WCAT *Workers' Compensation Appeal Tribunal*

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WCAT Decision Number:	**WCAT-2006-01356**
WCAT Decision Date:	**March 23, 2006**
Panel:	Herb Morton, Vice Chair
WCAT Reference Number:	052806-A

Section 257 Determination
In the Supreme Court of British Columbia
Vancouver Registry No. S034373
Attorney General of Canada v. Saskatchewan Wheat Pool and The Vancouver Port Authority

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Applicant:	Attorney General of Canada (the "plaintiff")
Respondent:	Saskatchewan Wheat Pool (the "defendant")
Representatives:	
For Applicant:	Jeffrey L. Hayes CAMPBELL FROH MAY & RICE LLP
For Respondent:	Rick Killough MILLER THOMPSON LLP

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Noteworthy Decision Summary

Decision: WCAT-2006-01356 **Panel**: Herb Morton **Decision Date:** March 23, 2006

WCAT jurisdiction to certify to the court under section 257 of the Workers Compensation Act in legal actions involving federal employees – Determination of worker status under Part 1 of the Workers Compensation Act – Sections 2 and 4 of the Government Employees Compensation Act – Appeal Division Decision #93-0502

The Workers' Compensation Appeal Tribunal (WCAT) has jurisdiction to certify to the court under section 257 of the *Workers Compensation Act* (Act) in a legal action involving a federal employee.

The worker, a federal employee, was injured when she fell on premises owned and maintained by a provincial employer. The employee signed an election to claim compensation under section 9(1) of the *Government Employees Compensation Act* (GECA). As it was subrogated to the employee's right to sue under section 9(3) of GECA, the Attorney General of Canada commenced a court action against the employer.

The Attorney General of Canada requested that WCAT certify that, at the time the cause of action arose (1) the employee was an "employee" as defined in section 2 of GECA and (2) the employee was not a "worker" within the meaning of Part 1 of the Act. The employer requested that WCAT certify that at the time the cause of action arose (1) the employee was a "worker" within the meaning of Part 1 of the Act, (2) her injuries arose out of and in the course of her employment, and (3) the employer was an "employer" within the meaning of Part 1 of the Act.

A preliminary issue was whether WCAT had jurisdiction to provide a section 257 certificate to the court in a legal action involving a person working for the federal government.

The panel noted that section 4 of GECA provides that federal employees are entitled to receive compensation at the same rate and under the same conditions as are provided under the provincial workers' compensation legislation. In *Appeal Division Decision #93-0502*, "Federal Workers", 9 WCR 721, April 15, 1993, the former Appeal Division found it did not have jurisdiction to provide a certificate under section 257 (then section 11) in respect of a legal action brought by a federal employee. The Appeal Division reasoned that section 11 was not part of the appeal process and was neither reasonably incidental nor necessary to the determination of the rate and conditions of compensation for an injured worker.

The panel disagreed with the reasoning in *Appeal Division Decision #93-0502*. The panel considered that the certificate process provided the parties to a legal action with a means of obtaining a final determination of status as an alternative to, or in substitution for, the usual mechanisms for review and appeal. The right to obtain such a final determination by a provincial tribunal with expertise in the field of workers' compensation is part of the entitlement under section 4 of GECA to receive compensation under the same rate and conditions as provincial workers.

The panel rejected the employer's submission that the wording of section 4(2) of GECA supported a conclusion that the employee was a worker within the meaning of Part 1 of the Act. The panel held that the analysis of the Supreme Court of Canada in *Ching* v. *Canadian Pacific Railway Co.*, [1943] S.C.R. 451, [1943] 3 D.L.R. 737 remains valid.

The panel concluded that WCAT had jurisdiction to consider whether the employee was a worker within the meaning of Part 1 of the Act or an employee under section 2 of GECA.

RE: Section 257 Determination
S.C.B.C. Action No. S034373, Vancouver Registry
Attorney General of Canada v. Saskatchewan Wheat Pool et al.

WCAT Decision Number: **WCAT-2006-01356**
WCAT Decision Date: **March 23, 2006**
Panel: Herb Morton, Vice Chair

Section 257 Determination
In the Supreme Court of British Columbia
Vancouver Registry No. S034373
Attorney General of Canada v. Saskatchewan Wheat Pool and The Vancouver Port Authority

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Introduction

On August 17, 2001, Linda Fleet was injured when she fell on premises owned and maintained by the defendant, Saskatchewan Wheat Pool. Fleet worked as a grain weigher, at different plants. The Saskatchewan Wheat Pool was registered as an employer with the Workers' Compensation Board (Board). This application raises issues regarding WCAT's jurisdiction to certify to the court under section 257 of the *Workers Compensation Act* (WCA), in a legal action involving a person working for the federal government. This requires consideration of the *Government Employees Compensation Act* (GECA).

Pursuant to section 257 of the WCA, 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 counsel for the plaintiff on October 12, 2005. A transcript has been provided of the May 11 and 12, 2004 examination for discovery of Fleet. The legal action is scheduled for trial on April 24, 2006. Written submissions have been provided by the parties to the legal action, including the applicant's rebuttal of January 30, 2006 and the respondent's surrebuttal of February 1, 2006.

The facts are not in dispute. This application involves questions of statutory interpretation involving WCAT's jurisdiction. I find this application can be properly considered on the basis of the written evidence and argument, without an oral hearing.

Subsection 9(1) of the GECA provides that:

> Where an accident happens to an employee in the course of his employment under such circumstances as entitle the employee or his dependants to an action against a person other than Her Majesty, the employee or the dependants, if entitled to compensation under this Act,

> may claim compensation under this Act or may claim against that other person.

Fleet signed an election to claim compensation under subsection 9(1) of the GECA, dated October 5, 2001. Subsection 9(3) of the GECA provides:

> If the employee or the dependants referred to in subsection (1) elect to claim compensation under this Act, Her Majesty shall be subrogated to the rights of the employee or dependants and may . . . maintain an action in the name of the employee or dependants or of Her Majesty against the person against whom the action lies and any sum recovered shall be paid into the Consolidated Revenue Fund.

The Attorney General of Canada is subrogated to Fleet's rights and is maintaining this action in its own name. The plaintiff has discontinued this proceeding against the defendant, The Vancouver Port Authority.

Issue(s)

Counsel for the Attorney General of Canada takes the position that WCAT has jurisdiction to determine whether a person is an "employee" as defined in section 2 of the GECA. He requests certification that at the time the cause of action arose, August 17, 2001, Fleet was an "employee" as defined in section 2 of the GECA, and that Fleet was not a "worker" within the meaning of Part 1 of the WCA.

Counsel for the defendant does not take issue with the applicant's assertion that Fleet was an "employee" for the purposes of the GECA at the time of the accident. By submission of November 18, 2005, he states: "…I do not think that there is any issue concerning whether Ms. Fleet was an 'employee' for the purposes of GECA. I take no issue with that assertion…" He accepts that WCAT has exclusive jurisdiction to determine whether any particular individual might be a "worker" within the meaning of Part 1 of the WCA. Counsel for the defendant submits, however, that WCAT does not have jurisdiction to determine whether a federal employee is subject to section 10 of the WCA.

Counsel for the defendant requests that WCAT certify that at the time the cause of action arose, August 17, 2001, Fleet was a worker within the meaning of Part 1 of the WCA, her injuries arose out of and in the course of her employment, and that the Saskatchewan Wheat Pool was an employer within the meaning of Part 1 of the WCA and was engaged in an industry within the meaning of Part 1 of the WCA. He asks that if WCAT concludes it is unable to issue a Certificate which records the first two determinations sought above, that WCAT provide written reasons which address the following questions:

(a) Does WCAT have jurisdiction to decide whether a federal employee is subject to section 10 of the WCA as a result of section 4(2) of the GECA; and,

(b) If so, is Fleet, as a federal employee, subject to section 10 of the WCA as a result of or pursuant to section 4(2) of the GECA?

Preliminary

By memo dated November 7, 2005, I noted that this application had been assigned to me as the WCAT panel, that *WCAT Decision #2005-01542* dated March 29, 2005 flagged a question at pages 33-34 as to whether WCAT has jurisdiction to provide a certificate concerning whether a person is an employee under the GECA, and that *WCAT Decision #2005-01542* is currently the subject of a petition for judicial review.

No objection has been presented to my hearing this application. I do not consider that a reasonable apprehension of bias arises as a result of my having decided a related issue in a prior decision (*WCAT Decision #2005-01542*). While it might have been preferable to await the outcome of the petition for judicial review in that case, this action is scheduled for trial on April 24, 2006. Accordingly, I consider it appropriate to proceed to consider this application.

The applicant argues (paragraph 14 of his December 22, 2005 submission) that WCAT decisions are binding on future WCAT panels to the extent set out in section 250(3) of the WCA. This argument is in error, inasmuch as it appears to interpret subsection 250(3) as applying to all WCAT decisions. Section 250(3) only applies in relation to a decision by a "precedent panel" appointed under section 238(6) of the WCA. From March 3, 2003 to date, only two decisions have been issued by panels appointed under section 238(6) of the WCA (*WCAT Decisions #2005-03622* and *#2005-06624*). Those decisions are not relevant to this application. Decisions by "precedent panels" appointed under section 238(6) of the WCA are posted under a separate index on the WCAT website. *WCAT Decision #2005-03622* explained:

> Where the chair determines that the matters in an appeal are of special interest or significance to the workers' compensation system, the chair may appoint a panel under section 238(6). Item #8.20 of WCAT's *Manual of Rules of Practice and Procedure* uses the term "precedent panel" to describe a panel appointed under section 238(6). A precedent panel may consist of three to seven members. A precedent panel may also include "extraordinary members" (see section 231 and section 232(2)(c)). Not all three member panels are precedent panels — under section 238(5), a three member panel may also be appointed which is not a precedent panel.

Single member panels are appointed under section 238(4) of the WCA. By definition, a single member panel cannot be a precedent panel under subsection 238(6). In the case of WCAT panels composed of three or more members, WCAT practice is to specify in the decision whether the panel has been appointed under section 238(5) or section 238(6). Only the decisions of panels appointed under section 238(6) have the legal effect provided by section 250(3) of the WCA.

WCAT Decision #2005-01542 was issued by a single member panel, and does not constitute a "precedent panel" decision. Accordingly, it is not binding upon my consideration in this application. A *Code of Conduct for WCAT Members* is provided at item #23.00 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP). I am mindful of the obligation set out in MRPP item #23.30 that: "Members must approach the hearing and determination of every appeal or application with a mind that is genuinely open with respect to every issue, and open to persuasion by convincing evidence and argument."

Jurisdiction

Section 257 of the WCA provides:

> **257** (1) Where an action is commenced based on
>
> (a) a disability caused by occupational disease,
>
> (b) a personal injury, or
>
> (c) death,
>
> the court or a party to the action may request the appeal tribunal to make a determination under subsection (2) and to certify that determination to the court.
>
> (2) For the purposes of subsection (1), the appeal tribunal may determine any matter that is relevant to the action and within the Board's jurisdiction under this Act, including determining whether
>
> (a) a person was, at the time the cause of action arose, a worker,
>
> (b) the injury, disability or death of a worker arose out of, and in the course of, the worker's employment,

(c) an employer or the employer's servant or agent was, at the time the cause of action arose, employed by another employer, or

(d) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of Part 1.

(3) This Part, except section 253 (4), applies to proceedings under this section as if the proceedings were an appeal under this Part.

Part 4 of the WCA 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 of the Board 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 WCA, 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.

Section 4 of the GECA provides:

4. (1) Subject to this Act, compensation shall be paid to

(a) an employee who

(i) is caused personal injury by an accident arising out of and in the course of his employment, or

(ii) is disabled by reason of an industrial disease due to the nature of the employment; and

(b) the dependants of an employee whose death results from such an accident or industrial disease.

(2) The employee or the dependants referred to in subsection (1) are, notwithstanding the nature or class of the employment, **entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed** respecting compensation for workmen and the dependants of deceased workmen, employed by persons other than Her Majesty, who

(a) are caused personal injuries in that province by accidents arising out of and in the course of their employment; or

(b) are disabled in that province by reason of industrial diseases due to the nature of their employment.

(3) Compensation under subsection (1) shall be determined by

(a) the same board, officers or authority as is or are established by the law of the province for determining compensation for workmen and dependants of deceased workmen employed by persons other than Her Majesty; or

(b) such other board, officers or authority, or such court, as the Governor in Council may direct.

[emphasis added]

It is necessary to consider, first of all, whether WCAT has jurisdiction to provide a certificate in this legal action. In *Appeal Division Decision #93-0502*, "Federal Workers", 9 WCR 721, April 15, 1993, the panel reasoned:

> Section 11 of the B.C. *Act* is not part of the rate or conditions under which a worker receives compensation. It concerns the determination of status under the *Act* for purposes of a legal action. **An injured worker cannot apply for compensation benefits under Section 11, nor is Section 11 part of the appeal process. It provides a procedure by which parties who wish to sue, or who are being sued, can determine if there is a legal impediment to the action. I find that section is not reasonably incidental, nor necessary, to the determination of the rate and conditions of compensation for an injured worker.** The *G.E.C.A.* sets up its own scheme for prohibiting legal action in Sections 9 to 12. The administration of those sections was not delegated to the province. I can find no authority for the B.C. Board to make determinations on the substantive provisions found in Sections 9 to 12 of the *G.E.C.A.* Similarly, the provisions in Section 10 of the B.C. *Act*, which restrict common law rights of action, are not incorporated into the *G.E.C.A.* It is difficult to see how the procedural provisions in Section 11, which go with the substantive provisions in Section 10 of the B.C. *Act*, can be seen to have been incorporated into the *G.E.C.A.* to go with the different substantive provisions in Sections 9 to 12 of the *G.E.C.A.*
>
> [emphasis added]

This reasoning was followed in *Appeal Division Decision #97-1026*, which found that the Appeal Division did not have jurisdiction to provide a certificate under section 11 in respect of a legal action brought by a federal employee.

Appeal Division Decision #93-0502 followed *Decision No. 485/90* of the Ontario Workers' Compensation Appeal Tribunal (1991) 17 W.C.A.T.R. 173. That decision reasoned in part:

> 46 We are satisfied that the jurisdiction to adjudicate upon the rights of parties to an action is not reasonably incidental to the compensation scheme incorporated by s. 4. This section of the GECA must be interpreted with a view to considering whether the compensation system established by the incorporation can function as a coherent whole. When there is a question as to whether a particular provincial provision ought to be included in the incorporation set out in s. 4, the decision as to whether the provision is reasonably incidental to the rates and conditions of compensation must be made with a view to considering whether the resulting compensation system can function as a fair, comprehensive, functional and balanced whole without it.

Counsel for the Attorney General of Canada submits that WCAT has jurisdiction to determine whether a person is an employee pursuant to the GECA, for the reasons set out in *WCAT Decision #2005-01542*. He summarizes the reasons in that decision as follows:

- Section 4.2 of *GECA* provides that an employee is entitled to "receive compensation at the same rate and at the same condition as are provided under the law of the province where the employee is usually employed. Recent court decisions have interpreted the phrase "at the same rate and under the same conditions" in a broad or liberal fashion, to afford persons working for the federal government benefits or advantages conferred under the provincial workers' compensation legislation.

- Item 1.2, Appendix A the Agreement requires the Board to request information on employee status from the federal government before adjudicating a claim. Although this provision might have been intended to exclude or remove the Board's jurisdiction to adjudicate the issue of employee status, the WCAT panel found that the word "information" is more in keeping with an attempt to ensure that the Board did not proceed with an adjudication, prior to affording the federal government the opportunity to provide input to assist the Board in its adjudication. The word "information" is a somewhat neutral term, comparable to the term "evidence".

- If the federal government had intended to exclude the Board's jurisdiction, it could have used a stronger term such as "decision" or "determination". Having regard to the imperative language utilized in item #1.3 of the Agreement, the federal government could also have included a prohibition on the Board considering a claim without a determination from the federal government that the individual was an employee. The wording of the Agreement appears to have left it open to the Board to adjudicate issues of employee status.

- While it is important for Board officers to appreciate that a determination of status under *GECA* involves an application of the definition of "employee" contained in section 2 of *GECA*, rather than the definition of "worker" from section 1 of the *WCA*, the Board nevertheless has expertise in addressing such issues.

- On the reading of the federal statute there is no apparent intention to exclude the Board's jurisdiction to make such determinations.

[reproduced as written]

WCAT Decision #2005-01542 dated March 29, 2005 concluded:

> …I take guidance from the recent Court decisions cited above, which support a purposive and liberal interpretation of the relevant statutory and contractual provisions aimed at ensuring equality of treatment for individuals claiming compensation under GECA. To my mind, it would seem unfair were the widow's application for compensation to be denied on the basis of a determination that Z was not an employee, with no opportunity for input from her, and no mechanism for seeking review or appeal of the determination apart for an application for judicial review. I am not persuaded that the provisions of GECA and the Agreement require such a result. I do not consider that such a situation could be equated with a right of persons working for the FG to receive compensation "at the same rate and under the same conditions" as workers in the Province. Adopting a purposive interpretation of this wording, I find that persons performing work for the federal government should be given access to the same avenues of review and appeal provided under the Act, on issues relating to the nature and extent of compensation payable. I find this includes issues relating to initial eligibility for compensation, as well as the question as to whether the person is an employee within the meaning of section 2 of GECA….

Federal employees, as well as provincial workers, have a similar interest in having a generally consistent approach applied to the determination of their status, whether the issue is framed as part of an application for workers' compensation benefits or as a status determination for the purposes of a legal action. In many cases, the two different contexts are interrelated. A status determination which results in a decision that the legal action is barred normally results in the injured person pursuing a claim for workers' compensation benefits. It is desirable that a consistent approach be applied in the determination of an individual's status under the GECA.

Upon careful consideration, I disagree with the reasoning expressed in published *Appeal Division Decision #93-0502*. That decision found that an injured worker cannot apply for compensation benefits under section 11, nor is section 11 part of the appeal process. Rather, it provides a procedure by which parties who wish to sue, or who are being sued, can determine if there is a legal impediment to the action. In my view, however, the certification process established under the former section 11 and the current section 257 may be viewed as complementing the appeal avenues provided under the WCA. It is often the case that a certificate under section 11 or 257 reaches a different conclusion than was provided by the Board officer in the initial adjudication of the claim. In the context of a claim by a person doing work for the federal government, this might involve consideration as to whether the individual is an employee or an independent contractor and whether the individual's injuries arose out of and in the course of their employment. The certificate process provides the parties to a legal action with a means of obtaining a final determination of status, as an alternative to or in substitution for the usual mechanisms for review and appeal. Such a certificate serves to support the further consideration by the Court concerning the effect of section 10 of the WCA and section 12 of the GECA. The right to obtain such a final determination, and to have that status determination provided to the Court, may be viewed as part of the entitlement of a federal employee "to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed". In other words, the injured person has the right to have their status determined by the provincial administrative tribunal with expertise in the field of workers' compensation (rather than by their employer, or by the court). Just as a federal employee has access to the same rights of review and appeal under the WCA, so too does a federal employee have the right to obtain a final determination of their status under section 257 for the purposes of a legal action.

The issues with respect to the status of the injured person are essentially the same whether they arise as part of an appeal to WCAT or in the context of an application for a certificate under section 257. One difference is that a section 257 application may be brought by another party to the legal action or may be based on a request by the court, and the scope of the issues may be broader (as concerning the status of the defendants and any third persons). I do not consider these differences particularly significant, however, compared to the substantial benefits to having status determinations made by the same tribunal which must address issues of entitlement to compensation.

I find that WCAT has jurisdiction to consider whether Fleet was a worker within the meaning of Part 1 of the WCA, or an employee under section 2 of the GECA. The right to obtain a certification of status is, however, to be distinguished from the consideration which may be given by a court as to how the determination affects the individual's right to pursue a legal action.

My conclusion on this point is consistent with the conclusion of the Newfoundland and Labrador Supreme Court – Court of Appeal in *Rees v. Canada (Royal Canadian Mounted Police)*, (2005) N.J. No. 103, (2005) 246 Nfld. & P.E.I.R. 72, leave to appeal to the SCC denied, [2005] S.C.C.A. No. 246, in respect of its reasoning at paragraphs 37-38 as to the necessity for obtaining a decision from the provincial workers' compensation authority in accordance with the GECA:

> 37 Nonetheless, the fact that the RCMP did not report a workplace accident does not have the effect of overriding section 12 of the Act and permitting Mr. Rees to elect to make his claim in the courts. If he is entitled to compensation under the Act, that is where he must obtain his remedy. Mr. Rees cannot avoid the operation of section 12 of the Act simply by ignoring the workers' compensation legislation and filing a statement of claim in the Trial Division. The fact that Mr. Rees is suing his employer and alleging that his injury arose out of and in the course of his employment further supports the conclusion that section 12 of the Act applies. To adopt the approach taken by the trial judge would, in effect, permit an employee to obtain through the back door what he could not obtain through the front, that is, the election to proceed by way of court action rather than under the workers' compensation scheme. This would clearly be contrary to the legislative intention.
>
> 38 In summary, the trial judge erred in concluding that Mr. Rees could avoid the operation of section 12 of the Act by failing to make a claim to the provincial workers' compensation authority. Mr. Rees claims that he has suffered a personal injury caused by an accident, that is, gradual onset stress, arising out of and in the course of his employment. His claim must be adjudicated by the provincial workers' compensation authority in accordance with the Government Employees Compensation Act.

The other reasoning in that decision appears to have invoked the concept of the GECA gateway which was rejected by the Nova Scotia Court of Appeal in *Morrison (Estate)* v. *Cape Breton Development Corp*., [2003] N.S.J. No. 353, 2003 NSCA 103, (2003) 218 N.S.R. (2d) 53, (2003) 28 C.C.E.L. (3d) 155, application for leave to appeal to the Supreme Court of Canada denied, [2003] S.C.C.A. No. 525. I need not address that reasoning for the purposes of my decision in this case.

With respect to possible constitutional issues, I adopt the reasoning expressed in *WCAT Decision #2005-001542* concerning WCAT's jurisdiction:

> Effective December 3, 2004, pursuant to section 44 of the *Administrative Tribunals Act*, WCAT has no jurisdiction over constitutional questions. This statutory constraint applies to all applications made before, on or after December 3, 2004. I do not consider, however, that section 44 precludes consideration of the jurisdictional issue raised in this appeal. There is no issue regarding the validity of legislation, or the effect of the *Charter*, raised in this appeal. I agree with the reasoning expressed in *Decision No. 485/90,* 17 W.C.A.T.R. 173, [1991] O.W.C.A.T.D. No. 14, of the Ontario Workers' Compensation Appeal Tribunal (Tab 5 of the CC's book of authorities):
>
>> We have been asked to consider whether the jurisdiction conferred upon the Tribunal by section 4 of the GECA includes the jurisdiction defined by section 15 of the provincial Act. In making this decision, we must interpret the relevant sections.
>>
>> 13 We do not see that in carrying out this exercise, we are doing anything which differs from our usual responsibility and practice when we are required to decide how two pieces of legislation can be read together. We are not being asked to find any legislation ultra vires, or otherwise inapplicable. We are not being asked to determine the competence of the Provincial Legislature, or the Parliament, to legislate in the field. The present application raises questions of jurisdiction which arise from time to time in the course of adjudication under any legislation. It happens that the two acts in question were enacted within different jurisdictions. However, for our purposes, nothing turns on that difference. We are satisfied, therefore, that the issue before us is one of jurisdiction, which does not raise questions of constitutional law.

Status of Linda Fleet

At the time of the accident on August 17, 2001, Fleet was an employee of the federal government. She was working as a grain weigher at different plants. She was a member of the Canadian Union of Public Employees. She commenced her employment for the federal government on January 27, 1997, firstly as a contract employee and afterward as an employee of indefinite term (pages 13-17 of her examination for discovery).

Fleet signed an election to claim compensation under subsection 9(1) of the GECA, dated October 5, 2001. Her claim was accepted by the Board. Decisions concerning her entitlement to workers' compensation benefits included *Review Decision #27629*, *WCAT Decision #2004-05804-RB* dated November 2, 2004, a pension decision dated January 13, 2005, and *WCAT Decision #2006-01030* dated February 28, 2006. MRPP item #20.20 provides that in a section 257 application, WCAT will consider all of the evidence and argument afresh regardless of a prior decision by a Board officer. As the two prior WCAT decisions concerned the extent of the benefits payable on Fleet's claim for workers' compensation benefits, rather than addressing the initial acceptability of her claim, I consider that it is open to me to address her status as a new issue in this application.

(a) Was Fleet a worker within the meaning of Part 1 of the WCA?

Counsel for the defendant has presented a complex argument. In summary (and at the risk of oversimplifying), he acknowledges that WCAT has exclusive jurisdiction to decide whether a particular individual is a worker within the meaning of Part 1 of the WCA. He submits, however, that WCAT has no jurisdiction to determine whether section 10 of the WCA applies to a federal employee. He argues that this issue hinges on the wording of section 4(2) of the GECA. He submits that if section 10 of the WCA does not apply to federal employees, those employees will be placed on a separate and preferential footing, and that this does not accord with the wording "and under the same conditions" in section 4(2) of the GECA. He argues that this leads to the conclusion that Fleet was a worker within the meaning of Part 1 of the WCA and that WCAT should certify accordingly (although this latter argument is stated to be dependant on WCAT finding that it has jurisdiction to consider the larger question as to whether a federal employee is subject to section 10 of the WCA).

It seems to me that this argument places WCAT in a Catch-22 situation. The defendant argues, in effect, that WCAT has no jurisdiction to consider his arguments regarding section 10 of the WCA and section 4(2) of the GECA. However, the defendant's position that Fleet was a worker is based on these arguments. These arguments appear to create a jurisdictional conundrum.

A historical review of the provincial legislation is of interest. Section 12(4) of the *Workmen's Compensation Act*, R.S. 1948, c. 370, provided:

> Where an action in respect of an injury is brought against an employer by a workman or a dependant, the Board has jurisdiction upon the application of any party to the action to adjudicate and determine whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination is final and conclusive; and if the Board

> determines that the action is one the right to bring which is taken away by this Part the action is for ever stayed.

The 1966 *Royal Commission Report* of Mr. Justice Tysoe commented (at page 420):

> I have come to the conclusion that, in justice to the Board and to all others concerned, the jurisdiction conferred upon the Board by subsection (4) of section 12 should be taken away from it and be left with the Courts. As Mr. Eades suggested, provision could be made for the Board to certify to the Court such of the Board's findings pursuant to its powers in section 77 of the Act as are material to the question which is before the Court-namely, whether the action is barred by Part I of the Act. I RECOMMEND accordingly.
>
> [reproduced as written]

The *Workers Compensation Act*, 1968, c. 59 provided the Board with authority to certify to the Court on such matters as whether at the time of injury, the plaintiff was a "workman" within the scope of Part 1 of the WCA, and whether the plaintiff's injury arose out of and in the course of employment. The Board's authority under the former section 12(4) to determine whether the action was barred was repealed.

The introductory statements concerning jurisdiction in WCAT section 257 determinations customarily acknowledge that the court determines the effect of the certificate on the legal action. This accords with the legislative history described above, and the current wording of section 257 of the WCA. I find that WCAT has jurisdiction to determine whether Fleet was a worker within the meaning of Part 1 of the WCA, but not to determine the effect or significance of this finding in respect of the legal action. In my decision, I will not address the effect of section 10 of the WCA, as that is outside WCAT's jurisdiction.

The evidence is clear that Fleet was employed by a federal agency, and was not a provincial worker within the scope of the provincial workers' compensation legislation. Accordingly, I find that at the time the cause of action arose, Fleet was not a worker within the meaning of Part 1 of the WCA. It therefore follows that her injuries on August 17, 2001, did not arise out of and in the course of employment within the scope of Part 1 of the WCA. For the purposes of this determination, I consider it sufficient to address these questions on a straightforward application of the provisions of the WCA, bearing in mind the constitutional limits to the jurisdiction of a provincial legislature.

I have also considered the argument presented with respect to the effect of section 4(2) of the GECA. I appreciate that counsel for the defendant has framed this argument as relating to the application of section 10 of the WCA, which is an issue outside of WCAT's jurisdiction. At the same time, however, this argument concerns the question as to whether or not Fleet was a worker within the meaning of Part 1 of the WCA, an

issue which is within WCAT's jurisdiction. I find it necessary to consider this argument, for the purpose of determining whether Fleet was a worker within the meaning of Part 1 of the WCA. To the extent this additional reasoning may be viewed as touching on a question which is outside WCAT's jurisdiction, it may be viewed as *obiter* which is not necessary to my decision.

In *Ching* v. *Canadian Pacific Railway Co.*, [1943] S.C.R. 451, [1943] 3 D.L.R. 737, the Supreme Court of Canada (SCC) dealt with the situation of a postal clerk employed by the federal government. The postal clerk elected to claim workers' compensation benefits as administered by the province. The SCC ruled that his right of legal action was not barred by section 24(6) of the provincial workers' compensation legislation. The SCC reasoned in part:

> ...the subsection is dealing only with cases in which both the workman and his employer are bound by the statute and, as here, on the assumption underlying the first ground, the Crown is not so bound, neither then is the employee of the Crown.
>
> That conclusion is not only consistent with but it seems to be required by the scheme of the Act as a whole. An examination of its provisions make it evident that, with the possible exception of the special cases within section 22(2), what are contemplated are workmen and employers both amendable to those provisions. The "workman" within the Act has his employer within the Act and, conversely, the "employer" his "workman". These correlative capacities are conceived as coexisting before rights vest in the one or obligations attach to the other.
>
> There is, too, a necessary rejection given by the language of the Act to a construction that would create a right to compensation in a Dominion Government employee out of a fund to which his employer was not bound to contribute....
>
> It is next contended that there has been a submission by the Dominion Crown under section 2(h) by the effect of the Dominion enactment itself. What the latter does is to make full provision for the creation of rights in, and the payment of compensation to, Dominion Government employees. For the purpose of administration, either the existing machinery under the compensation laws of the various provinces, or new machinery set up under the Dominion Act itself, may be used; and if the questions arising in this case are examined in the light of an administration by a Dominion body or officer rather than by the Provincial Board, most of the difficulties encountered disappear. The authority given by the Dominion Act to the Provincial Board is strictly limited and, under the language of the principal section, the right to compensation is unencumbered by a referential

> incorporation of provisions of the Provincial Act dealing with consequential matters.
>
> It may be useful here to set out the first subsection of section 3:
>
> > (1) An employee who is caused personal injury by accident arising out of and in the course of his employment, and the dependents of an employee whose death results from such an accident, shall, notwithstanding the nature or class of such employment, **be entitled to receive compensation at the same rate** as is provided for an employee, or a dependent of a deceased employee, of a person other than His Majesty under the law of the province in which the accident occurred for determining compensation in cases of employees other than His Majesty, **and the liability for and the amount of such compensation shall be determined subject to the above provisions under such law, and in the same manner and by the same board**, officers or authority as that established by such law for determining compensation in cases of employees other than of His Majesty, or by such board, officers or authority, or by such court as the Governor in Council shall from time to time direct...
>
> The important words are: "And the liability for and the amount of such compensation shall be determined ... in the same manner and by the same board." It is the liability of the Dominion Government to pay and the amount of the compensation, the right to which is given earlier in the section, which are to be determined; not the resulting effects upon collateral rights against third parties. To suggest, therefore, that the enactment of a special code of provisions with the powers of carrying them into administration without reference to the Provincial Board, is a submission in any sense of the term to a Provincial Act constituting another code, is to disregard the precise and individual character of the Dominion enactment.
>
> [emphasis added]

Counsel for the defendant points out that the legislation considered in *Ching* contained the phrase "compensation at the same rate." The current section 4(2) contains the additional wording "and under the same conditions," which was not contained in the earlier legislation. In the case of *Canada Post Corp. v. Smith*, (1998) 159 D.L.R. (4th) 283, application for leave to appeal to the SCC dismissed, [1998] S.C.C.A. 329, the Ontario Court of Appeal held that this additional wording allowed for the inclusion of

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non-pecuniary benefits (in relation to the entitlement of federal workers to benefits as determined under the provincial workers' compensation legislation). The Ontario Court of Appeal reasoned:

> 44 Moreover, the impact of the Ching decision is restricted. When it was decided, there was no obligation to re-employ in the Workers' Compensation Act. More importantly, the relevant provision in the GECA at the time provided that the injured federal employee receive compensation only "at the same rate" as a provincial employee. The words "and under the same conditions" currently found in s. 4(2), were absent until 1986. These are the very words which allow for the inclusion of non-monetary benefits.
>
> ...
>
> …Section 4(2) entitles injured federal employees to compensation under the same conditions as are available under provincial law. It is far from irrational or unreasonable to conclude that the right of re-employment, found in s. 54, is a fundamental condition of the entitlement to compensation in Ontario, an integral part of Ontario's compensation scheme, and therefore one of the benefits available as compensation in Ontario under s. 4(2) of the GECA.

It is evident that the addition of the phrase "and under the same conditions" supports a broader interpretation as to the benefits available to federal workers. I am not persuaded, however, that this expansion of the benefits available to federal workers has the effect of making them workers within the meaning of Part 1 of the WCA. I find that the analysis in *Ching* remains valid, in respect of the distinction between the status of such persons and the benefits available to them.

I find persuasive the decision of the Saskatchewan Court of Appeal in *Canada v. Ahenakew* [1986] 4 W.W.R. 230. The decision by the Saskatchewan Court of Queen's Bench, [1984] 3 W.W.R. 442, reasoned:

> 32 However, on behalf of the defendant, it is argued that the federal government has adopted the provincial legislation through the device of incorporation by reference. To this end counsel for the defendant points to the emphasized portions of the federal legislation together with the written argument of January 17, 1980. On the basis of this I am invited to conclude that Parliament has adopted the provincial legislation.
>
> 33 I agree that one legislative body may adopt the legislation of another such body. See Attorney-General for Ontario v. Scott (1956) 1 D.L.R. (2d) 433 and Coughlin v. The Ontario Highway Transport Board (1968) S.C.R.

> 569. However, I do not agree that Parliament has adopted the legislation contained in The Workers' Compensation Act, 1979. Rather, the provisions contained in The Government Employees Compensation Act and the terms contained in the written agreement relate to and are solely for the purpose of administering the federal plan which is separate and distinct from the provincial plan. Parliament has merely chosen to base the amount of the compensation awards upon those paid in the respective provinces, undoubtedly in an attempt to achieve uniformity within each province. Secondly, Parliament has merely hired the provincial board to administer the federal plan. This conduct by Parliament cannot be construed as adopting the provincial legislation in total. As well, this conduct by Parliament cannot be construed as the Crown "submitting to the operation of the Act", i.e. the provincial Act.
>
> [reproduced as written]

An appeal was dismissed by the Saskatchewan Court of Appeal in oral reasons [1986] S. J. No. 94. The Court of Appeal reasoned:

> It was held at trial: (i) that the action was not barred by s. 44 of The Workers Compensation Act, 1979 S.S. c. W-17.1 which prohibits an action by employers and workers "with respect to an injury sustained by a worker in the course of [his] employment"; ....
>
> As for the first of the conclusions, it is our opinion that the Crown in the right of Canada is not, as was contended, an "employer" within the meaning of s. 44 of The Worker's Compensation Act; nor was the deceased, a Federal Crown employee, a "worker" under the section. Indeed in our view The Worker's Compensation Act was simply inapplicable....

I note, as well, that the GECA contains its own provision restricting the rights of a federal employee to bring a legal action. Section 12 of the GECA provides:

> Where an accident happens to an employee in the course of his employment under such circumstances as entitle him or his dependants to compensation under this Act, neither the employee nor any dependant of the employee has any claim against Her Majesty, or any officer, servant or agent of Her Majesty, other than for compensation under this Act.

In *Morrison*, *supra*, the Nova Scotia Court of Appeal quoted with approval the brief provided by the Attorney General of Canada:

> In my view the interaction of GECA with provincial workers' compensation legislation was concisely expressed by the Attorney General for Canada as follows:

> The Attorney General submits that the interplay between GECA and the WCA ought to be interpreted as follows:
>
> The provincial workers' compensation scheme governs claims submitted under GECA provided that:
>
> (a) The provision in issue is reasonably incidental to a "rate" or "condition" governing compensation under the law of the province, and
>
> (b) The provision is not otherwise in conflict with GECA.
>
> 69 This approach appears to be consistent with the case law, and I adopt it. Whether "reasonably incidental" in (a) is referred to as "integral" (Smith) or "sufficiently linked or connected to compensation" (Bergeron [1997] A.Q. No. 811), the concept is common in the jurisprudence. There must be a close nexus between the provincial provision sought to be invoked and compensation. Section 187 of the Nova Scotia Act is intended to correct the imbalance of resources between the resources of the Workers' Compensation Board and the individual worker seeking compensation.
>
> [reproduced as written]

I do not consider that characterizing Fleet as a worker under the WCA is reasonably incidental to a "rate" or "condition" governing compensation under the law of the province.

Upon consideration of the foregoing, I do not consider that the wording of section 4(2) of the GECA supports a conclusion that Fleet was a worker within the meaning of Part 1 of the WCA.

(b) Was Fleet an employee within the meaning of section 2 of the GECA?

For reasons set out above, I find that WCAT has jurisdiction to determine this issue. I adopt, as well, the additional reasoning expressed in *WCAT Decision #2005-01542*, in finding that this issue is within WCAT's jurisdiction.

Paragraph 6 of the Statement of Claim filed by the Attorney General of Canada states:

At all material times, Linda Fleet ("Fleet") was employed as a Grain Inspector with the Canadian Grain Commission and was performing her employment duties on the Premises. The Canadian Grain Commission is a federal government department and operates under the authority of the Canada Grain Act, R.S. 1985, c. G-10.

Section 2 of the GECA defines "employee" as follows:

"employee" means

(a) **any person in the service of Her Majesty who is paid a direct wage or salary by or on behalf of Her Majesty**,

(b) **any member, officer or employee of any** department, company, corporation, **commission**, board or agency established to perform a function or duty on behalf of the Government of Canada **who is declared by the Minister with the approval of the Governor in Council to be an employee for the purposes of this Act**,

(c) any person who, for the purpose of obtaining employment in any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada, is taking a training course that is approved by the Minister for that person,

(d) any person employed by any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada, who is on leave of absence without pay and, for the purpose of increasing his skills used in the performance of his duties, is taking a training course that is approved by the Minister for that purpose, and

(e) any officer or employee of the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer or office of the Ethics Commissioner;

[emphasis added]

Section 2 of the GECA further defines "Her Majesty" as meaning "Her Majesty in right of Canada."

The Canadian Grain Commission was established by section 3 of the *Canada Grain Act*, R.S. C. 1985, c, G-10. This includes the following provisions:

> 3. There is hereby established a Commission to be known as the Canadian Grain Commission consisting of three commissioners to be appointed by the Governor in Council to hold office, during good behaviour, for a renewable term of up to seven years.
>
> 5.(1) Each commissioner shall be paid a salary to be fixed by the Governor in Council and is entitled to be paid reasonable travel and other expenses incurred by him while absent from his ordinary place of residence in the course of his duties under this Act.
>
> (2) The commissioners are deemed to be persons employed in the public service for the purposes of the *Public Service Superannuation Act* and to be employed in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.
>
> 9.(1) The Governor in Council may appoint six persons as officers of the Commission, to be known as assistant commissioners, to hold office, during good behaviour, for a renewable term of up to five years.
>
> (2) Section 5 applies, with such modifications as the circumstances require, to assistant commissioners appointed pursuant to subsection (1).
>
> 10. Such officers and employees, other than assistant commissioners, as are necessary for the proper conduct of the business of the Commission, including managers and employees employed at elevators constructed or acquired by Her Majesty in right of Canada and administered by the Commission pursuant to this Act, shall be appointed in the manner authorized by law.

The definition under (b) of the definition of "employee" in section 2 of the GECA was considered in *WCAT Decision #2005-01542* at page 20 as follows:

> As Z was performing work for a crown corporation, I consider that his status must be addressed under clause (b) of the definition of "employee". This definition refers to "any member, officer or employee of any . . . corporation . . . who is declared by the Minister with the approval of the Governor in Council to be an employee for the purposes of this Act".
> I have considered, first of all, whether this definition is determinative of the jurisdictional issue raised in this appeal (as to whether the Board has jurisdiction to determine Z's status). In other words, does section 2(b) of

> GECA require a determination from the federal Minister of Labour regarding every claim for compensation under GECA by a person working for a federal crown corporation? In response to my January 25, 2005 memo, by letter of January 28, 2005, counsel for the CC furnished copies of two documents. The first, approved by the Governor General in Council on September 29, 1960 (P.C. 1960-11/1322), conferred authority on the federal Minister of Labour to declare the officers and employees of the CC to be employees for the purposes of GECA, effective November 10, 1958. The second, dated October 20, 1960, is a declaration by the Minister of Labour that the officers and employees of the CC were employees for the purposes of GECA effective November 10, 1958. Counsel for the CC submits that that these documents clearly demonstrate that the officers and employees of the CC are employees within the meaning of section 2(b) of GECA. I accept this submission.

By memo of February 8, 2006, I inquired whether there was documentation to show that employees of the Canadian Grain Commission have been declared by the Minister with the approval of the Governor in Council to be employees for the purposes of the GECA. By submission of February 21, 2006, counsel for the applicant advised:

> . . . no such document exists, in that the Canadian Grain Commission is a federal agency as opposed to a crown corporation. I refer to sections 5(2), 9(1), 9(2), and 10 of the *Canadian Grain Act*, copies of which are enclosed, making employees of the Canadian Grain Commission employees for the purposes of the *Government Employees Compensation Act*.…

On February 23, 2006, counsel for the defendant submitted:

> The provisions relied on by [the applicant] do not have the effect that he contends for. The combined effect of Sections 5(2), 9(1) and 10 of the *Canada Grain Act* simply establish that the "commissioners" as well as the "assistant commissioners" are "employed in the federal public administration for the purposes of [GECA]". These provisions do not have that effect with respect to employees such as Linda Fleet.

On March 14, 2006, counsel for the applicant further submitted:

> …Section 2 of the _Financial Administration Act_, RS 1985 c.F-11 provides that a department includes "…*a division or branch of the federal public administration*… By the _Canada Grain Act_, RS 1985 c. G-10, the *Canadian Grain Commission* is established by act of Parliament. It is not established as a crown corporation and must accordingly be a division or branch of the federal public administration.

> Additionally, after speaking with the Canada Revenue Agency concerning Ms. Fleet's T4 information, her employer is referred to a "PWGSC". "PW" identifies "Public Workers" on the T4s which Ms. Fleet had received and as confirmed with the Canada Revenue Agency.
>
> [reproduced as written]

By letter of March 15, 2006, counsel for the defendant advised he had no additional comments to make in relation to the March 14, 2006 letter.

The *Financial Administration Act* is the short title for *An Act to provide for the financial administration of the Government of Canada, the establishment and maintenance of the accounts of Canada and the control of Crown corporations*. The Canadian Grain Commission is listed in Schedule 1.1 (in reference to sections 2 and 3) and Schedule IV (in reference to section 3 and 11) of the *Financial Administration Act*. Schedule 1.1 lists the "appropriate minister" as the Minister of Agriculture and Agri-Food. Schedule IV lists the Canadian Grain Commission under the heading: "PORTIONS OF THE CORE PUBLIC ADMINISTRATION".

For the purposes of the *Financial Administration Act*, it is evident that the Canadian Grain Commission is a division or branch of the federal public administration. However, a person may not necessarily have the same status for different pieces of legislation. I have some doubt as to whether I can determine the plaintiff's status under the GECA by reference to the *Financial Administration Act*.

The employer's report of injury or occupational disease dated August 21, 2001, which was submitted to the Board by the Canadian Grain Commission concerning Fleet's August 17, 2001 injury, described Fleet as a permanent, full time employee. The employer's report was countersigned by Human Resources Development Canada.

Copies have not been furnished of the plaintiff's T4 information. However, the employer's report of injury to the Board in this case indicated that the plaintiff's remuneration involved a differential, shift premium, and overtime as required and available. This report contained the following handwritten notation: "ADDITIONAL SALARY INFORMATION FROM PAY OFFICE AGRICULTURE CANADA 604-666-5583". The applicant has furnished a letter dated September 14, 2001 to the plaintiff, from a subrogation officer with Human Resources Development Canada. She stated:

> On the above-noted date [Your Accident of August 17, 2001 – Trip on Grating], you were injured while in the course of your employment with the federal government…

By memo dated November 3, 2005, the policy manager, Assessment Department, advised that the Canadian Grain Commission is a deposit account registered under the

Government of Canada, account number 005400. This registration with the Board was in effect at the time of the August 17, 2001 accident.

On the basis of the evidence before me, I accept that the plaintiff was in receipt of a direct wage or salary by or on behalf of Her Majesty in right of Canada. I accept that the plaintiff comes within the first definition of the term employee, as being "any person in the service of Her Majesty who is paid a direct wage or salary by or on behalf of Her Majesty." I find that at the time of the August 17, 2001 accident, Fleet was an employee within the meaning of section 2 of the GECA.

Counsel for the defendant requests certification that the injuries suffered by Fleet arose out of and in the course of her employment. There is no dispute on this issue. On August 17, 2001, Fleet's shift started at approximately 7:00 a.m. (page 24 of her examination for discovery). The accident occurred at approximately 12:45 (page 25). After her lunch break Fleet returned to work. Her fall occurred while she was returning from going downstairs to the office to get water and to go to the washroom (page 29). The fall occurred while she was walking on a grated walking surface of a catwalk, on the premises of the Saskatchewan Wheat Pool (page 30).

The policy in effect on August 17, 2001 provided, at item #21.00 of the *Rehabilitation Services and Claims Manual*:

> An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied. For example, it has long been accepted that compensation is not limited to injuries occurring in course of production. Where persons are injured while at work in the broader sense of that term, claims will not be denied on the ground that at the precise moment of injury they were blowing their noses, using the toilets or having their coffee break.

I find that Fleet's injuries on August 17, 2001 arose out of and in the course of her employment.

Status of the defendant

Counsel for the defendant requests a determination that the Saskatchewan Wheat Pool was an employer within the meaning of Part 1 of the WCA, and was engaged in an industry within the meaning of Part 1 of the WCA.

Counsel for the applicant advises that the Saskatchewan Wheat Pool is a company incorporated under the laws of Saskatchewan and is registered as an extra-provincial company under the laws of British Columbia (with a head office on Burrard Street in downtown Vancouver). By memo dated November 3, 2005, the policy manager, Assessment Department, advised that the Saskatchewan Wheat Pool was registered

with the Board at the time of the accident on August 17, 2001, under account numbers 080171 and 473181.

I find that at the time the cause of action arose, August 17, 2001, the Saskatchewan Wheat Pool was an employer engaged in an industry within the meaning of Part 1 of the WCA.

Conclusion

I find that at the time of the August 17, 2001 accident:

(a) Linda Fleet was not a worker within the meaning of Part 1 of the *Workers Compensation Act*;

(b) the injuries suffered by Linda Fleet, did not arise out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*;

(c) Linda Fleet was an employee within the meaning of section 2 of the *Government Employees Compensation Act*;

(d) the injuries suffered by Linda Fleet, arose out of and in the course of her employment; and,

(e) the defendant, Saskatchewan Wheat Pool, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

Herb Morton
Vice Chair

HM:gw

NO. S034373
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:

ATTORNEY GENERAL OF CANADA

PLAINTIFF

AND:

SASKATCHEWAN WHEAT POOL AND THE VANCOUVER PORT AUTHORITY

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Plaintiff, ATTORNEY GENERAL OF CANADA, 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, August 17, 2001:

1. LINDA FLEET, was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by LINDA FLEET, did not arise out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

3. LINDA FLEET was an employee within the meaning of section 2 of the *Government Employees Compensation Act*.

4. The injuries suffered by LINDA FLEET arose out of and in the course of her employment.

5. The Defendant, SASKATCHEWAN WHEAT POOL, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

CERTIFIED this day of March, 2006.

____

Herb Morton
VICE CHAIR

NO. S034373
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:

ATTORNEY GENERAL OF CANADA

PLAINTIFF

AND:

SASKATCHEWAN WHEAT POOL AND THE VANCOUVER PORT AUTHORITY

DEFENDANTS

SECTION 257 CERTIFICATE

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