interested Persons:

Diane Bourassa
Olivia Thunderblanket
Gail Wilson — Narvinder Gill
HARRIS & BRUN

Norma McPherson — D. Blake Hobson
HOBSON & COMPANY

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WCAT Decision Number: **WCAT-2005-02939**
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Section 257 Determination
In the Supreme Court of British Columbia
New Westminster Registry No. S81822
Lambina Stanculescu v. Attilio Bortignon

Introduction

A motor vehicle accident occurred on September 6, 2002, at approximately 9 a.m., near Capilano Road and the entrances to Highway #1 in North Vancouver, B.C. The plaintiff was planning to go west on Highway #1, and the defendant was planning to go east on Highway #1. The plaintiff, Lambina Stanculescu, worked as a supervisor for a cleaning company. At the time of the accident, she was driving a car belonging to her employer, and was transporting four employees from the employer's premises to their first cleaning job of the day. The defendant, Attilio Bortignon, was travelling from his home to a construction site in Port Coquitlam. Prior to the accident, he had picked up an electrician in his car so that the electrician could attend the work site to provide a bid on a job.

Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning actions based on a disability caused by occupational disease, a personal injury, or death. This application was initiated by defence counsel by letter dated August 27, 2004. A transcript has been provided of the March 4, 2005 examination for discovery of the defendant. The legal action is scheduled for trial on August 8, 2005. Written submissions were completed on May 19, 2005.

The defendant is represented by Corey J. Bow of Stevens Kale. The plaintiff is represented by Kirk H. Wirsig of Hanson Wirsig Matheos. Submissions have been provided on behalf of the plaintiff by Vahan A. Ishkanian.

Legal actions have also been brought on behalf of the four passengers in the plaintiff's vehicle. No certification is requested concerning those four plaintiffs. However, as this decision may also affect them, they have been given the opportunity to participate in this application as interested persons. Three of the interested persons (Diane Bourassa, Olivia Thunderblanket and Gail Wilson) are represented by Narvinder Gill of

Harris & Brun (BCSC Vancouver Registry No. M043568). The fourth interested person, Norma McPherson, is represented by D. Blake Hobson of Hobson & Company.

Although invited to do so, "A Woman's Touch Cleaning Company Inc." and "Frisco's Ventures Inc. dba Frisco's Inn" (Frisco) are not participating in this application.

Issue(s)

The central issue concerns the status of the defendant. The first question is whether he was a worker or independent operator. If the defendant was a worker, a further question is whether his action or conduct, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

Jurisdiction

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 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.

Applicable Policy

I have considered, as a preliminary issue, the question as to which policies apply to the determination of the parties' status. In *WCAT Decision #2004-05552*, an interpretive question was flagged as to whether WCAT should apply the policies in effect at the time of the motor vehicle accident in 2002, or the later policies of the board of directors. That decision noted:

> Item 1.1(g) of the February 11, 2003 policy resolution of the board of directors provided for the inclusion, as policy of the board of directors, of policy decisions of the former governors and the former panel of administrators still in effect immediately before February 11, 2003. However, the former *Assessment Policy Manual* had been replaced by the *Assessment Manual* effective January 1, 2003. Accordingly, the former *Assessment Policy Manual* cannot be viewed as part of the policy of the board of directors.

> Section 42 of the transitional provisions contained in Part 2 of Bill 63 makes express allowance for the policies of the former governors to be applied in connection with appeals filed to the former Workers' Compensation Review Board or the Appeal Division, which were transferred to WCAT on March 3, 2003 for completion. It does not make provision for the application of policies of the former governors to new applications under section 257. Section 250 stipulates that WCAT must apply the policies of the board of directors. While it would appear strange, possibly absurd, to apply current policies to an event in the past, that appears to be the approach required by the current statutory provisions. The new statutory provisions appear to require that WCAT apply the policies of the board of directors to all WCAT decision-making, apart from Review Board and Appeal Division proceedings transferred to WCAT on March 3, 2003, irrespective of the nature of the events or time period giving rise to the current proceeding before WCAT.

WCAT Decision #2004-01785 , dated April 6, 2004, certified regarding the status of the parties to a legal action based on the policy which existed at the time of an accident on June 22, 2000. That decision was the subject of a judicial review in the British Columbia Supreme Court, in *Harris v. BC (WCAT)*, 2004 BCSC 1618, accessible at: http://www.courts.gov.bc.ca/jdb-txt/sc/04/16/2004bcsc1618.htm (currently under appeal to British Columbia Court of Appeal). The Court found the WCAT decision was not patently unreasonable. The Court reasoned in part:

> [28] Moreover I find that the petitioner's submission ignores the legal effect of a policy pronounced by the Board. Section 82(a) of the ***Act*** requires the Directors of the Board to "set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety". Prior to the passage of the ***Workers Compensation Amendment Act 2002***, SBC 2002 c. 56, it was the Governors of the Board who were empowered to make policy: "the Governors must approve and superintend the policies and direction of the Board, including policies respecting compensation, assessment, rehabilitation, and occupational safety and health…").
>
> [29] Today, by virtue of s. 250(2) of the ***Act***, the WCAT must apply the Board's policy unless it finds the policy patently unreasonable (s. 251(1) of the ***Act***). If a policy is found to be patently unreasonable, then it must be referred to the Chair of the WCAT for a binding determination (s. 251(3)). The Chair must then refer a patently unreasonable policy to the WCB Board of Directors for reconsideration (s. 251(5)). The Board of Directors' decision is a final and binding determination on the WCAT (s. 251(8)). At no point here has the petitioner ever challenged the lawfulness of Policy 20:30:40 under s. 251 of the ***Act***. In all of these circumstances, I

> am satisfied that the WCAT's decision to apply the Policy in effect at the time the injury arose and to treat that Policy as binding under s. 250 was not patently unreasonable.

The Court's reasoning supports a narrow interpretation of sections 250 of the Act and section 42 of the transitional provisions, so as to avoid having to apply current policy in addressing the status of parties at the time of events which occurred in the past. This approach is supported by general principles of statutory interpretation. The text *Sullivan and Driedger on the Construction of Statutes*, 4th edition, (Ontario: Butterworths, 2002) summarizes the common law as follows (at page 546):

> At common law there are three well-established rules that govern the temporal application of statutes and regulations:
>
> 1. It is presumed that the legislature does not intend new legislation to be given a retroactive application — that is, to be applied so as to change the past legal effect of a past situation.
>
>   This presumption is strong. Normally it can be rebutted only if the statute or regulation in question contains language clearly indicating that it, or some part of it, is meant to apply retroactively.
>
> 2. It is presumed that the legislature does not intend to interfere with vested rights.
>
>   This presumption is weaker and in some contexts is easily rebutted. The weight of the presumption varies depending on factors such as the nature of the protected right and how unfair or arbitrary it would be to abolish or curtail the right.
>
> 3. It is presumed that the legislature does not intend to confer a power on subordinate authorities to make regulations or orders that are retroactive or interfere with vested rights.

The application of new policies to determine the status of parties to accidents which occurred in the past, could result in a different outcome, which in turn could affect the question as to whether their right to pursue a legal action against another party is barred by section 10 of the Act. In this context, it is appropriate to apply a strong presumption against such a retroactive interpretation of the Act. None of the parties has argued for the application of the current policies of the board of directors to the determination of the status of the parties at the time of the accident on September 6, 2002.

WCAT Decision #2005-01937 recently concluded that the policies in effect at the time of the accident should be applied, notwithstanding the wording of section 42 of the transitional provisions contained in Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*. I will apply the same approach in my decision, for the reasons set out above. Accordingly, I need not consider the current policies of the board of directors

(under which, for example, the definition of an independent firm has been amended from including "Service industry firms contracting to two or more clients simultaneously and employing workers" (APM item #20:30:20) to "Service industry firms that enter into two or more contracts simultaneously" (*Assessment Manual* item #AP1-1-3). My references to policy in this decision will be in relation to the former *Rehabilitation Services and Claims Manual* (RSCM), *Assessment Policy Manual* (APM) and published decisions in Volumes 1 to 6 of the *Workers' Compensation Reporter* (WCR), which were part of governors' policy at the time of the accident on September 6, 2002.

Status of the Plaintiff

The plaintiff submitted an application for workers' compensation benefits in relation to the September 6, 2002 accident. Her claim was suspended as she elected not to claim compensation.

The status of the plaintiff is not in dispute. She provided a sworn statement dated September 11, 2002 (Tab 5 of the Defendant's Materials). She was employed by A Woman's Touch Cleaning Company Inc., which was registered with the Board under account number 320775. She had worked for this company for the last four years. I find that the plaintiff was a worker within the meaning of Part 1 of the Act.

On the morning of the accident, she drove to her employer's place of business, picked up the company car and four other employees, and commenced driving to their first job. Policy at RSCM item #18.32 concerning Irregular Starting Points provided:

> A different situation arises when the job function requires the worker, after first reporting to the employer's premises or assembly area, to travel to a work location. Clearly, the worker's travel from home to the employer's premises or assembly area would be considered commuting and, as such, would not warrant compensation coverage. The worker's travel from the employer's premises or assembly area to the point where he or she will begin work is normally covered as being in the course of employment.

Policy at #18.20 concerning Provision of Transportation by Employer further provided:

> An employer may directly or indirectly provide transportation for its employees' journeys to and from work. In situations where this involves providing a specific vehicle such as, for example, a crew bus, in which the journeys are made, compensation coverage is generally extended to injuries occurring while travelling in this employer-owned vehicle.

Both policies support the conclusion that the plaintiff's injuries arose out of and in the course of her employment.

I find that at the time of the accident on September 6, 2002:

- the plaintiff, Lambina Stanculescu, was a worker within the meaning of Part 1 of the Act;
- the injuries suffered by the plaintiff, Lambina Stanculescu, arose out of and in the course of her employment within the scope of Part 1 of the Act.

Status of the defendant

The defendant gave evidence in an affidavit sworn on August 26, 2004, and in an examination for discovery on March 4, 2005.

In a telephone memorandum dated September 18, 2002, a Board entitlement officer documented a conversation with the defendant as follows:

> He advised me he is self employed in the construction trade. He was coming from his home in West Vancouver to pick up a friend at the Chevron station in North Vancouver off Capilano Road.
> He clarified that he has a project in Port Coquitlam at a convenience store and he called his friend who is an electrician. Attilio called his friend to take him out to the site to get an estimate on this particular job site.
> Attilio states he typically works from his home. However, on Sept 6, the electrician did not have transportation to this job site so Attilio drove him out there.
> Attilio advised me he does not have insurance coverage with the Board. He hires sub contractors and they are required to carry their own insurance.
> Attilio confirms he is currently working on 2 projects. Most of his job duties involve processing the budgets and other administrative duties. He does not do any physical activity which is why he does not carry insurance.
> He states 1-2 times per week, he will drive to the job site to review the work being done. . . .
> Attilio confirmed his [*sic*] is a proprietor of 'Attilio Bortignon Project Management Services". He was hired by Nav Enterprises Ltd. He states he is not incorporated and not a limited company. He is hired to manage the projects. The sub contractors are required to carry all necessary insurance and they also provide the materials.

This information was reviewed by a Board claims analyst on September 20, 2002, to provide an opinion concerning the defendant's status. The claims analyst advised:

> If the 3rd party does not hire any workers, is not a limited company and is not supplying major materials, and is only supplying labout [*sic*], he is not required to register. He would be considered a worker and would be covered under the Prime Contractor. In this case, it does not appear that the 3rd party was working at the time of the incident as he was giving another person a ride to a jobsite and therefore would not be considered a worker.

Item #20.20 of WCAT's *Manual of Rules of Practice and Procedure* provides:

> WCAT will consider all of the evidence and argument afresh regardless of a prior decision by a Board officer or by the Review Division.

In his affidavit of August 26, 2005, the defendant describes himself as the sole proprietor of an unincorporated business called Attilio Bortignon Project Management Services. He has been operating under this name since 1987. He first became involved with Frisco in 1991. In 1994 he began working on Frisco's Shaughnessy Square Project, located on Lougheed Highway in Port Coquitlam. During construction, the defendant was paid $4,000 per month plus G.S.T. In July of 2001, the agreement with Frisco changed and they began paying him $2,520 per month plus G.S.T., plus $45 per hour for project management services. The defendant stated in paragraph 7:

> Before the substantial completion of the buildings in the Shaughnessy Square project, Frisco's was my only client and had been since 1999. In 2002, Frisco's was my main client except for two other clients: one that I did tenant improvements for at Shaughnessy square and one that I helped build kitchen cabinets for. The job building cabinets was completed in January of 2002.

In paragraph 11, the defendant states that Frisco paid $40,470 plus G.S.T. for his services in 2002. This represented 68% of his total billings in 2002. For the tenant improvements he billed $2,250 plus G.S.T. This represented 3% of his billings in 2002. For the kitchen cabinet job he completed in January 2002, he billed $16,690. This represented 28% of his billings in 2002, but $11,000 of that invoice was paid to the cabinet makers and the installers. In terms of the defendant's own labour in 2002, he calculated these as being allocated as follows: Frisco — 83.6%, cabinet client — 11.8%, and tenant improvement client — 4.6%.

In paragraph 12, the defendant states:

> At the time of the accident, I was working for Frisco's, overseeing landlord improvements on one of the retail spaces, a convenience store. We had to install a transformer. On the morning of the accident, I had arranged for an electrician, Ludo Lipjack, to come to the Shaughnessy site and put in a bid for installing the transformer in the convenience store. Because Mr.

> Lipjack had his car in the shop that day, I agreed to pick him up and drive to the site. After I picked up Mr. Lipjack, we discussed, in general, the job that he was going to bid on. The accident occurred and we did not make it to the site. Later, Frisco's hired a different electrician to do this work.

The defendant further stated, in paragraph 14:

> At no time during the time I was working on the Shaughnessy Square project, did I write a contract between myself or Attilio Bortignon Project Management services, and a contractor. I only ever facilitated contracts between Frisco's or a tenant of Frisco's and the contractors.

In paragraph 16, the defendant stated:

> The one time that I worked for a tenant in 2002, I provided a project manager service. The contracts made were between the tenant and the contractors.

The defendant further advises that Frisco did not deduct any income tax or make other deductions in paying him. He states in paragraph 20: "Even though on paper, I was an independent contractor, I very well could have been an employee of Friscos' at the time of the accident."

In paragraph 11, the defendant stated that he attached as Exhibit C to his affidavit a true copy of all the invoices he billed in 2002. This consisted of one invoice to Peter Rowbotham for new kitchen cabinets, multiple invoices (one or two per month) to Frisco, and two invoices to Nav Enterprises Ltd. (NAV) dated September 30, 2002 and October 25, 2002 (in the amounts of $1,564,88 and $842.62, for project management services).

The defendant's evidence in his examination for discovery revealed a more complex situation. Mr. Gill submits that the defendant was actively involved in providing construction and project management services to a number of clients totally unrelated to Frisco. In 2002, the defendant provided services to a variety of clients at the same time he provided services to Frisco. By letter of April 12, 2005, Mr. Ishkanian forwarded a copy of the defendant's tax return for 2002, his diary for September 2002, and his "Summary of Income Billing" for 2002. The defendant reported a gross business income of $91,799.61, and net business income of $59,944.04. His billings to Frisco totaled $37,306.50, but an amount of $2,250 shown in the total for 2002 was dated October 25, 2003. Unless that was a typographical error, that amount should be removed from the 2002 total. The defendant's other work involved the following billings for his labour:

- Utomo Kuntjoro – House inspection on or about May 4, 2002 (Q 75-78), $202.50;

- Water Trax – Office renovation in or about September to October 2002 (Q 91-95), $584.34;
- Hasskenson Development Corporation – Office renovation project at Viva Tower in or about December 2002 (Q 96-97), $29,362.79;
- Peter Rowbotham – Residential renovation, cabinets, in or about January 2002 (Q 113-118), $4,771.80;
- Key Engineering – Supply of epoxy counter tops for North Delta School in August 2002 (Q 119-123), $14,751.12;
- Sears Robertson – Carpet replacement at residential suite at Shaughnessy Square in July 2002 (Q 131-138), $200.00.
- Nav Enterprises Ltd. – Tenant improvements at Shaughnessy Square convenience store (Q 56-57), $7,065.00;
- Antiquity Spa and Salon – (Q 125), $376.69;

At questions 96-102, the defendant explained that Hasskenson was a company related to Frisco. He advised that Hasskenson was the name they used at Viva Tower "for repairs and tenants and whatever. You know, that's all I can tell you. I've never been involved in their structure – corporate structure part of it." He advised (Q 97): "They have got 10 different company names as part of the group, so I just – they asked me to send the bill to that particular company and that's what I did."

In his examination for discovery, the defendant advised he obtained a business license in the City of Vancouver (Q 36). From 1991 to 2000 or 2001 he shared an office at Viva Tower in downtown Vancouver (Q 38). He did not have to pay any rent or expenses for the use of the office. At question 44, he further explained:

> At the time of the accident I was working out of my home office. Most of it at the time. I still share on and off office at Viva Tower, and I also had an office at the site, Shaughnessy Square in Port Coquitlam. And that was that project that took almost seven years to be completed as part of that group of Viva Tower and Frisco's and United Viva and all related companies.

At question 54-55, the defendant stated that he began hiring the trades himself to perform the landlord improvements at Shaughnessy Square, rather than arranging for them to enter into contracts with Frisco. He explained:

> ...it was the only way that the trades was going to work, if they guaranteed that I was going to pay them.

At question 318, the defendant described the Shaughnessy Square development in the following terms:

> Normally a project like this is 36 months. This one took seven years because of problems with money.

Beginning at question 325, the defendant described his involvement in dealing with a mistake by the general contractor involving a stair landing. The general contractor had not left the necessary height and opening, so the landing did not pass the building inspection. One of the owners was scheduled to move into a penthouse unit within three days. The defendant arranged for the concrete to be jack hammered out, and he designed a wood landing. He called the "Designer Shop" to do the wood part of it, and another firm, LA Industries, to do the brackets to support the landing. The defendant paid both invoices personally. He explained (Q 339):

> . . . Frisco's by this time, the name is totally no good to any subtrade in the industries, so any time that I had to provide some services such as this, this particular supplier said only if you pay. And that was the only way I could get it done as quick as we needed them to be done, because people were staying in the hotel because they were supposed to move into their unit. So a good samaritan [*sic*] helping hand for a fee.

The defendant further explained (Q 341):

> And this particular amount, Frisco wanted me to do it this way because this amount was completely back charged from Frisco's to the general contractor because it was his responsibility to provide a proper landing but they couldn't – they weren't able to do it, so that's when I started paying for it.

In connection with the work on the convenience store for NAV, the defendant arranged for contracts between subtrades and NAV for a fee (Q 57). In terms of the landlord's (Frisco) improvements, the defendant entered into a contract with the electrical company. Similarly, with the work being done at the Antiquity Spa retail space, he personally entered into contracts with a subcontractor for the suppliers of heat pumps, drywall and electrical.

In the defendant's initial telephone conversation with a Board entitlement officer, he indicated he was the proprietor of Attilio Bortignon Project Management Services, and had been hired by NAV. He was bringing an electrician to the job site, at the time of the accident. The defendant's discovery evidence beginning at question 57 dealt with his involvement with the NAV convenience store work. The defendant explained (Q 57):

> Well, on this particular NAV, which is the convenience store, part of the work that I've done for her was that she developed some problem with their subtrades, and she asked me if I could help. So I said that I would and I told her what my fee was for that part of the work. And then I sort of helped her to issue the contract to the subtrades. She paid them direct. I only collected the fee from her.

Those contracts were signed by the convenience store owner and the subtrades. The defendant further stated (Q 62-63):

> Q Were there also contracts with subtrades that were entered by the landlord?
> A Correct. Electrical.
> Q Electrical. Who entered that contract with the electrical company?
> A I did.

An invoice dated November 26, 2002 was submitted to "ABC Const", Attention: Attilo, by Lilly Electric (1973) Ltd. for electrical equipment, in reference to work at Shaughnessy Square. It is curious that the invoice was directed to "ABC Const". In 1984, the defendant incorporated ABC Contract Management Ltd. (Q 27). That company operated from 1984 to about 1989 or 1990 (Q28-33), following which the defendant operated in his own name. It may simply be that the defendant had originally established an account with the electrical supply business in the company name, and never updated this information.

Another invoice dated November 27, 2002 was from Bob Shultz Contracting. That invoice for $3,416.71 was billed to "Always Better Construction", at the defendant's home address in West Vancouver. Similarly, the December 31, 2002 invoice from Lilly Electric (1973) Ltd. for $7,7113.36 was sent to "Always Better Construction" at the defendant's home address. An invoice dated December 31, 2002 for a heat pump installation, for the Antiquity Spa & Salon, in the amount of $23,288.08, was sent to Always Better Construction Ltd., at the defendant's home address in West Vancouver. No evidence has been provided to indicate "ABC Const." or "Always Better Construction" were real companies. It appears that these names were used for convenience, rather than involving a situation in which the defendant was operating as the principal of a company which failed to register with the Board.

At question 214, the defendant acknowledged the following:

> Q ...But after that, you did enter into subcontracts using your own business name, correct?
>
> A Yeah. Again, everybody would provide their own WCB. I chose not to participate in WCB because of the – physically I wasn't working anymore.

The defendant ended his relationship with Frisco when it failed to pay one of his bills around January 2004 (Q 182-185). He commented (Q 184): "It was only $500. But I never got paid and I didn't bother going back."

The defendant's evidence at question 186 was as follows:

> Q …When you first stated working for Frisco's in 1991, how did your business change?
>
> A Well, the only thing that changes is I had a steady employee by the group with all the problems that they had with this building that they just completed, Viva Tower, and the development part that they wanted to be involved. So I was – an in-house project manager. They had a pretty cheap in-house project manager.

The defendant stated he did not have many other clients prior to commencing work for Frisco (Q 191). He stated (Q 197):

> For me – for me it was the beginning of another era because they were – promised that they were going to be a company. I was promised that I was going to get shares. I was promised so many things.
>
> So I – completely from '91 I was involved with that particular group.

At Q 199, the defendant stated:

> . . . What they're saying to me is they're saying, well, you work for this group and you – due diligence and so forth and you don't have to worry about your pension fund. Well, I am worried right now.

The defendant stated the last time he had an employee was in 1991. He had no employees after beginning to work for Frisco (Q 212), but did enter into subcontracts in his own name. Frisco never provided the defendant with any employee benefits (Q 218). However, they continued to pay him when he took vacation (Q 220). He did not have any set hours (Q 224). At question 234, the defendant stated:

> Q Can you describe in general terms what your position with Frisco's entailed? What was your job?
>
> A Again, it's a – they introduced me to every meeting that I went in their behalf as the internal project manager – in-house, in-house project manager, okay.

The defendant's work initially concerned remedial work relating to the air-conditioning system, and water problems, with the Viva Tower. With the Shaughnessy Square project, his duties involved (Q 241):

> Providing services as the project manager for the project which I was to – deficiencies to the suite repair. So I was looking after the subtrade responsible for repairing the – doing the deficiency repair was done. I was doing tenant improvement on behalf of the owner, and I had done some tenant improvement on behalf of the tenant, as we've already discussed.

In his diary, the defendant appears to have allocated the time involving the motor vehicle accident as being related to his contract with the convenience store for tenant improvements. The entry for September 6, 2002 states: "Pick up Ludo from the Gas Station Capilano road, on the way to S. Square got into an accident, truck was towed, Rent a Car, phoned ICBC." Two separate columns list the defendant's hours worked for Frisco, and for "Others". Four hours are listed under the "Others" column in relation to the September 6, 2002 entry. A subsequent entry on September 10, 2002 similarly lists another four hours, under the heading "Others" for the following: "Meet Ludo on site to start the work on the Conv. Store, returned the Rental Car, Back to S SQ."

Defence counsel submits the defendant was an unregistered labour contractor and, as such, was a worker of Frisco's. He argues that as the defendant had been consistently employed by the same group of companies for over ten years, and was Frisco's "inside project manager" for major construction projects during that time, the overall circumstances lead to the conclusion the defendant was a worker as opposed to an independent operator.

Appeal Division Decision #95-1481, *"Workers" Under the Act*, November 30, 1995, 12 WCR 7, reasoned at pages 16-17:

> The Workers' Compensation Reporter contains several decisions relevant to the issue of whether a firm is independent. The factors from those decisions had been summarized in policy #7.44 of the Rehabilitation Services and Claims Manual, although that summary has now been removed from the Claims Manual. Policy #7.44 listed the factors as:
>
> (a) Control,
> (b) Ownership of equipment or licenses,
> (c) Terms of work contract,
> (d) Independent initiative, profit sharing and piecework,
> (e) Employment of others,
> (f) Continuity of work, and
> (g) Separate business enterprise.
>
> With regard to the last factor, separate business enterprise, policy #7.44 said, "This test largely encompasses the factors set out in (a) to (f) above".
>
> These factors were taken from Decision No. 32, (1974) 1 WCR 127, Decision No. 138, (1975) 2 WCR 143, and Decision No. 255, (1977) 3-4 WCR 155.

Mr. Ishkanian cites *WCAT Decisions #2005-01271* and *#2005-01475*, among others, as examples of WCAT decisions which applied the same criteria as were previously set out in item #7.44. He further cites *Appeal Division Decision #04-0455*, "*Labour Contractors — Section 11 Determination*", 10 WCR 589, concerning a plaintiff who operated a carpet cleaning business, in which 70 to 80% of the business came on referral from a particular carpet store. The Appeal Division panel reasoned in part (at pages 601-602):

> In considering all of the above, I find that, during the times the plaintiff was working as Jordans Master Carpet Cleaning on contracts that arose under his agreement with Jordans, he was a labour contractor. This would include cleaning jobs where the plaintiff billed the customer and where he billed Jordans directly. As he did not have personal coverage with the Board, he was a worker and Jordans was his employer on those contracts. When the plaintiff was working as Carpet-King for customers he attracted on his own, he was an independent operator. As he was not registered with the Board, he was neither a worker nor an employer under the Act at those times.

Mr. Ishkanian submits that *Appeal Division Decision #04-0455* may have erred by finding that an individual could be an independent operator and a labour contractor at the same time. He submits that in the present case, the defendant provided a "service", which was in the nature of a finder of subtrades, some supervision, and the preparation of drawings and budgets. With respect to these activities, he was his own boss, and Frisco did not maintain any control over his work. The only thing Frisco controlled was whether or not to accept the defendant's recommendations, but that did not affect or alter what the defendant had done nor the fees that were paid to the defendant. Mr. Ishkanian submits:

> Para. 48 [of the defendant's submissions] wrongly states that Frisco's was the Defendant's main client, both in numbers and in dollars.... In dollars, see the Defendant's diary for September 2002, his earnings breakdown for the year 2002, and his tax returns for 2002. His diary shows that he spent 32.5 hours working for Frisco's, but 101.5 hours working for others, more than three times as much. His earnings breakdown to December 30, 2002 shows a total of $89,549.61, out of which approximately $54,000.00 was for other work, a similar ratio as his [diary] shows. The tax returns show, contrary to his evidence at discovery, that his business grossed $91,779.61, but netted only $59,994.04, which suggests an overhead of approximately 30%, rather than no overhead as he had testified at page 9, though he likely meant something else at the time.

The *Workers' Compensation Reporter* decisions were adopted as published policy by the board of governors in 1991, by the panel of administrators in 1995, and by the board of directors in 2003 (but have recently been "retired" as part of a move to consolidate

policies in the Manuals). *Decisions #32, 138* and *255* were "retired" effective January 1, 2003. "Retire" for this purpose means that, as of the "retirement date", the Decision is no longer current policy under the board of directors Bylaw. "Retiring" does not affect a Decision's status as policy prior to the date it was "retired". A "retired" Decision applies in decision-making on historical issues to the extent it was applicable prior to the "retirement date". For the purposes of this decision, I rely on the policy contained in *Workers' Compensation Reporter Series, Decisions #32, 138* and *255*.

Decision #255 reasoned as follows, at pages 155-156:

> The result of *Decisions 32* and *138* is that the Board makes its own determination as to the status of the parties to a contract and is not bound in its determination by "the labels used in the document as showing how the relationship should be classified."
>
> *Decisions 32* and *138* also lay down the factors considered by the Board in determining how the relationship between the parties to a contract should be classified. These factors include, for example, the degree of control exercised over the supplier of labour by the person for whom he works, whether the supplier of labour or the person for whom he works provides the necessary equipment or licenses, and whether the supplier of labour engages continuously and indefinitely for one person or works intermittently and for different persons. The major test, which largely encompasses these factors, is to ask whether the supplier of labour has any existence as a business enterprise independently of the person for whom he works.

At the time of the accident, policy at *APM No. 20:30:20* defined labour contractors as including unincorporated individuals or partners:

> (b) who are not defined as workers, do not have workers, or supply major materials or major revenue-producing equipment but who contract a service to two or more firms on an ongoing simultaneous basis (e.g. a janitorial contractor having simultaneous contracts with two or more unaffiliated firms).

As the evidence indicates that Frisco and Hasskenson Development Corporation were affiliated, they will not be treated as separate firms for the purpose of applying this policy.

At the time of the accident, *APM No. 20:30:20* defined independent firms as including:

> (c) Service industry firms contracting to two or more clients simultaneously and employing workers.

There is little clear evidence to show that the defendant hired workers. He arranged his business activities to contract with subcontractors who had their own workers' compensation coverage, or to have the workers contract directly with the owners.

The determination of the defendant's status involves consideration of a range of factors. The parties structured their relationship so that he was termed an independent contractor, and had to maintain his own books without any deductions being taken for income tax, EI or CPP. The defendant was paid $4,000 per month up to July 2001, following which he was paid on the basis of a monthly salary of $2,520 and an hourly rate of $45. While he had a home office, he also shared an office at Viva Tower, and had an office at the Shaughnessy Square site. The evidence supports a conclusion that the defendant was a worker of Frisco's, in terms of his role in providing labour-only services, on a continuous and indefinite basis for Frisco, functioning as their in-house project manager. Alternatively, the evidence supports the conclusion that he was a worker, as an unregistered labour contractor, contracting a service to two or more firms on an ongoing simultaneous basis. While the defendant undertook work for some other clients as well, I do not consider that this is inconsistent with a determination that he was a worker in relation to his relationship with Frisco. I find that the defendant's other contracts may be viewed as incidental or part-time services or contracts which were in addition to his primary employment relationship with Frisco. Given the significant long-term nature of his services to Frisco, I find that the defendant was Frisco's worker.

The defendant's circumstances bear some similarity to those addressed in *Appeal Division Decision #04-0455*. In that case, the panel found the plaintiff was a worker in relation to the 70 to 80% of his activities performed for his primary client, and an independent operator in respect of his other activities. A question arises as to whether the panel erred in not determining the plaintiff's status in light of all his activities. In other words, given the multiple clients he served, should he have been characterized as an independent operator in respect of all his activities? Alternatively, is it appropriate in some circumstances to find an individual to be a worker in respect of a particular employment relationship, but to be independent in relation to other work activities? Given the range of employment circumstances which may exist, I consider that both approaches may be appropriate depending on the circumstances. In some situations, it may be appropriate to view an individual as having "two jobs", and to determine their status in respect of each area of work activity separately. In other situations, it is appropriate to view all of their work activities globally, in determining their status. The question as to which approach should be applied depends on whether one set of work activities is clearly distinguishable from the other. It is necessary to consider the evidence in this case, to determine whether, for example, in performing work for NAV, the defendant was an unregistered labour contractor, or was independent. Given the

definitions cited above and lack of evidence to show that the defendant had employees, I find that he was an unregistered labour contractor in respect of his relationship with NAV, and as such was their worker. Accordingly, in relation to both Frisco and NAV, I find that at the time of the accident the defendant was a worker within the meaning of Part 1 of the Act.

It is also necessary to consider whether any action or conduct of the defendant, 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 Act. Defence counsel submits that the defendant was engaged in travel between two working points, as he stopped productive activity at his home office and was traveling to commence productive activity at the Shaughnessy Square Site. He submits productive activity continued en route as the defendant and the electrician discussed the job that was to be done. Defence counsel also cites the presumption contained in section 5(4) of the Act.

At questions 357-359, the defendant stated that on the morning of the accident, he had breakfast and then went to his home office. The electrician was going to provide a bid on the electrical part of the tenant improvements (both the owner's part and the tenant's part). The defendant had made this arrangement with the electrician the day before, and telephoned from his home office at approximately 7:45 a.m. to confirm the arrangement. He had known the electrician for 25 years. The electrician wished to have maintenance done on his car, and the defendant agreed to give him a ride (Q 372-373). The defendant had never given him a ride to Shaughnessy Square before (Q 384). The defendant printed the drawing(s), and the defendant provided this to him to review when he picked him up. The defendant stated he would be billing his hourly rate of $45 for the drive to and from Port Coquitlam (Q 389-393). He noted: "It just takes me so long to go to Port Coquitlam and it takes me so long to come back" (Q 390). He recorded his hours after going home in the evening (Q 393). No explanation was provided for the fact that the records provided concerning his diary entries indicate that he billed the time relating to the journey and the accident to NAV, rather than Frisco.

The defendant intended to bill $45 an hour for his driving time to the Shaughnessy Square site. This is one indication that the journey arose out of and in the course of his employment. On the other hand, he had an office at the Shaughnessy Square site, and was engaged in providing work services at the site on a long-term basis. At question 44, the defendant stated:

> At the time of the accident I was working out of my home office. Most of it at the time. I still share on and off office at Viva Tower, and I also had an office at the site, Shaughnessy Square in Port Coquitlam. And that was that project that took almost seven years to be completed as part of that group of Viva Tower and Frisco's and United Viva and all related companies.

Extracts from the relevant policies contained in the RSCM included:

#18.00 TRAVELLING TO AND FROM WORK

The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.

#18.20 Provision of Transportation by Employer

An employer may directly or indirectly provide transportation for its employees' journeys to and from work. In situations where this involves providing a specific vehicle such as, for example, a crew bus, in which the journeys are made, compensation coverage is generally extended to injuries occurring while travelling in this employer-owned vehicle. In some situations, the employer may let the worker choose her or his own mode of transportation, but pay for all or part of the costs of this transportation. The employer may also pay the worker a wage for the time spent in travelling. While these factors must be considered, the basic question to be determined is whether or not the claimant is routinely commuting to or from work. The fact that coverage does not extend to include routine commuting could override the fact that the worker is being paid a travel allowance or a wage to cover the commuting. This is distinct from the crew bus situation described above which can be deemed to be an extension of the employer's premises.

#18.22 Payment of Travel Time and/or Expenses by Employer

The payment of wages or travelling allowances etc. may in some circumstances be a factor to be considered, but it usually will not be a significant factor, nor is it ever the sole criteria in determining the acceptability of a claim.

Where the place of employment is some distance from the available labour market, workers may arrive at the place of employment in a number of ways. If workers go there of their own initiative looking for whatever jobs may be found, they take the risk of travel upon themselves. But if an employer extends the network of hiring arrangements to distant places, and induces a worker to leave a distant city and journey to the employer's place of work upon the promise of travel time and expenses, the journey becomes part of the employment relationship, and the hazards of the journey become risks of the employment.

#18.30 Journey to Work Also Has Employment Purpose

There may be situations where the journey is not simply a routine matter of driving to and from work, but there are also some additional circumstances which connect the journey with some particular aspect of the claimant's employment. This additional circumstance may be sufficient to bring all or part of the journey within the scope of the employment.

#18.32 Irregular Starting Points

There are a number of different situations that have to be considered under this heading. One is where the worker is injured in the course of a journey between home and a normal or regular operating base. That situation is substantially similar to the case of a worker travelling between home and a fixed place of employment and an injury occurring in the course of that journey would not be covered.

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.

. . .

Where a worker has a regular or usual place of employment and is assigned temporarily to work at a place other than the regular place of employment, the worker is covered for compensation while travelling to and from that temporary place, and this is so whether the worker goes there from the regular place of employment or goes there directly from home. The same rule applies, for example, to a delivery person who goes direct from home to make deliveries.

#18.40 Travelling Employees

> Employees whose job involves travelling on a particular occasion or generally are covered while travelling. Where they do not travel to their employer's premises before beginning the travelling required by their work, they are covered from the moment they leave their residence. However, they will not be covered if they first travel to their employer's premises even though their vehicle has been provided by their employer and/or they need that vehicle to do the traveling required by their work.

I have considered, first of all, whether the defendant's normal travel between his home and the Shaughnessy Square site was in the nature of work travel, or commuting. While the defendant had a home office, I do not consider that this means that his travel from his home or home office to the Shaughnessy Square site was necessarily work travel. Policy item #18.32 referred to the situation where a "worker terminates productive activity at one point and then has to travel to commence productive activity at another point". I appreciate that policy at #17A.10, "Commencement of Employment Relationship", provided that:

> It is not essential that a person must actually have commenced productive work for an employer before being covered.

However, for the purposes of applying the policy at #18.32, I consider it necessary to establish that the defendant had been engaged in productive activity in his home office, before the policy concerning travel between two working points would apply. The defendant's evidence is that he printed the drawings for the NAV work to provide these to the electrician for review. He did this in his home office, shortly before leaving his home on the morning of the accident (Q 352 -354). He also telephoned the electrician from his home office at approximately the same time (Q 369), to confirm their arrangement. The defendant stated (Q 386-387):

> A There wasn't very many drawings to print. I just print the layout of the space area. I printed – reflect the ceiling plan and I printed the copy of the transformer and the 200 amp service that was required and that's it.
> Q Okay. Let me finish the question, though.
> All of these events that I am going to say happened within a few minutes, you printed the drawings, you called Mr. Lipjack, and then you left your home to pick him up?
> A Yes.

I consider that the defendant's normal travel from his home to Shaughnessy Square was in the nature of a journey between his home and a regular operating base. That situation is substantially similar to the case of a worker traveling between home and a fixed place of employment and an injury occurring in the course of that journey is

not covered. While the defendant only attended the construction site approximately once a week, I do not consider that this changes the nature of his travel to the work site from commuting to work travel. If a worker is permitted to work at home four days a week, that does not mean the worker's travel to the employer's premises on the fifth day is a work journey, rather than a commute. The fact that the worker is spared from having to commute to the employer's premises on the days he or she is permitted to work at home, does not change the nature of the journey on the days the worker does attend the employer's premises.

Policy at RSCM item #18.22 indicates that the fact the defendant billed for his travel time is not determinative. Similarly, policy at RSCM item #18.20 provides that the fact that coverage does not extend to include routine commuting could override the fact that the worker is being paid a travel allowance or a wage to cover the commuting. Inasmuch as the defendant's services appear to have been retained by NAV due to his ongoing involvement with the Shaughnessy Square project, I would not reach a different decision on this point on the basis that the defendant appears to have billed his travel time to NAV rather than to Frisco.

It is also necessary to consider whether there were additional circumstances present on the day of the accident which would make the defendant's travel part of his work. It is arguable that the defendant was traveling between two work points, and that such travel is covered for workers' compensation purposes by the policy at #18.32. The defendant's activities of telephoning the electrician, and printing the drawings, took only a few minutes. In that sense, he may be characterized as having commenced productive activity in his home office. On balance, however, I consider these very limited activities as being in the nature of having been preparatory for his commute to the work site, rather than being sufficient to make applicable the policy regarding travel between two work points. The fact that the defendant performed work-related tasks for a few minutes in his home office before leaving on his journey does not suffice to change the nature of the journey from a commute to a work journey. I note, in this regard, the policy at RSCM item #21.00 concerning personal acts:

> There is a dilemma that is always inherent in workers' compensation. The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped. An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied. . . . Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation. For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. In the

> marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.

I find that the predominant nature of the defendant's journey on September 6, 2002, involved a commute to the work site.

A further question is whether the defendant, in providing a lift to the electrician, was furnishing travel to the work site which was in the nature of a crew bus. The defendant had used the electrician's services in previous projects (Q 365), including his own home (Q 383). He stated (Q 366-367):

> Q So you know him well?
> A Yes, I've known him for the last 25 years.
> Q Is he a friend?
> A Ah, yes. Friends at the bar and business at work.

The defendant further stated (Q 371-372):

> Q Had you agreed that you would be driving him the day before?
> A Yes.
> Q Any why was that?
> A Because he figured that there was no sense going with two cars because he wanted to have his van, maintenance done to his van, oil change.

I consider it likely that the electrician knew the defendant sufficiently well to request a lift to the job site as a favour. I find that the provision of a lift by the defendant to the electrician involved the provision of a personal favour or courtesy, rather than provision of transportation by the employer as part of the employment. I do not consider that the defendant was, in effect, driving a crew bus to provide the electrician with travel to the job site on behalf of the employer. I find that these circumstances are similar to those addressed in *Appeal Division Decision #97-1138* (accessible at: http://www.worksafebc.com/appeal_decisions/appealsearch/advancesearch.asp).

On balance, for the reasons expressed above, I find that the defendant was commuting to work, rather than working at the time of the accident. Even if the action or conduct of the defendant, which caused any alleged breach of duty of care, arose out of his employment, I find that the section 5(4) presumption that it also occurred in the course of his employment has been rebutted.

Accordingly, while the defendant was a worker within the meaning of Part 1 of the Act, his action or conduct, which caused the alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the Act.

Conclusion

I find that at the time of the September 6, 2002 motor vehicle accident:

(i) the plaintiff, Lambina Stanculescu, was a worker within the meaning of Part 1 of the Act;

(ii) the injuries suffered by the plaintiff, Lambina Stanculescu, arose out of and in the course of her employment within the scope of Part 1 of the Act;

(iii) the defendant, Attilio Bortignon, was a worker within the meaning of Part 1 of the Act; and,

(iv) the action or conduct of the defendant, Attilio Bortignon, which caused the alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the Act.

Herb Morton
Vice Chair

HM:dc

NO. S81822
NEW WESTMINSTER 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:

LAMBINA STANCULESCU

PLAINTIFF

AND:

ATTILIO BORTIGNON

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, ATTILIO BORTIGNON, 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 the action arose, September 6, 2002:

1. The Plaintiff, LAMBINA STANCULESCU, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

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

3. The Defendant, ATTILIO BORTIGNON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, ATTILIO BORTIGNON, which caused any alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this day of June, 2005.

_____

Herb Morton
VICE CHAIR

NO. S81822
NEW WESTMINSTER
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:

LAMBINA STANCULESCU

PLAINTIFF

AND:

ATTILIO BORTIGNON

DEFENDANT

SECTION 257 CERTIFICATE

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