WCAT

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT DECISION DATE:	**December 12, 2018**
WCAT DECISION NUMBER:	**A1603743**
WCAT PANEL:	**Herb Morton**

RE: Dean E. Butler v. Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease, CanUsa Limos Ltd., Remo Guolo and Roberto Angelo Pavan
Vancouver Registry No. VLC-S-M-121540
WCAT No. A1603743

Patrick William Evans v. Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease, CanUsa Limos Ltd., Remo Guolo and Roberto Angelo Pavan
Vancouver Registry No. VLC-S-M-120546
WCAT No. A1603747

Edonna A. Fisher v. Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease, CanUsa Limos Ltd., Remo Guolo and Roberto Angelo Pavan
Vancouver Registry No. VLC-S-S-121076
WCAT No. A1603749

Julie K. Savage-Wade v. Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease, CanUsa Limos Ltd., Remo Guolo and Roberto Angelo Pavan
Vancouver Registry No. VLC-S-M-123759
WCAT No. A1603750

Cheryl Skaar v. Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease, CanUsa Limos Ltd., Remo Guolo and Roberto Angelo Pavan
Vancouver Registry No. VLC-S-M-123762
WCAT No. A1603751

Applicants:	Dean E. Butler, Patrick William Evans, Edonna A. Fisher, Julie K. Savage-Wade, and Cheryl Skaar ("Plaintiffs")

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Respondents:	Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease, CanUsa Limos Ltd., Remo Guolo (“Defendants”) Roberto Angelo Pavan (“Defendant”)
Interested Person:	Powerex Corporation
Representatives:	
For Applicants:	Scott W.K. Urquhart LINDSAY LLP
For Respondents:	
Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease, CanUsa Limos Ltd., Remo Guolo	Robert C. Brun, Q.C. / Rebecca K. Buchanan HARRIS & BRUN LAW CORPORATION
Roberto Angelo Pavan	Deborah H. Taylor MACKOFF MOHAMED
For Interested Person:	Jay Ratzlaff Corporate Counsel, Powerex Corporation

Noteworthy Decision Summary

Decision: A1603743 **Panel:** Herb Morton **Decision Date:** December 12, 2018

Airline flight crew – Application of Part 1 of the Workers Compensation Act – Constitutional law - Definition of "worker" in Part 1 of the Workers Compensation Act – Section 257 of the Workers Compensation Act.

This decision concerned a section 257 of the *Workers Compensation Act* (Act) determination of the status of the flight crew of a foreign-owned aircraft who were injured while on a temporary layover in BC.

Five plaintiffs were injured in a motor vehicle accident in BC. The plaintiffs were all residents of the US, employed by an airline as flight crew. They were the captain and first officer (cockpit crew) and flight attendants (cabin crew) on layover for one night in Vancouver between flights. The accident occurred when the plaintiffs were being driven from their hotel to Vancouver International Airport so that they could be the crew of a flight departing for a US destination. In the action they commenced, the plaintiffs applied to WCAT for determination of whether they were workers within the meaning of Part 1 of the Act and whether the injuries they sustained in the accident arose out of and in the course of their employment.

The airline was based in the US. It offered flights into and out of BC but did not provide service between destinations in BC. The airline was registered as an employer with the Workers' Compensation Board, operating as WorkSafeBC, but had never paid assessment premiums for flight crew based in the United States. The airline paid for the plaintiffs' overnight accommodation and transportation to and from the airport, but the plaintiffs were not being paid at the time of the accident. The panel had before it evidence establishing that the cockpit crew performed some work while in the airport before boarding the aircraft, while the cabin crew performed essentially all of their work on board the aircraft. The panel had before it evidence that the term "turn-around" referred to the situation where an aircraft and flight crew arrives and then departs again in a relatively short space of time, and "layover" refers to the situation where the flight crew arrives, stays overnight and then departs the next day.

The panel referred to item #C3-14.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) and noted that the issue of whether injuries arose out of and in the course of employment does not turn on whether the a worker was engaged in some productive work activity at the time of injury, but on whether the injury was sufficiently connected to the worker's employment. The panel further noted that the plaintiffs were clearly required to travel as part of their employment and there was no evidence of a departure of a personal nature in relation to the circumstances of the accident. However, the panel stated that that the policies in Chapter 3 of the RSCM II would not apply to the plaintiffs unless they were found to be "workers" under the Act.

Regarding whether the plaintiffs were "workers" under the Act, the panel considered the BC Court of Appeal decision in *British Airways Board v. British Columbia (Workers' Compensation Board)*, 1985 CanLII 636, leave to appeal denied [1985] S.C.C.A. No. 63 (*British Airways*) and item #AP1-2-1 of the *Assessment Manual* regarding exemption of flight crews from coverage

under the Act. The panel also considered the "sufficient connection" test set out in *Combs v. Teck Cominco Metals Ltd.*, 2014 BCSC 572.

The panel concluded that the reasoning in *British Airways* is not confined to the situation of flight crews on a turn-around in BC. It also applies to flight crews on layover in BC. Item #AP1-2-1 of the *Assessment Manual* provides that some workers and employers are excluded from coverage under Part 1 of the Act as a matter of constitutional law, as they have no attachment to BC industry. This includes consulates and trade delegations from foreign countries, and with respect to air transportation firms from outside BC, flight crews who are on turn-around in BC where specific criteria are met. The term "includes," in the policy amended in 2016 to "some examples are," indicates that the list is not exhaustive and does not preclude consideration of other circumstances, such as flight crews on layover, excluding application of Part 1 of the Act as a matter of constitutional law.

The panel found that the plaintiffs' residence and usual place of employment was the in the United States. The activities of staying in a hotel overnight and travelling to and from the airport were not sufficiently different in nature, character or extent from the activities of the flight crew on turn-around considered in *British Airways* to take them out of the scope of the reasoning in that case. Following that reasoning, despite the fact that the plaintiffs performed some brief productive work outside of the aircraft in B.C., their connection to B.C. was insufficient for the Act to apply to them as a matter of constitutional law. Accordingly, the flight crew were not "workers" within the meaning of Part 1 of the Act. It necessarily follows that any injury the plaintiffs sustained in the accident did not arise out of and in the course of their employment within the scope of Part 1 of the Act.

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DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

This decision has been the subject of a BC Supreme Court decision on application for judicial review. See 2022 BCCA 20.

Introduction

[1] The five plaintiffs, Dean E. Butler, Patrick William Evans, Edonna A. Fisher, Julie K. Savage-Wade, and Cheryl Skaar, suffered injuries in a motor vehicle accident on September 22, 2010. The accident occurred at the intersection of Davie and Hornby Streets in downtown Vancouver at 5:15 a.m.

[2] The plaintiffs, residents of the United States, were employed by Delta Air Lines Ltd. (Delta), and were on a layover for one night in Vancouver between flights. Butler and Evans were pilots, and Fisher, Savage-Wade, and Skaar were flight attendants. At the time of the accident, they were traveling from their hotel back to the Vancouver International Airport (YVR). The plaintiffs were being driven to the airport so that they could be the flight crew of a departing Delta flight.

[3] The plaintiffs were traveling as passengers in a 2004 Ford Excursion, an extended length sport utility vehicle (SUV) owned by the defendants CanUsa Limos Ltd. (CanUsa) and Brown Bros. Motor Lease Ltd. The SUV was being driven by the defendant, Remo Guolo, who worked as a driver for CanUsa. The other vehicle in the accident was being driven by the defendant, Roberto Angelo Pavan. Pavan was employed by Powerex Corporation.

[4] 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. These applications were initiated by counsel for the plaintiffs in September 2012. The plaintiffs requested determinations of their status at the time of the September 22, 2010 motor vehicle accident. On March 25, 2013, counsel for the defendants CanUsa and Guolo requested determinations of their status at the time of the accident.

[5] By letter of April 8, 2013, Pavan's former counsel stated that Pavan was seeking a section 257 determination in these matters. On January 8, 2016, the British Columbia Supreme Court (BCSC) rendered a decision on liability in *Pavan v. Guolo*, 2016 BCSC 23. By agreement of counsel, this judgment on liability applies to all five actions. Guolo was found liable for the damages which occurred to Pavan and the five plaintiffs, on the basis that he failed to meet the common-law duty to take care. By letter of August 9, 2018, counsel for Pavan advised that no submission would be provided on behalf of Pavan and that he would not be participating further in these applications.

[6] Powerex Corporation is participating in these applications, but did not provide a submission. A certificate was not requested for the legal action in which Pavan is a plaintiff (*Roberto Angelo Pavan v. Remo Guolo and Canusa Limos Ltd.*, BCSC Vancouver Registry No. M122794).

[7] The plaintiffs provided submissions on May 2, 2013, and advised that additional evidence would be forthcoming. Following examinations for discovery of four of the parties, additional submissions were provided by the plaintiffs on September 15, 2015. Examination for discovery transcripts were provided as follows: Remo Guolo (October 18, 2013), Dean E. Butler (January 13, 2014), Patrick William Evans (January 16, 2014), and Julie K. Savage-Wade (January 14, 2014).

[8] No party submitted an application to the B.C. Workers' Compensation Board, operating as WorkSafeBC (Board), for workers' compensation benefits for injuries sustained in the September 22, 2010 accident. There was no examination for discovery of the plaintiff Cheryl Skaar.

[9] On June 24, 2016, the defendants requested an order compelling Delta to produce certain documents. An order dated July 27, 2016 was issued by WCAT and served on Delta. Delta provided selected documents from its *Flight Operations Manual* and its *Inflight Service On-Board Manual* on September 28, 2016.

[10] On November 21, 2016, the defendants requested that Delta be ordered to provide disclosure of additional documents. By memorandum of February 14, 2017, I initially found that the selected documents provided by Delta were sufficient and declined to grant an order to compel production of additional records.

[11] The defendants provided submissions on March 31, 2017, concerning the status of the plaintiffs and of the defendant Guolo. The plaintiffs provided rebuttal submissions on May 25, 2017. On May 26, 2017, the WCAT appeal coordinator advised that submissions were considered complete.

[12] By memorandum of June 14, 2017, I noted that under section 45 of the *Administrative Tribunals Act* (ATA) WCAT has jurisdiction over constitutional issues other than ones relating to the *Canadian Charter of Rights and Freedoms*. As these applications raised a constitutional issue as to whether the Act applies to the plaintiffs, I provided notices to the federal and provincial Attorneys General in accordance with section 8 of the *Constitutional Question Act*, RSBC 1996, c. 68. By letters dated July 11, 2017 and August 3, 2017, the federal and provincial Attorneys General declined to participate in these applications.

[13] In the June 14, 2017 memorandum, I also invited the Assessment Department of the Board to participate in these applications as an interested person (in accordance with section 246(2)(i) of the Act and item #6.6.7 of WCAT's *Manual of Rules of Practice and Procedure*). The Assessment Department provided comments in a memorandum dated June 27, 2017.

[14] By memorandum of July 5, 2017, I noted that it appeared the plaintiffs may be raising an issue as to the interpretation of the policy at item #AP1-2-1 of the *Assessment Manual*, or alternatively, the lawfulness of the policy under the Act. On this latter point, I cited section 251 of

the Act, which requires that WCAT apply an applicable policy unless it is so patently unreasonable that it is not capable of being supported by the Act and its regulations.

[15] By letter of May 8, 2013, Delta advised that it would be relying upon the submissions provided by the applicants/plaintiffs. Legal counsel for Delta also provided a submission on January 12, 2017 in connection with an application by the defendants for a further order for production of documents. Although invited to do so, Delta is not otherwise participating in these applications as an interested person.

[16] The plaintiffs provided further submissions on May 25, 2017. On July 28, 2017, the defendants renewed their request that Delta be required to produce additional documents. By memorandum of August 4, 2017, I approved this request and inquired whether Delta was willing to provide the requested documents on a voluntary basis. By letter of September 22, 2017, Delta furnished additional documents. Further explanations were provided by Delta by letter of October 27, 2017. Supplemental submissions were provided by the plaintiffs on November 17, 2017.

[17] By memorandum dated January 4, 2018, I identified several documents (consisting of archived policies and discussion papers, as well as Practice Directive 1-2-1(A), "Exemptions from coverage," May 1, 2010) concerning the air transportation industry and exemptions from coverage. This memorandum and copies of the cited documents were provided to the parties.

[18] Further time was granted for the defendants' submissions, to allow time for obtaining a transcript of the January 9, 2018 examination for discovery of the plaintiff, Edonna A. Fisher. The defendants provided submissions on March 19, 2018. The plaintiffs provided rebuttal submissions on August 30, 2018. On September 11, 2018, the WCAT appeal coordinator advised that submissions were considered complete.

[19] The parties provided submissions concerning the decision of the BCSC in *Air Canada v. Workers'* Compensation *Appeal Tribunal*, 2017 BCSC 1609. Accordingly, the October 19, 2018 judgment of the British Columbia Court of Appeal (BCCA) in that case, 2018 BCCA 387, was disclosed for comment. The plaintiffs provided a submission dated November 3, 2018, and the defendants provided a submission on November 29, 2018. By letter of December 4, 2018, the appeal coordinator again advised that submissions were considered complete.

[20] The background facts relevant to these determinations are generally not in dispute. I find that these applications primarily involve questions of law and policy which can be properly considered on the basis of the written evidence and submissions, without an oral hearing.

Issue(s)

[21] Determinations are requested concerning the status of the plaintiffs in the five legal actions, and of the defendants Guolo and CanUsa, at the time of the September 22, 2010 motor vehicle accident. A central issue is whether the Act applies to the plaintiffs, as non-residents of B.C. employed as members of a flight crew, in relation to their "layover" in B.C.

Jurisdiction

[22] 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 that is applicable (section 250(2)). In this decision, I am applying the applicable policies contained in the *Assessment Manual*, and in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II)[1], as they existed at the time of the accident on September 22, 2010.

[23] 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: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

[24] WCAT acquired authority to address constitutional questions, other than questions relating to the *Canadian Charter of Rights and Freedoms*, effective December 17, 2015. On the request of a party or on its own initiative, at any stage of an application WCAT may refer the constitutional question to the court in the form of a stated case. On the request of the Attorney General, WCAT must refer the constitutional question to the court in the form of a stated case. MRPP item #3.4.1 provides, in part:

> WCAT has jurisdiction over constitutional questions with the exception of Canadian Charter of Rights and Freedoms issues [s. 245.1 WCA [*Workers Compensation Act*], s. 45(1) ATA].
>
> "Constitutional questions" are defined by the ATA as questions requiring notice to the Attorneys General of Canada and British Columbia under section 8 of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68. That Act requires notice where the constitutional validity or applicability of any law (including a regulation) is challenged, or where an application is made under section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.
>
> [all quotations are reproduced as written, except as noted]

Status of the Plaintiffs, Dean E. Butler, Patrick William Evans, Edonna A. Fisher, Julie K. Savage-Wade, and Cheryl Skaar

(a) Background and Evidence

[25] The defendants provided a detailed summary of the evidence provided by the parties in their examinations for discovery. The following summary largely follows the statement of facts provided by the defendants (with different numbering and incidental changes). The background

[1] The board of directors of the Board approved a revision to the policies in Chapter 3 of the RSCM II, and the revised policies apply to injuries or accidents that occur on or after July 1, 2010.

evidence is not in dispute, and I accept the evidence provided by the parties, including the affidavit evidence of the plaintiffs and Brad Baker (a Delta manager, workers' compensation) as accurate.

[26] The defendant driver, Remo Guolo, provided evidence in an examination for discovery on October 18, 2013:

(a) Guolo lived in Burnaby, B.C. (Q 3 to 6).

(b) The accident occurred at approximately 5:15 a.m. on September 22, 2010 (Q 27 to 28), at the intersection of Davie Street and Hornby Street in Vancouver (Q 29).

(c) At the time of the accident, he was driving an SUV (Q 110) as an employee of CanUsa (Q 117), with the consent of the owner of that business, Stavros[2] (Q 119 to 125).

(d) Guolo had five passengers with him at the time of the accident (Q 133). He was transporting passengers from the Renaissance Hotel to YVR because his employer had a contract with Delta. It was his routine to drive Delta employees from the Renaissance Hotel to the airport five to six days a week.

[27] The plaintiff, Dean E. Butler, provided evidence in an examination for discovery on January 13, 2014:

(a) Butler lived in Stillwater, Minnesota, and had lived there for 17 years (Q 4 to 5).

(b) Butler had been a commercial pilot since 1995 (Q 13).

(c) Delta pays its pilots by the hour and it tracks their flight time by the minute by a data link based on the time the aircraft brakes are released or set (Q 34 to 35, 42 to 43).

(d) Butler was "on duty" one hour prior to the scheduled flight departure time and off duty 30 minutes after the flight arrival time (Q 38, 41). Pilots received a *per diem* based on the "flight duty period," but it was not recorded as flight time for pay purposes (Q 47 to 49).

(e) Delta considered the pilots to be employees, non-duty, during layovers (Q 39).

(f) As the first officer, Butler was paid $110.00 per hour for flight time in 2010 (Q 52, 74).

(g) Butler was paid an hourly *per diem* of $2.20 domestic and $2.70 international from one hour before departure of the initial flight until 30 minutes after final arrival, inclusive of all layover time (Q 55).

(h) Delta arranged and paid for all transportation and accommodation costs for pilots and crew on layover (Q 59 to 60). Meals were paid out of the *per diem* (Q 61).

(i) Their flight arrived in Vancouver at approximately 1:05 p.m. on the afternoon of September 21, 2010 (Q 80). The point of origin was Charlotte, North Carolina, and they flew to Minneapolis (Saint Paul International Airport) and then to Vancouver (Q 81). This was a three-day trip. They landed in Vancouver on the second day, and the accident was the

[2] Counsel for the defendants advises that according to the BC Company Summary, the president and sole director of CanUsa is Stavros Tsiodras. The Internet website for CanUsa similarly refers to Stavros Tsiodras as the owner.

third day (Q 82 to 83). They would have flown from Vancouver to Minneapolis to finish their trip (Q 83).

(j) The flight attendants were on a different schedule. They boarded in Minneapolis and were scheduled to return to Minneapolis from Vancouver (Q 86).

(k) Butler could not recall whether he or Evans had flown the leg into Vancouver (Q 87). They were both on active duty on that flight. The flight attendants were also scheduled to work. No Delta employee was "deadheading" on that flight (Q 89 to 93).

(l) On other occasions, Butler had flown into Calgary, Edmonton, Regina, Saskatoon, Winnipeg, Toronto, Ottawa, Montreal, and Halifax, in addition to Vancouver (Q 95).

(m) Butler never flew between Canadian airports, except on Delta sport charter trips (Q 105). Butler had flown hockey charter flights from Edmonton to Calgary to Vancouver, and from Ottawa to Toronto (Q 100 to 101). In the United States, Butler had also flown basketball, hockey, and college sports teams (Q 102). The charter flight time varied by year, between zero and 10% of his annual flying, for an average of 3 to 5% annually (Q 103).

(n) The September 21, 2010 flight arrived in Vancouver at about 1:00 p.m. and he was then transported to the Renaissance hotel. The cost of the transportation and the hotel was paid by Delta (Q 106 to 108).

(o) On the morning of the accident, they departed the hotel at approximately 5:10 a.m. (Q 110). His flight was due to depart at 6:45 a.m. (Q 112).

(p) Butler was seated in the front passenger seat, Savage-Wage and Fisher were seated in the middle row, and Evans and Skaar were seated in the rear row of the SUV which was being driven by Guolo (Q 115, 141 to 142).

[28] The plaintiff, Patrick William Evans, gave evidence at an examination for discovery on January 16, 2013:

(a) In 2010, Evans lived in Cannon Falls, Minnesota (Q 469 to 471, 493).

(b) Evans was employed by Delta as captain of the Airbus 319 and 320 (Q 31 to 33). In 2011, the hourly base rate for a Delta pilot captain 320 was $168.12 (Q 213).

(c) A captain's duties are fairly choreographed by Delta's operating procedures (Q 38). He must be at the airport a minimum of one hour before flight time (Q 38). He reviews a weather and flight plan package prepared by the dispatcher in Atlanta, Georgia (Q 39, 41). He can do this at the airport or at the flight gate, but typically did it in the Delta flight planning room in Minneapolis (Q 42). Evans normally flew flights which originated in Minneapolis (Q 46).

(d) The paperwork was about five-feet long (Q 44 to 45). The captain signs a release for the flight and takes co-authority for the flight with the dispatcher when both agree the flight can operate safety under listed conditions (Q 40).

(e) In Minneapolis, Delta had its own flight planning room where Evans could pull the flight information up on a computer and print it out (Q 46 to 50). In Vancouver, the agents at the flight gate would have printed out the paperwork for Evans and he would have found a

quiet spot, possibly at another gate, to review it (Q 52). This activity occurred before boarding the aircraft (Q 53).

(f) The first officer was also required to review the release and familiarize himself with the paperwork (Q 54). This was not something he and the captain did together at the same time (Q 55). While the captain was reviewing the paperwork, the first officer was usually at the airplane "preflighting" it, looking at the aircraft logbook and doing a walk-around (Q 55).

(g) A "layover" occurred when the flight arrives at an airport and the crew get off the plane and go to a hotel, spend the night, and fly home the next day (Q 58). A "turn-around" occurred when the plane flew into the airport, let the passengers off, and departed within a few hours (Q 59).

(h) Had the accident not happened, Evans would have received a flight plan for his review from the dispatcher at the gate at YVR (Q 68). At YVR, there is no designated place to review the flight plan, so he would have taken it and gone somewhere quiet in the airport to review it such as the podium or another gate (Q 69 to 70). The review of the flight plan could take 5 to 20 minutes, depending upon the complexity of the information, including weather patterns (Q 71).

(i) If Evans had questions about the flight plan, he could call his dispatcher in Atlanta, Georgia. In the United States, he would use his cellular phone. In Vancouver, he would use the phone at the podium to call long distance (Q 77 to 80).

(j) While the captain reviewed the flight plan, the first officer inspected the plane by walking around it to observe whether anything was out of place (Q 81 to 82). The first officer would also look at the aircraft log books to see what was going on with the airplane (Q 83). They could legally operate the aircraft with some items inoperable, so they must know what those items were and verify that they could legally do what was said in the logbook they could do (Q 83).

(k) The day before the accident, Evans and his first officer, Butler, flew the Airbus from Minneapolis to Vancouver. While Butler landed the plane, Evans was always the captain sitting in the left-hand seat. (Q 86 to 91)

(l) The airplane Evans and Butler flew into Vancouver returned to Minneapolis (Q 93). The plane Evans would have flown on the day of the accident was a plane flown into Vancouver by another crew, which would have been the evening flight from Minneapolis (Q 93 to 97).

(m) Evans and Butler had to check the logbook, because the plane they were to fly out of Vancouver was not the same plane they flew into Vancouver. Checking the logbook was a legal obligation and part of his procedures. As well, maintenance would sometimes be performed on a plane that was sitting overnight. Evans could not assume that nothing had happened to the aircraft since the last time he saw it (Q 100 to 101).

(n) Both the captain and the first officer were responsible for making sure the plane was properly fuelled (Q 108). This involved checking the amount of fuel known to be on the aircraft prior to fueling, and the amount put into the aircraft, to ensure it had the appropriate amount of fuel (Q 109). They never fully filled the airplane fuel tanks (Q 110). The dispatcher determined how much fuel was needed for the safety of the flight (Q 111).

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The captain (and first officer) reviewed the flight plan, the distance to the destination, alternate and second alternate destination, and the weather (Q 111). If the captain thought there was not enough fuel, he could call the dispatcher and request more fuel. The dispatcher could agree or disagree with the request (Q 111).

(o) The protocol that told the captain and first officer exactly what each was supposed to do before the flight departed was called the operating procedures (Q 115).

(p) Delta's procedures provided that there was a determination of which pilot was going to fly, either the captain or first officer. Depending upon which pilot was going to fly, that pilot had specific duties. If Evans was going to be the flying pilot on the trip to Minneapolis, he would do the preflight of the cockpit and load the flight plan data into the computer. Butler would do the walk around of the aircraft to make sure everything was where it belonged and that there was nothing out of the ordinary. Evans and Butler would both review the aircraft logbook, the weather, the dispatch release, and the fuel. The captain would generally brief the flight attendants on the flight and make them aware if anything was going on. If Butler was going to be the flying pilot, Evans was supposed to do the walk around, even in the snow, and Butler would do the preflight of the cockpit and load the flight plan data into the computer (Q 117).

(q) The release which Evans had to sign was already signed by the dispatcher in Georgia, and Evans would sign it and leave it with the gate agent at the departing airport (Q 119 to 121). On turn-around flights, he would sign it and hand it back to the gate agent (Q 122). On a layover, Evans always did things at the gate (Q 124).

(r) The flight attendants in the back of the plane took care of the passengers. Evans was not aware whether they had to do anything procedurally prior to boarding the aircraft (Q 130 to 132).

(s) The flight attendants were responsible for verifying the number of meals, drinks, *et cetera*, that they had on board. If they were short of anything, they would make a request to the gate agent or through the cockpit to call operations (Q 134).

(t) On arrival in Vancouver for a layover, Evans and Butler secured the aircraft (Q 198). Because another crew was taking the plane out on September 21, 2010, they probably set everything in the aircraft where it needed to be for the oncoming crew (Q 202). If the aircraft was spending the night at YVR, they would have shut everything down into a "black cockpit" and powered off the aircraft (Q 203). Evans did not think they powered off the aircraft on September 21, 2010 (Q 204).

(u) Evans got off the aircraft, cleared customs, and traveled to a hotel (Q 205 to 206). Delta arranged transportation from the airport to the hotel (Q 207). There was a waiting vehicle to take him, the first officer, and three flight attendants to the hotel (Q 208). Delta paid for the transportation and hotel and paid each of them a *per diem*, based upon flying time, for meals (Q 210).

(v) Evans stayed in the Renaissance Hotel in Vancouver the night before the accident (Q 276). He was picked up to be transported to the airport in a CanUsa vehicle (Q 278).

(w) Evans received disability income in 2011 which included benefits from ESIS[3], the insurance company that Delta used to handle workers' compensation issues (Q 195 to 197).

[29] The plaintiff, Julie K. Savage-Wade, gave evidence at an examination for discovery on January 16, 2013:

(a) She lived in Denver, Colorado, and had lived there for 15 years (Q 9 to 10).

(b) She had worked for 37 years as a flight attendant (Q 15 to 16) with different airlines and then Delta (Q 29 to 38).

(c) At the time of the accident on September 22, 2010, she and the other two flight attendants (Fisher and Skaar) were on a 20-hour layover in Vancouver at the end of a five-day trip which commenced in Minneapolis (Q 41, 49). The fourth night of the five-day trip was in Vancouver (Q 61). The flight attendants stayed at other points around the continent during the first three nights including Sacramento (Q 61).

(d) The pilots were on a three-day turn-around on a different schedule (Q 43).

(e) On September 22, 2010 they were leaving early to go back to Minneapolis, and they would then do a turn-around flight from Minneapolis to Detroit and then back to Minneapolis (Q 49).

(f) She defined a turn-around as a flight leaving the city they were based at and returning to the same city on the same day (Q 51).

(g) She would regularly depart from Minneapolis and return to Minneapolis five days later, and then do a turn-around trip to Detroit and finish in Minneapolis (Q 55).

(h) Delta flight attendants were paid on an hourly basis from the moment the plane backed-up from the departure gate to the moment it parked at the arrival gate (Q 105 to 107).

(i) She was not paid for the time waiting in an airport on a turn-around flight, or for the time between flights on a layover flight.

(j) There was a maximum number of hours she could fly in a particular day (eight to nine hours of flying time).

(k) Delta paid for her hotel and transportation from the airport to the hotel.

(l) Her *per diem* was $1.90 per hour, and she was responsible for paying for her own meals. Her *per diem* time started one hour before the departure of the flight (Q 128 to 129).

(m) She received workers' compensation/ESIS benefits, which covered 67% of her basic income loss (Q 222 to 224). She received sick pay from Delta and was required to sign over the workers' compensation cheques to Delta as she would then be paid by ESIS (Q 227).

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[3] An Internet website for ESIS states that ESIS, Inc. (ESIS) provides customized risk management services. ESIS is a Chubb company. Chubb is the marketing name used to refer to subsidiaries of Chubb Limited providing insurance and related services: https://www.chubb.com/us-en/business-insurance/esis-workers-compensation.aspx

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[30] The plaintiff, Edonna Ann Fisher, gave evidence at an examination for discovery on January 9, 2018:

(a) She had worked for Delta since 2008, when Delta acquired her former employer.

(b) She had provided a signed statement concerning the accident, in which she had crossed out the word “turn-around” and replaced it with “layover.” She defined a “turn-around” as involving a situation such as when a plane left Minneapolis, landed in Vancouver, deplaned the passengers and picked up new passengers, and turned around and returned to Minneapolis. On a “turn-around,” she would remain on the plane the entire time.

(c) A “layover” would involve leaving Minneapolis, going to Vancouver, getting off the airplane, and going to a hotel and laying over. On a “layover,” she would leave the plane, clear customs, and leave the airport.

(d) At customs, there was a separate line for flight crews. They might be asked whether they were entering Canada for business or pleasure. She commented: “I guess because we’re with the flight crew line, they know it’s business” (at page 9, lines 22 and 23). She was entering Canada “for my job” (at page 10, line 1).

(e) Delta made all the arrangements for the transportation from the airport to the hotel, and paid for this transportation.

(f) Delta made the arrangements for the hotel, and paid for her accommodation.

(g) She would be told when the crew bus was going to be there in the morning, and she would be waiting with the other flight members to be transported to the airport in the crew bus.

(h) She would be wearing her Delta uniform while traveling from the airport to the hotel, and from the hotel back to the airport. She would wear “civilian” clothing during her stay at the hotel.

(i) She was wearing her Delta uniform at the time of the accident.

(j) One of the flight attendants would be designated as the “lead flight attendant.” She thought Savage-Wade had been designated as the lead flight attendant for this trip.

(k) The lead flight attendant would have additional responsibilities, including making announcements in the plane.

(l) Delta required flight attendants to not have alcohol for 8 hours prior to a flight. Her general practice was to not drink alcohol within 12 hours of flying.

(m) In addition, Delta employees could not consume alcohol while in uniform. They had to change to civilian clothing if they wished to have a drink with their dinner during the layover.

(n) A flight attendant could consume alcohol while “deadheading,” provided they were not in uniform or wearing an identifiable part of a uniform.

(o) If a crew member had reasonable cause to suspect another crew member was impaired by alcohol or drugs, they were required to report this concern and have it resolved prior to a plane’s departure.

(p) When required, a gate agent would assist in bringing an unaccompanied minor, or a disabled person, to or from a plane. A flight attendant would provide assistance between the door of the plane and the passenger's seat.

(q) After the other passengers had deplaned, there may have been situations where she assisted in taking an unaccompanied minor off the plane. Generally this was done by the gate agent, because the gate agent had the relevant paperwork.

(r) In preparation for a departing flight, she would go to the airport and show her identification to the gate agent and get on the airplane. At times, she would have to wait in the airport until the plane was ready. She did not have any responsibilities prior to boarding the plane.

(s) She preferred to work in the back galley, rather than being the lead flight attendant. She would go the back galley, and then arrange it and get it set up.

(t) She would check the supplies and, if necessary, take steps to obtain anything that was missing.

(u) Once the passengers started boarding, she would help people with their bags.

(v) The lead flight attendant was the primary liaison between the captain and the flight attendants.

(w) Flight attendants had training, including drills, for evacuating passengers from an airplane in an emergency.

[31] The *Delta Flight Operations Manual* in effect at the time of the accident contained policies and practices governing the conduct of the flight crew. Delta's policy concerning the responsibility and authority of the captain provided (item 3.1.3):

> The Captain is in complete command of the aircraft and has authority over all assigned crew members from the time they report for duty until termination of the flight. **This includes transportation to and from the layover facility.**
>
> [emphasis added]

[32] Delta's policy provided that the pilot in command will (item 3.1.14, in part):

- Make decisions regarding transportation and hotel accommodation for that leg.
- Be the primary point of contact for the entire crew during layover and will be consulted first by the company on matters concerning reroute, irregular operations, crewmember changes, etc.
- Conduct the preflight brief.
- Sign the Flight Dispatch Release Acknowledgement (FDRA).
- Be at the controls of the aircraft for the scheduled takeoff and landing.
- Conduct flight deck preparations along with First Officer performing the takeoff.

- Determine each pilot's rest period after due consideration of individual desires and regulatory requirements.

[33] Item 3.2.15 (as amended September 17, 2010) provided that pilots would report for rotations in proper uniform, with adequate rest, and with all required credentials, manuals, and equipment, one hour prior to departure in operations to and from Canada.

[34] Item 4.2.1 provided general direction regarding accommodations and transportation during layover flights. It provided that Delta Crew Accommodations and Delta Crew Tracking were responsible for reserving hotel rooms and scheduling ground transportation. It prescribed what a crew member is required to do if the ground transportation took more than 20 minutes to arrive, if alternative transportation was required, and limited cab occupancy to four persons.

[35] Item 11.7.3 provided that for the purposes of the applicable alcohol and drug testing, on a layover a pilot was deemed to report for duty by entering the airport terminal or operational facilities or planeside as applicable.

[36] The *Delta In-Flight Service On-Board Manual* provided, under item 5.3.15, that the captain was designated as the aircraft commander and had full responsibility for the safe operation of the aircraft. Item 5.3.15 stated:

- **Captain has authority over all assigned crew members from report time until termination of the flight. This includes transportation to/from layover facility.**
- Crew members must honour Captain's orders. Differences from written procedures must be brought to Captain's attention; however, if order stands, it must be followed.
- Decisions concerning transportation and hotel accommodation will be made by Captain. He/she is primary point of contact for entire crew during layover and will be consulted first by company on matters concerning reroute, irregular operations, crew member changes, etc.

[emphasis added]

[37] Item 5.3.16 provided that the purser/flight leader is responsible for the flight attendants, ensures that in-flight service policies and procedures are followed, and is the primary liaison between the captain and the flight attendants. He or she is responsible for making decisions concerning transportation and hotel accommodations for flight attendant crew on layovers without pilots.

[38] Affidavits were provided by Evans (April 12, 2013 and May 14, 2013), Butler (April 18, 2013 and May 21, 2013), Fisher (April 22, 2013 and May 21, 2013), Savage-Wade (April 29, 2013), Skaar (May 21, 2013) and by Brad Baker, a manager, workers' compensation, for Delta (April 24, 2013). At the time of the accident, Evans resided in Cannon Falls, Minnesota, Butler resided in Stillwater, Minnesota, Fisher resided in Phoenix, Arizona, and Savage-Wade resided in Denver, Colorado.

[39] At the time of her affidavit in May, 2013, Skaar resided in Apple Valley, Minnesota. Skaar advised that at the time of the accident, she and the rest of the flight crew were on a layover during a break between flights in and out of Vancouver from and to Minnesota. Skaar advised:

> 4. As at September 22, 2010, I was employed by Delta Airlines, Inc. ("Delta") as a flight attendant. I was a member of a flight crew that included Dean Butler, Patrick Evans, Edonna Fisher, and Julie Savage-Wade (collectively, the "Flight Crew").
>
> 5. The Flight Crew had flown into Vancouver, British Columbia from Minneapolis, Minnesota on a Delta flight. The Flight Crew was scheduled to fly out of Vancouver, returning to Minneapolis on a Delta flight, following a layover of 15 hours and 58 minutes.
>
> 6. As an employee of Delta and a member of the Flight Crew, at all material times I differentiated between a "turnaround" and a "layover". I define a "turnaround" as the length of time between the arrival of an aircraft at a point and that aircraft's being ready to depart from that point and as part of the duty day for an employee.
>
> 7. I define a "layover" as a required break, either by operation of law or contract, during a multi-day sequence of trips generally for the purpose of crew rest.
>
> 8. At all material times, and at the time of the Accident, I, with the rest of the Flight Crew, was on a layover, as defined above, during a break between flights in and out of Vancouver from and to Minneapolis.

[40] Similar evidence was provided in the affidavits of Fisher (May 21, 2013), Butler (May 21, 2013), and Evans (May 14, 2013).

[41] By memorandum dated March 8, 2013, a research and evaluation analyst, Audit and Assessment Department of the Board, advised that Delta, account number 378591, was registered with the Board from April 1, 1987 to April 1, 1998, was not registered from April 1, 1998 until January 1, 2010, and was registered from January 1, 2010 until the date of her memorandum. Delta was registered with the Board as an employer at the time of the September 22, 2010 accident.

[42] In an affidavit of April 24, 2013, Brad Baker, a Delta manager, workers' compensation, advised that the five plaintiffs were employed by Delta exclusively as members of a flight crew, either as a cockpit crew or a cabin crew. A review of their employee files showed that the plaintiffs all resided in the United States, and were flight crews based out of the United States. Baker advised that Delta had never made payments of assessment premiums to the Board in relation to the earnings of the plaintiffs. He advised:

> 7. Delta does not provide flight services between locations in British Columbia.
>
> 8. Delta has never made payment of premium to WCB for its flight crews based out of the United States.

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(b) Law, Policy, and Court Decisions

[43] Section 2(1) of the Act provides:

> This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.

[44] At the time of the accident on September 22, 2010, policy in the *Assessment Manual* at item #AP1-2-1, "Exemptions from Coverage," provided:

> **(c) Exclusions from coverage under constitutional law**
>
> Some workers and employers are excluded from coverage under Part 1 and Part 3 of the *Act* as a matter of constitutional law as they have no attachment to BC industry. **This includes:**
>
> (1) Consulates and trade delegations from foreign countries.
>
> (2) **With respect to air transportation firms from outside of BC conducting business in BC, flight crews (cockpit crew and cabin crew) who are on turn-around in BC for a short period of time if:**
>
> (i) they are not BC residents;
> (ii) the firm does not supply service between BC points; and
> (iii) they are employed exclusively as members of the flight crew.
>
> [emphasis added]

[45] Effective January 1, 2016, this policy was amended to replace the phrase "This includes" with the phrase "Some examples are".

[46] It is undisputed that the plaintiffs were not B.C. residents, Delta did not supply service between B.C. points, and the plaintiffs were employed exclusively as members of the flight crew.

[47] Relevant guidance is provided by the decision of the BCCA in *British Airways Board v. British Columbia (Workers' Compensation Board)*, 1985 CanLII 636, leave to appeal denied June 25, 1985, [1985] S.C.C.A. No. 63 (*British Airways*). The matter came before the court as a special case, with agreed facts, and concerned whether the Board had authority to levy assessments on British Airways in respect of its flight and cabin crew personnel. The agreed facts included the following:

> 3. The Plaintiff offers several flights for the general public in and out of British Columbia. None of these flights originate in British Columbia, and in no case do the Plaintiff's aircraft stop over in British Columbia for an extended period of time. Flights in and out of the Province of British Columbia are not necessarily flown by the same aircraft, and the flight and cabin personnel are not necessarily the same employees from flight to flight or from time to time.
>
> 4. On the average the Plaintiff's on duty flight and cabin personnel and aircraft are on the ground in British Columbia for two hours and thirty minutes and

in British Columbia airspace for an average of seventy-five minutes. **The Plaintiff's on-duty personnel and aircraft may on occasion be in British Columbia for longer periods of time due to weather or non-scheduled repair**.

5. As presently scheduled, the Plaintiff's flight and cabin crew will arrive in Vancouver as either operating crew, or as passengers on a British Airways' flight, or as passengers on a flight operated by another airline. When they leave Vancouver, the flight and cabin crew will either operate the outbound flight back to London or travel as passengers on a British Airways' flight, or travel as passengers on a flight operated by another airline.

6. Depending on the type of aircraft operated by the Plaintiff, the crew will normally consist of three flight crew and thirteen cabin crew in the case of a Boeing B-747, or three flight crew and nine cabin crew, in the case of a Lockheed TriStar L-1011. The flight crew are responsible for the piloting and navigation of the aircraft in motion. The cabin crew greet passengers, serve food and refreshments, supervise and maintain safety procedures and equipment and generally attend to the well being of the passengers while on board the aircraft. **The cabin crew do not sell or make out tickets, make reservations or give information concerning arrivals and departures and their work takes place exclusively on board the Plaintiff's aircraft.**

7. All the Plaintiff's flight and cabin crew have insurance coverage in respect of occupational illness or disability pursuant to the National Insurance System of the United Kingdom as administered by the Department of Health and Social Security….

…

9. The Plaintiff's flight and cabin crew are all, without exception, hired in the United Kingdom and the places of residence of all crew members must be in the United Kingdom. In addition, all crew must be holders of a United Kingdom passport and the terms of employment of each of the said crew are subject to the laws of the United Kingdom.

[emphasis added]

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[48] The BCSC held that the Act did not apply to the British Airways' employees. Finch J. noted, in part:

> [12] A further question arising from the interpretation given s. [section] 5 in *B.C. Coal v. Wrend,* supra, is whether the plaintiff's flight and cabin crew might claim compensation for an injury while working "in the province". There are two aspects to this. The first is the possibility of injury occurring to an employee while he is in an aircraft and airborne. I will call this the "airspace" issue. **The second aspect is the possibility of injury occurring to an employee while he is on the ground in British Columbia, either in the aircraft, leaving it, entering it, staying at local accommodation between flights, or going to or from the airport from or to his accommodation. I will call this the "ancillary presence" issue**, **since it is clear that claims could only arise if the employee were in British Columbia in connection with his work** (as opposed, for example, to being here on holiday).
>
> [emphasis added]

[49] Finch J. summarized the Board's submission on this question as follows:

> [19] **The defendant's main submission, however, was that even if the aircraft never had a sufficient presence within British Columbia to be "within the province", nevertheless flight and cabin crew employees could still acquire entitlement to benefits under s. 5 of the Act, since they had from time to time an actual presence in the province incidental to, or ancillary to, their employment, during which time they may suffer injury which would be compensable.** Counsel for the defendant says such coverage would encompass virtual[l]y all activities of the employees that were not of a purely personal nature. **He says that the scope of this coverage would include injuries suffered by the employee while staying in a hotel, travelling to or from the airport, or leaving or entering the aircraft.** And he says the employees should have a choice as to whether they claim compensation for such injury here or in the United Kingdom.
>
> [emphasis added]

[50] Taking into account the arguments regarding the flight crew's "ancillary presence" in B.C., the BCSC found that section 5 of the Act did not apply to British Airways' flight and cabin crew because they were not "workers" within the meaning of section 5, and because they were not employed within the province of B.C.

[51] The Board appealed. In a majority decision, the BCCA found that the Board's decision was patently unreasonable in assessing British Airways for workers' compensation premiums in respect of its flight crew in aircraft present in the province from time to time. The BCCA found that in order for employees to be regarded as workers under the Act, they must have a sufficient connection with the province to bring them within its legislative competence. These employees did not have such a sufficient connection with the province: their residence and usual place of employment was in the United Kingdom, their contract of employment had been made in the United Kingdom and they were paid there, and their presence in the province was only transitory.

[52] In dissenting reasons, Craig J.A. noted the possibility that a member of the flight crew could be injured in a motor vehicle accident while traveling between the airport and a hotel in Vancouver:

> [5] … Admittedly the "on duty" flight crew and cabin attendants carry out their actual work within the confines of the aircraft, and, normally, the Vancouver stop is temporary in the sense that the aircraft is on the ground for only two hours and 30 minutes, but circumstances may require a longer stop. Then, too, there is the problem of the "off duty" air crew. **Whether part of the "on duty" air crew or "off duty" air crew, the employees of the airline may from time to time have to stay at a hotel in the Vancouver area which requires them to travel to and from the airport. Is it not ignoring reality to say that in such circumstances they are not travelling in the course of their employment and that if they are injured in such a journey that their injuries did not arise out of and in the course of their employment?** As counsel for the appellant has pointed out, the fact that these particular workers may have coverage under an equivalent British scheme does not affect their right to claim compensation under the B.C. Act for a claim properly coming within the Act, emphasizing that there are flight crews from other countries operating out of Vancouver on the same basis as British Airways which may not provide coverage to their employees similar to the coverage provided by British Airways to its employees.
>
> [emphasis added]

[53] Craig J.A. concluded that the matter came within the Board's exclusive jurisdiction to determine. In the reasons for the majority, MacFarlane J. A. also addressed the possibility that a member of a flight crew could be injured while staying in a hotel, or while traveling to and from the airport:

> [68] The appellant's case is reduced to this: some of the work of the employees is done while they are physically present in the province, so they are "workers" to which the Act applies.
>
> [69] But the place of their employment is in an aircraft, which is temporarily in British Columbia. The aircraft is not constitutionally within the province: see *Air Canada v. Manitoba, supra.* The employees, like the aircraft, have a transitory presence in the province. Their real and substantial connection is with the United Kingdom. They have no more real connection with British Columbia, or its laws respecting employment, than those persons in aircraft that fly overhead from Alaska to the State of Washington. None of the usual indicia of connection with the province apply to them. They are not resident here, they are not paid here, their contracts of employment are not made here, and their usual place of employment is not here. They fly in and they fly out.
>
> [70] **But the appellant submits that they fall within s. 5 of the Act because they may be injured "in the course of their employment", for instance, while staying in a hotel, travelling to and from the airport, or leaving or entering the aircraft. Such incidental activities may well occur "in the course of employment", but before coverage can be afforded the person must be a "worker" to which the Act applies**.

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> Section 5 of the Act does not provide for compensation to a person who is injured in the course of his employment, but when "injury or death arising out of and in the course of the employment is *caused to a worker*". **If a person does not have a sufficient presence to qualify as a "worker" then it matters not that he may have been injured going to work.** If he worked in the State of Washington, but had been staying temporarily on the British Columbia side of the border, and was injured in British Columbia while travelling to work in Washington he would not be covered by the Act, even though he may have been injured in the course of his employment.
>
> [emphasis added]

[54] Following the *British Airways* decision, the Board adopted the following policy as set out in the *Assessment Policy Manual* at No. 20:10:31, "The Air Transportation Industry":

> In a recent decision (British Airways vs. WCB) the Courts decided that the non-resident flight crew of British Airways did not have a significant presence in the province and therefore were not subject to the B.C. Workers' Compensation Act. The decision did not [a]ffect the status of the ground workers and they remain workers under the Act.
>
> In order to apply the spirit and intent of the Court decision, we have developed the following policy.
>
> The first test is to determine whether the air transportation firm is an employer conducting business in the province. If so, the firm will be registered and workers of the company will be subject to assessment.
>
> However, some employees of the firm may not be workers under the B.C. Workers' Compensation Act and therefore their earnings are not subject to assessment nor are they covered by the Act.
>
> The determination as to whether an individual is a worker under the B.C. Act or not will apply only to the flight crews (cockpit crew and cabin crew). Individuals are not considered workers if:
>
> 1. they are not B.C. residents;
> 2. the firm does not supply services between B.C. points;
> 3. they are employed exclusively as a member of the flight crew.
>
> Flight crew members, where the foregoing three conditions are not fully satisfied, will be assessed to the firm (see Item 40:20:40).

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[55] Decision of the Governors No. 60, February 7, 1994, "Exemption from Coverage under Part One of the *Workers Compensation Act,*" 10(2) *Workers Compensation Reporter* 167, was a policy decision with respect to the exercise of the exemption authority provided in section 2(1) of the Act. Appendix C to that decision noted that certain persons, such as non-resident airline flight crews, were excluded from coverage as a matter of constitutional authority (so it was not necessary to consider an exercise of the Board's exemption authority under section 2(1) of the Act in relation to them):

> **Some non-resident workers and employers are excluded from coverage under the *Act* as a matter of constitutional law, for example, non-resident air line flight crews who work in the province for short periods** (See Policy No. 20:20:31 of the *Assessment Policy Manual*.) This position is not changed by *Bill 63* [the *Workers Compensation Amendment Act, 1993*, which brought about "universal coverage" effective January 1, 1994].
>
> [emphasis added]

[56] The May 1996 version of item No. 20:10:20 of the *Assessment Policy Manual* was amended to expressly refer to the situation of a foreign carrier's flight crew, who were on turn-around in B.C. for a short period of time, as being an example of a situation involving workers and employers who are excluded from coverage under the B.C. Act as a matter of constitutional law. The policy stated:

> Some workers and employers are excluded from coverage under the B.C. Act as a matter of constitutional law and others as they have no attachment to B.C. industry.
>
> **Examples of this:**
>
> …
>
> (b) **Air crew of a foreign carrier who are on turn-around in B.C. for a short period of time**. They are not considered to have an attachment to B.C. industry (see British Airways vs. WCB), ALSO POLICY 20:10:31).
>
> [emphasis added]

[57] A discussion paper issued by the Board concerning "Exemption for Non-Resident Employers and Workers" (January 12, 2001), in relation to the application of the occupational health and safety provisions in Part 3 of the Act, set out the following analysis:

> Apparently, the Board assumed that a non-resident employer with no BC workers and no place of business in BC, would not meet the sufficient connection test if it carried on business in the province on a single occasion of very short duration. However, the longer the duration of the work in the province and the more regular the work, the more likely it would be that sufficient connection would be found. Thus, the Board's exemption policy is based on number of occasions and days worked in BC.

> However, it is arguable that any work in a province provides a sufficient connection for the *Act* to apply and that the particular decision in British Airways turned on a finding that, in law, the flight and cabin crew's worksite was not in British Columbia.
>
> …
>
> If this interpretation is accepted, it is not necessary to exempt non-resident employers carrying on business in the province for very short periods, simply to provide certainty regarding the Board's jurisdiction.

[58] Three WCAT decisions concerning workers who were not residents of B.C. have been the subject of petitions for judicial review. *WCAT-2004-01785* concerned a worker who was employed as the general manager of sales and marketing for CapProducts. CapProducts manufactured electrical and plumbing products in Ontario, and these products were sold through distributors. Harris worked for CapProducts in Ontario and also resided in Ontario.

[59] Harris travelled to B.C. on business in June 2000. He planned to stay in B.C. commencing June 17, 2000 and leaving on June 30, 2000. He intended to work in the Lower Mainland for five days, from June 19th to June 23, 2000 and then attend a plumbing convention in B.C. for a further five days from June 26 to 30, 2000.

[60] On June 22, 2000, Harris left his hotel room and was proceeding to meet a customer for a breakfast meeting at the hotel restaurant. He alleged that while stepping onto an elevator in the hotel, he fell on to the floor and suffered an injury due to uneven levelling of the elevator floor in juxtaposition to the hallway floor.

[61] In *WCAT-2004-01785*, the WCAT panel found the petitioner was a worker within the meaning of Part 1 of the Act. *WCAT-2004-01785* concluded at page 16:

> Even if I accept that the five day attendance at a plumbing conference would not count as work, the worker's June 2000 trip was intended to involve five working days which, coupled with two later intended trips, would total more than ten working days. This is so even if the two later trips were less than five days each and were as short as three days each. Those circumstances would fit in clause (b) of the *Assessment Policy Manual* policy excerpted above. It should be kept in mind that 15 days is not the critical factor. Coverage under the policy also results when ten or more days are associated with three or more trips.
>
> I find that the plaintiff was a worker covered by the Act. **I do not consider that his presence in the Province was transitory. It was sufficient to bring his employer under the coverage of the Act and sufficient to establish him as worker. That the plaintiff might also have had a connection with his home province of Ontario would not preclude him from having had a sufficient connection to British Columbia to become a worker under the Act.** Worker status under the Act would not preclude him from having had worker status under the Ontario legislation at the same time. That his employer was registered as an employer with the Board's Ontario counterpart would not preclude it from acquiring employer status in British Columbia via the plaintiff's activities. This is

> so even if Cap Products of Canada did not have a branch or satellite office in British Columbia and did not have any employees resident in British Columbia.
> [emphasis added]

[62] In *Harris v. BC (WCAT)*, 2004 BCSC 1618, the BCSC dismissed a petition for judicial review of *WCAT-2004-01785*. The court reasoned at paragraph 21:

> [21] In the case at bar, the petitioner's presence in the province was not transitory. He was not here in or on a conveyance to some other place. He was in the province to work and specifically to work in the very hotel in which he was alleged injured. The hotel, unlike the aircraft in ***British Airways***, is constitutionally located in the province. Further, the petitioner was here to conduct business with customers and clients who were also constitutionally in British Columbia. In ***British Airways***, the employees in question worked onboard the aircraft and when they interacted with customers and clients, they interacted onboard the aircraft. If the aircraft was not constitutionally present in the province, then it followed that for the purposes of workers' compensation, the customers and clients of British Airways were also not constitutionally present within the province once they set foot on the aircraft. Here, the customers and clients who interacted with the petitioner never left the province either physically or constitutionally.

[63] The court further reasoned at paragraphs 32 to 34:

> [32] In my view the WCAT's determination, for the purposes of the **Act**, that the petitioner's presence in the province constituted both the employer's presence and the worker's presence in British Columbia was not patently unreasonable.
>
> [33] It was open to the WCAT to find that an employer can satisfy the requirements of the Policy through the presence or intended presence of its workers for work in the province. The very premise recited in the Policy's opening paragraph, upon which the exemption order and the Policy are founded, is that the employer has no place of business in the province and employs no British Columbia resident workers. Among other things, the Policy states that so long as a firm comes into the province for a period of nine days or less, it is exempt from the application of the ***Act***. In these circumstances, it was not unrealistic for the WCAT to consider that an employer's only presence may be that of the employee coming to the province.
>
> [34] …The WCAT found the petitioner's presence in the province to conduct business on his employer's behalf meant that the employer was indeed carrying on business within the province within the meaning of the ***Act***. It also concluded on the same evidence that the petitioner's presence in the province was not transitory but rather was for work purposes. As it was sufficient to bring his employer under the ***Act*** it was equally sufficient to establish him as a worker under the ***Act***.…

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[64] *WCAT-2012-02569* concerned a trucker, Combs, who was an American citizen employed by an American company (Linde LLC) as a hazardous materials truck driver. Part of his employment duties included driving a tanker truck from Kettle Falls, Washington, to Trail, B.C., to load industrial gas for delivery to the U.S. Combs claimed that on June 9, 2008, during one of these trips to Trail, he was injured due to being exposed to a release of toxic gases from a nearby effluent treatment pond. During the 54-week period from May 7, 2007 until June 9, 2008, he made a total of 61 trips to Trail for an average of 1.1 trips per week (P 10). He received time-loss and medical benefits from the Washington Department of Labour and Industry based on his employer's in-state insurance

[65] His usual travel time in B.C. for the Trail route was approximately three hours. 30 minutes was spent driving from the border to the Plant, two hours were spent filling the tanker truck with liquid argon or liquid oxygen, and another 30 minutes was spent driving back to the border. He did not deliver product to any customer in B.C. He did not stay overnight in B.C. (apart from a single occasion when he was required to stay overnight in a hotel due to unexpected mechanical difficulties at the Plant).

[66] *WCAT-2012-02569* found that Combs' circumstances were different from those addressed in *British Airways*, as his activities in driving from the border to Trail, in loading the tanker truck with gas (and in interacting with other B.C. workers at the Plant), and in driving back to the border, were all work activities carried out in B.C.

[67] *WCAT-2012-02569* found that Combs' employer was an employer within the meaning of Part 1 of the Act based on the 273 trips made by its employees into B.C. in 2008 to haul gas from B.C. into the U.S. *WCAT-2012-02569* found that the plaintiff was a worker within the meaning of Part 1 of the Act, in respect of his work activities in B.C., and any injury suffered by the plaintiff on June 9, 2008 arose out of and in the course of his employment within the scope of Part 1 of the Act.

[68] At the time *WCAT-2012-02569* was issued, WCAT did not have jurisdiction to address a constitutional issue. The constitutional issue was addressed by the BCSC, in hearing a petition for judicial review of *WCAT-2012-02569*. In *Combs v. Teck Cominco Metals Ltd.*, 2014 BCSC 572 (*Combs*), the BCSC addressed the meaning of the "sufficient connection" test as follows:

> [104] In *Unifund* the Supreme Court of Canada was concerned with the application of an Ontario insurance regulatory scheme to an out of province insurance company. Binnie J. writing for the court stated that territorial restriction of provincial regulation is fundamental to our system of federalism (paras. 50-51) and is rooted in the ancient doctrine of territorial limits. Justice Binnie explained, at para. 55, that the question to be asked when assessing whether a provincial legislative scheme applies to an out-of-province respondent is, "whether the "connection" between [the Province] and the respondent is sufficient to support the application to the appellant of [the Province's] regulatory regime." Binnie J. then stated, at para. 56:

Consideration of constitutional *applicability* can conveniently be organized around the following propositions:

1. The territorial limits on the scope of provincial legislative authority prevent the application of the law of a province to matters not sufficiently connected to it;
2. What constitutes a "sufficient" connection depends on the relationship among the enacting jurisdiction, the subject matter of the legislation and the individual or entity sought to be regulated by it;
3. The applicability of an otherwise competent provincial legislation to out-of-province respondents is conditioned by the requirements of order and fairness that underlie our federal arrangements;
4. The principles of order and fairness, being purposive, are applied flexibly according to the subject matter of the legislation.

a) Sufficient Connection

[105] With regards to the sufficient connection test itself, the Ontario Court of Appeal summarized Binnie J's finding in *Abdula v. Canadian Solar Inc.*, 2012 ONCA 211:

> [45] [Binnie J.] continued, at para. 56: "What constitutes a 'sufficient' connection depends on the relationship among the enacting jurisdiction, the subject matter of the legislation and the individual or entity sought to be regulated by it". He observed, at para. 58, that "**a 'real and substantial connection' sufficient to permit the court of a province to take jurisdiction over a dispute may not be sufficient for the law of that province to regulate the outcome.**"

…

[113] …Despite both British Airways and Linde LLC being employers in B.C., the employees in *British Airways* were found to not do any work in the Province. The Court of Appeal emphasized this finding of fact more than once. The employees are only considered to work on the plane, and following the *Manitoba* case, that plane cannot be considered "in the Province". Other employees of British Airways, such as ground crew working at a B.C. airport, would be "workers" for the purpose of the *Act*,

> as they are employees of an "employer" in B.C. and are themselves performing work in the Province.
>
> [114] A finding that Mr. Combs is a "worker" under the *Act* does not lead to the conclusion, as argued by the petitioner, that all Linde LLC employees who reside in the U.S. are also "workers". **The *British Airways* case shows that a company which is an "employer" in B.C. within the meaning of the *Act* can have both employees who are not "workers" within the meaning of the *Act*, and employee who are "workers".** According to the WCAT's interpretation of the legislation and policy, Mr. Combs, because of the specifics of his actual employment for Linde, is one of the employees who does work in the Province and thus qualifies as a "worker".
>
> [emphasis added]

[69] The BCSC noted that at an average of three hours per trip, in 2008 Linde LLC drivers performed 819 hours of work in B.C., relating to the loading and transportation of gases out of B.C. and into the United States. In an 8-hour workday, this would be the equivalent of more than 100 days of full-time work in B.C. in 2008. The BCSC reasoned:

> [124] Sufficient connection is very much based on the particular facts of a case. In the case at bar, the petitioner is clearly working in the Province: Linde Canada, Linde LLC and Teck are all employers in the Province, the injury clearly arose at an employer's plant that is in the Province, the purpose of the trip was work and the trip took place 61 times in the 54-week period, from May 7, 2007 to June 9, 2008. In *Harris*, the petitioner had only been working in the Province for two of 52 weeks in the year, or roughly 3.8% of his total work, yet this was a sufficient connection. Mr. Combs spent 7.64% of his actual time on duty in this province, a larger percentage than in *Harris*.
>
> [125] **There is a difference between transitory presence, and a small amount of work.** An employee residing and working in B.C., but only working part time, would be a "worker" within the meaning of the *Act*. **Part of Mr. Combs's work was done in the Province, and the fact that it was a small portion of his employment, does not make his presence transitory**.
>
> [127] **Though I agree that frequency of visits alone would not be enough to warrant a finding of sufficient connection in all cases, it is a relevant consideration.** As was made clear in *Unifund*, the determination of sufficient connection will depend on the particular circumstances of the case, including what legislation is involved, the subject matter of that legislation, and the entity to be regulated. **When it comes to work being done in the Province, I am of the view that there is a difference between a short one-time visit where work is performed, and regular and continual short visits to perform the same work. Again, contrary to the petitioner's claim, the *British Airways* decision is distinguishable as the court found there that**

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> **work done on the plane was not work done in the Province, so the accumulation of more plane trips had no effect on the question of sufficient connection.**
>
> [128] I find, based on the particular facts of this case, that the petitioner is sufficiently connected to the Province to allow him to be subject to the application of the *Act*.
>
> [emphasis added]

[70] Subsequent to the April 3, 2014 BCSC judgment in *Combs*, in a December 16, 2015 policy resolution the board of directors removed the six-trip limit for hauling goods out of B.C. per calendar year from the exemption criteria for non-Canadian employers in the trucking industry. The board of directors exempted non-Canadian trucking firms from the application of Part 1 of the Act regardless of the number of trips they make in hauling goods into B.C. or in hauling goods out of B.C, provided they meet several conditions (they temporarily carry on business in B.C. but do not employ a B.C. resident, are not incorporated in BC, do not haul goods between B.C. points, and are covered in another jurisdiction that provides compensation for occupational injuries and diseases). It is not evident why such a broad exemption was granted for non-Canadian companies in the trucking industry, but not for non-Canadian companies in the airline industry. However, the questions of exclusion as a matter of constitutional law, and the making of policy regarding exemptions under section 2(1) of the Act, are wholly different matters.

[71] *WCAT Decision A1603285* concerned a flight attendant, Zechel, employed by Air Canada. Her employment was based out of YVR (her work shifts originated and finished at YVR). She commuted between Manitoba and B.C. for her work (on her own time and at her own expense). She was paid in B.C. On May 20, 2012, she was working on a flight from Tokyo, Japan, to YVR. There was an incident involving an acrid smell in the cabin of the aircraft, and the flight was given priority landing status. Zechel subsequently learned that the problem was determined to have been caused by an overheated entertainment system (which she recalled as having been identified as the likely cause of the crash of a Swissair flight). She reported that upon being apprised of this after her flight had landed in Vancouver, the seriousness of the situation hit her. She was diagnosed with an acute situational stress reaction and a lung irritation.

[72] Zechel's claim was accepted by the Board under section 5.1 of the Act for an acute reaction to stress, and that decision was confirmed by the Review Division. On an appeal to WCAT, a WCAT panel found that Zechel was not a resident of B.C. and her usual place of employment was not B.C. The WCAT panel found that the circumstances of the worker's employment and residency meant that her claim did not meet the provisions of section 8(1)(b) of the Act and she was not entitled to receive workers' compensation coverage in B.C.

[73] On a petition for judicial review, in *Air Canada v. Workers' Compensation Appeal Tribunal* (*Air Canada*), 2017 BCSC 1608, the court quashed the WCAT decision as being patently unreasonable. The BCSC cited the decision in *Combs*, and found that a sufficient connection to B.C. has been found to exist even where a non-resident worker's actual work within B.C. constituted only a small percentage of his work duties. The BCSC found that an interpretation that section 8 of the Act was intended to negate coverage to a worker who had a significant connection to B.C. was inconsistent with the object and intention of workers' compensation legislation, as well as the Board's policies and previous court decisions.

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[74] By judgment dated October 19, 2018, the BCCA dismissed WCAT's appeal but set aside the BCSC judge's implicit direction to the WCAT as to how it should interpret the Act. The BCCA reasoned:

> [81] Though the reasons provided by the WCAT do not stand up to scrutiny, I am not, at present, convinced that the result reached by the tribunal is clearly wrong. Accordingly, I am unable to endorse the chambers judge's implicit direction to the tribunal that it must assume that Ms. Zechel's claim, if substantiated, will entitle her to compensation. On the other hand, the chambers judge's rationale for finding Ms. Zechel to be eligible to make a claim under s. 5.1 of the *Workers Compensation Act* is a reasonable interpretation of the statute, and is one that is open to the WCAT.
>
> …
>
> [83] In the result, the matter should be remitted to the WCAT. The WCAT must determine whether Ms. Zechel is, in the circumstances of this case, a person covered by the British Columbia *Workers Compensation Act*. It should do so by engaging in a proper exercise of statutory interpretation, uninfluenced by its previous decision in this case. If Ms. Zechel is entitled to make a claim, the WCAT will have to determine whether to uphold or overturn the WCB decision to grant her compensation.

(c) Submissions

[75] The following is a limited summary of the key submissions and comments provided in these applications.

[76] The plaintiffs note the reference to flight crews on 'turn-around in B.C." in the policy concerning exclusions from coverage under constitutional law. They submit that the term "turn-around" is not defined and cannot be taken to mean flight crews of airplanes that have landed in B.C. and are to be resupplied before leaving B.C. "Turn-around" typically refers to the length of time between the arrival of an aircraft at a point and its being ready to depart from that point. In this case, the plaintiffs were technically on a "layover" which typically refers to a break during a multi-day sequence of trips generally for the purpose of crew rest. The plaintiffs submit this is a semantic distinction without a difference. The connection to B.C. is not sufficient for the Act to apply. The plaintiffs submit that crews on turn-around are actually still working, whereas crews on lay-over are resting between work periods. Accordingly, the connection of a crew on a lay-over to B.C. is even more tenuous.

[77] The plaintiffs submit that their place of employment is in an aircraft that is temporarily in B.C. and not constitutionally within the province. The plaintiffs have a transitory presence in the province. Their real and substantial connection is to the U.S. They are not resident in B.C., and are not paid in B.C. Their contracts of employment with Delta are not made in B.C., and their usual place of employment is not in B.C. In the alternative, the plaintiffs submit that in the alternative, they were commuting to their place of work (the aircraft) at the time of the motor vehicle accident.

[78] The plaintiffs submit that the only distinguishing features between this case and *British Airways* is that the pilots check the weather and flight plan, and walk around the aircraft prior to boarding. They are not paid for the few tasks they perform outside the aircraft. Such tasks are, at most, incidental to the operations of the aircraft which is never constitutionally within B.C. The flight crew's paid work is all performed within the aircraft.

[79] The defendants submit that unlike the flight and cabin crew in *British Airways*, the productive work of the pilots Butler and Evans was not confined solely to an aircraft on the ground in B.C. They were on a layover rather than a turn-around. The *British Airways* decision was based on an agreed statement of facts which excluded the question of whether any productive work was done by the flight or cabin crew anywhere but aboard the aircraft (which was later found to be not constitutionally within B.C.). While the British Airways crew might be in the province longer, this was only as occasioned by weather or non-scheduled repair which were not in the control of their employer and not a part of their designated flight schedule.

[80] In this case, Butler and Evans would have engaged in productive work outside of the aircraft including:

- reviewing a weather and flight plan package prepared by the dispatcher in Atlanta, Georgia (a job of 7 to 20 minutes to be performed somewhere quiet in the airport);
- signing a release for the flight, and taking co-authority for the flight with the dispatcher when both agree the flight can operate safely under listed conditions; and
- inspecting the aircraft by walking around it to observe whether anything appeared out of place.

[81] In addition, Butler and Evans were required to arrive for duty one hour before a scheduled flight, and were considered to be on duty for 30 minutes after a flight lands. By regulation, flight crew members were required to have a minimum of 8 hours of uninterrupted sleep opportunity prior to reporting for flight duty, and were subject to maximum flight times of 8 or 9 hours. While not productive work, rest periods were a legal requirement of their job. Accordingly, the pilots were workers within the meaning of Part 1 of the Act, based on the nature and extent of their productive work activities in which they were engaged in the 22 hours before the accident while on the ground in B.C. on a layover flight, and in which they would have engaged prior to boarding the aircraft.

[82] The defendants submit that the cabin crew (flight attendants) were similarly subject to maximum periods of flight time and prescribed rest periods between flights. Such rest periods were a legal requirement of the job, to ensure the health and safety of the passengers. This fact distinguishes their circumstances from those of the flight and cabin crew in *British Airways*, who were on turn-around and only did productive work on an aircraft not constitutionally in the province.

[83] The defendants submit that the plaintiffs, like Combs, did not have a "transitory presence" in B.C. at the time of the accident. They worked for an employer (Delta) which was registered with the Board in B.C. They were not on a turn-around. The aircraft on which they arrived had already turned around and left the day before the accident. The purpose of their trip to B.C. was work, and the purpose of their travel to the hotel was to fulfill their regulatory rest requirements.

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[84] The defendants cite section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, which provides:

> Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding
>
> …
>
> (g) concerns a tort committed in British Columbia,

[85] The plaintiffs have commenced a tort action in B.C. and attorned to the jurisdiction of the province of B.C. in respect of that tort. The defendants submit that the plaintiffs were engaged in productive work in B.C. at the time they were injured and, as such, are substantially connected to the Act and come within its jurisdiction.

[86] By memorandum dated June 27, 2017, a research and evaluation analyst, Assessment Department, advised as follows in respect of the Assessment Department's interpretation of the policy at item #AP1-2-1 of the *Assessment Manual*:

> 6. In *British Airways*, *supra*, the court determined that the employees at issue were not workers under the *Act* as they did not engage in work in or about an industry in British Columbia. **Any work performed was undertaken in an aircraft which was "not constitutionally within the province," and their incidental activities in the province – *e.g.*, "staying in a hotel, travelling to and from the airport, or leaving or entering the aircraft" – did not establish a sufficient presence to qualify as a worker**.
>
> [emphasis added]

[87] The analyst advised that the policy at item #AP1-2-1 is the Board's response to *British Airways'* sufficient presence test. The analyst further advised:

> 8. The phrase "turn-around" is a term-of-art in the aviation industry, which addresses actions and consequences in respect of an aircraft. However, its use in *AP1-2-1's* exclusion applies to a flight crew – "flight crews (cockpit crew and cabin crew) who are on turn-around in BC" – and not an aircraft. It is the flight crew that must land and depart within the "short period of time." Therefore, in answer to paragraph number 21 of the *Notice of Constitutional Question*, *AP1-2-1's* exclusion would not apply to "flight crews who stay overnight … as part of a layover between flights and perform some related work outside of the aircraft," for the exclusion requires uninterrupted, proximate departure:
>
> (a) An aircraft and its flight crew must land in British Columbia and must immediately thereafter unload passengers, cargo, or both.
>
> (b) Immediately thereafter, the aircraft must be serviced and loaded for another flight.

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(c) Immediately thereafter, the same flight crew must depart on the other flight.

9. ***AP1-2-1's* exclusion establishes the sufficient connection boundary when its listed conditions are met. Thus, a member of a flight crew who meets the *Act's* definition of worker by performing some related work outside of the aircraft is exempt from the application of Part 1 of the *Act* if he or she is "on turn-around in BC" but is not exempt if he or she is not "on turn-around in BC."**

[emphasis added]

[88] The defendants cited the 2017 BCSC decision in *Air Canada*, and submitted that a determination that the plaintiffs were not entitled to compensation under the Act would be unreasonable as leading to a similarly incongruous result. While on a layover, pilots do not do all of their productive work strictly aboard an aircraft that is not constitutionally within the province. Further, Delta pilots do not do less or different work outside the confines of the aircraft than Air Canada pilots who are residents of B.C. The defendants submit the work performed by the Delta pilots outside of the aircraft cannot be called incidental, as it was essential. As well, the fulfillment of certain rest periods was required by regulation.

[89] The plaintiffs submit that the *Air Canada* decision is distinguishable, as all of Zechel's flights originated or terminated in B.C. Her employment was based in B.C. and her connections to jurisdictions other than B.C. were transitory. The connection of the plaintiffs to B.C. in this case is substantially weaker. Regardless of the ultimate result in Zechel's case, the exercise of statutory interpretation and application of cases such as *British Airways* in the plaintiffs' cases more clearly results in their being exempt from the application of the Act.

[90] The defendants submit that in the *Air Canada* case, the alleged injury apparently did not occur in the province of B.C. In the present case, the injuries occurred to flight and cabin crew who were constitutionally present in the province of B.C., and who were doing productive work during their layover. The accident occurred at a time when they were not aboard an aircraft that was not "constitutionally" within the province. There is compelling evidence before WCAT to support a conclusion that at all material times, there was a substantial connection between the plaintiffs and the province of B.C. so as to trigger the application of the Act. The decision of the BCCA in *Air Canada* to uphold the determination of the chambers Judge on certain matters, and to refer other questions back to WCAT for further consideration, does not detract from the defendants' prior arguments.

(d) Analysis

[91] The agreed facts before the court in *British Airways* were that the pilots were responsible for the piloting and navigation of the aircraft in motion, and that the work of the flight attendants took place exclusively on board the aircraft. There was no agreed statement of fact that the work of the pilots took place exclusively on board the aircraft. However, the work of piloting and navigating the aircraft in motion could only occur on board the aircraft. The decision of the court was thus made on the basis that the pilots and flight attendants did their work exclusively on board the aircraft.

[92] The facts of the present case are somewhat different. Neither the pilots nor the flight attendants were on a turn-around, in the sense of landing at YVR and then leaving within a few hours on the same plane. Their overnight stay in Vancouver was a normal and planned event, rather than one occasioned by weather or non-scheduled repairs. The pilots landed at YVR at approximately 1:05 p.m. on the afternoon of September 21, 2010, and were scheduled to depart on a different plane at 6:45 a.m. on September 22, 2010. Accordingly, the pilots was scheduled to be on the ground in B.C. for approximately 17 hours and 40 minutes. The flight attendants, who arrived in Vancouver on a different flight, were scheduled to be on the ground in B.C. for approximately 20 hours before the scheduled departure at 6:45 a.m. on September 22, 2010.

[93] The policies in Chapter 3 of the RSCM II do not apply to the plaintiffs unless they are found to be workers under the Act. If the plaintiffs were workers under the Act, it is clear that workers' compensation coverage would apply to the plaintiffs at the time of the accident.

[94] For workers' compensation purposes, the issue as to whether an injury arose out of and in the course of the worker's employment does not turn on whether the worker was engaged in some productive work activity at the time of the injury. The issue is concerned with whether the injury was employment-connected. This point is set out in the opening wording of the policy at RSCM II item #C3-14.00, which is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment. This policy provides:

> The test for determining if a worker's personal injury or death is compensable, is whether it arises out of and in the course of the employment. The two components of this test of employment connection are discussed below.
>
> **In applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity**. An injury or death that occurs outside a worker's productive work activities may still arise out of and in the course of the worker's employment.
>
> [emphasis added]

[95] Members of an airline flight or cabin are obviously required to travel as part of their employment. Policy at item #C3-19.00, "Work-Related Travel," defines traveling employees as including workers who typically travel to more than one work location in the course of a normal work day as part of their employment duties. The policy provides:

> An employment connection generally exists throughout the travel undertaken by traveling employees, provided they travel reasonably directly and do not make major deviations for personal reasons. This is so regardless of whether public or private transportation is used.
>
> …
>
> An employment connection generally exists for traveling employees during normal meal or other incidental breaks, such as using the washroom facilities, so long as the worker does not make a distinct departure of a personal nature.

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[96] Policy at item #C3-19.00 also concerns "Business Trips":

> **D. Business Trips**
>
> The general factors listed under Item C3-14.00 are used to determine whether a trip undertaken by a worker is sufficiently connected to the worker's employment as to be a business trip. **For example, if the trip is taken for the employer's benefit, on the instructions of the employer, or paid for by the employer, these are all factors that weigh in favour of finding that the trip is a business trip.**
>
> **An employment connection generally exists continuously during a business trip, except where the worker makes a distinct departure of a personal nature.**
>
> This means that injuries or death that result from a hazard of the environment into which the worker has been put by the business trip, including hazards of any overnight accommodation itself, are generally considered to arise out of and in the course of the employment. However, injuries or death resulting from a hazard introduced to the premises by the worker for the worker's personal benefit may not be considered to arise out of and in the course of the employment, if no other factors demonstrate an employment connection.
>
> **Personal activities associated with and incidental to business trips, such as traveling, eating in restaurants, staying in overnight accommodations (including sleeping, washing etc.) are normally regarded as within the scope of the employment where a worker is on a business trip.**
>
> On the other hand, when a worker makes a distinct departure of a personal nature while on a business trip, this may be regarded as outside the scope of the employment….
>
> [emphasis added]

[97] The factual evidence contains no suggestion of any departure by the plaintiffs of a personal nature in relation to their circumstances at the time of the accident. They were traveling from hotel accommodation provided by their employer, using transportation provided by their employer, for the purpose of going directly to the airport to depart on their next flight. As emphasized by the defendants, their overnight stay was not only employment-connected, but was mandated by regulatory requirements concerning rest periods. Accordingly, their activities relating to their stay in Vancouver were clearly employment-connected. Their travel was not in the nature of "commuting" to work (in the sense of travel between home and the normal, regular or fixed place of employment), which is generally not covered for workers' compensation purposes (see item #C3-19.00).

[98] In addition, the flight crew were required to perform certain activities on the ground in preparation for the departure of a flight. Such activities may reasonably be characterized as being "productive" in nature, in the sense that they were essential to the operation of the aircraft. The fact that the pilots were only paid at their full hourly rate for flight time (tracked by the minute by a data link based on the time the aircraft brakes were released or set) does not

detract from this conclusion. However, such activities could also be characterized as being incidental to, or preparatory in nature, in relation to their duties in operating the airplane.

[99] It is evident that both the flight and cabin crew had certain employment-related responsibilities during their time on the ground. In particular, the pilots were required to review a weather and flight plan package prepared by the dispatcher, sign a release for the flight, and inspect the aircraft by walking around it to observe whether anything appeared out of place. In *British Airways*, the flight and cabin crews were assigned to either an inbound or outbound flight. It may be that the British Airways flight crew might have had similar duties to perform on an outbound flight. However, evidence of any such duties was not before the court. The court's decision was based upon the agreed facts that the crews did their work exclusively on board the aircraft.

[100] In the present case, the captain was in command and had authority over the other crew members until the termination of the flight, including transportation to and from the layover facility. The lead flight attendant had additional responsibilities in the absence of a pilot. All members of the flight and cabin crew had certain responsibilities involving abstaining from alcohol for minimum periods, and reporting any concerns involving other flight and cabin crew members in this regard.

[101] The foregoing provides context for considering the central question, which concerns whether the test of "sufficient connection" is met so as to justify the application of Part 1 of the Act to the plaintiffs.

[102] I find the reasoning in *Combs* helpful in addressing the test of sufficient connection. As noted at paragraph 105, a 'real and substantial connection' sufficient to permit the court of a province to take jurisdiction over a dispute may not be sufficient for the law of that province to regulate the outcome. Accordingly, I do not consider the facts that the tort occurred in B.C., that the plaintiffs have brought their legal actions in B.C., and that a real and substantial connection between B.C. and the facts on which the proceedings are based is presumed to exist pursuant to section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, are germane to the issue as to whether the Act applies to the plaintiffs.

[103] As shown in *British Airways*, an employer which is registered with the Board as an employer of workers who reside in B.C. can also have employees who do not reside in B.C. and who are not workers within the meaning of the Act. Accordingly, the fact that Delta was registered with the Board as an employer at the time of the accident does not assist in determining the status of the plaintiffs.

[104] What constitutes a 'sufficient' connection depends on the relationship among the enacting jurisdiction, the subject matter of the legislation, and the individual or entity sought to be regulated by it.

[105] In *British Airways*, the key factors identified by the majority as supporting a conclusion that the test of sufficient connection was not met involved the facts that the employees were not resident in B.C., they were not paid in B.C., their contracts of employment were not made in B.C., and their usual place of employment was not in B.C. As noted by the court, they fly in and they fly out. Their place of employment was in an aircraft, which was temporarily in B.C. The employees

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had a transitory presence in B.C., and their real and substantial connection was with the United Kingdom. They had no real connection to B.C., or its laws respecting employment.

[106] The question arises as to whether the different facts which are present in this case warrant a different conclusion as to the applicability of the Act. Do the facts concerning the plaintiffs' layover in B.C., and performance of certain duties on the ground in preparation for a flight (as well as having the necessary rest period required by regulation) provide sufficient connection to the province to support the application of Part 1 of the Act?

[107] Following the *British Airways* decision, the Board initially adopted a policy which was described as being intended to give effect to "the spirit and intent of the Court decision." The policy provided that members of a flight crew (cockpit and cabin crew) would not be considered workers under the Act if the three criteria were met (of not being B.C. residents, of the airline not supplying services between B.C. points, and of being employed exclusively as a member of the flight crew). The policy did not distinguish between flight crews on a turn-around, and those on a layover, in B.C. Under those criteria, the plaintiffs would not be workers under the Act. However, in 1996, the policy was amended to expressly refer to the situation of a flight crew on a turn-around.

[108] The agreed facts in the *British Airways* case were that on average, the on-duty flight and cabin personnel and aircraft were on the ground in B.C. for 2 hours and 30 minutes. However, the agreed facts included recognition that the on-duty personnel and aircraft may on occasion be in B.C. for longer periods of time due to weather or non-scheduled repair. The reasoning of the BCCA expressly acknowledged the possibility of a member of a flight crew being injured while staying at a hotel in BC, or while traveling between the airport and a hotel in B.C.

[109] The decision in *British Airways* was not concerned with an injury to a particular employee. Rather, it concerned the authority of the Board to levy assessments on British Airways, in connection with the earnings of its employees who were not resident in B.C. The fact that the employees could on occasion be required to stay overnight in a hotel in Vancouver due to weather or non-scheduled repair formed part of the factual matrix before the court in *British Airways*, in connection with the issue as whether it was within the Board's authority to levy assessments on British Airways in relation to such activities.

[110] Accordingly, the reasoning of the BCCA was not confined solely to the situation of crews on a turn-around in B.C. It also applied to crews on layover in B.C. due to weather or non-scheduled repair. Inasmuch as the *British Airways* decision was not limited to the situation of crews on a turn-around, I consider that it would be patently unreasonable to interpret *British Airways* as being limited to the situation of a crew on a turn-around.

[111] Certain facts in the present case differ from those set out in *British Airways*. In that case, reference was made to the pilots and flight attendants arriving in YVR as either operating crew, or as passengers on a British Airways' flight, or as passengers on a flight operated by another airline. When they left YVR, the pilots and flight attendants would either operate the outbound flight back to London or travel as passengers on a British Airways' flight, or travel as passengers on a flight operated by another airline. On these facts, the pilots and flight attendants were only on active duty on either the inbound or outbound flights to and from YVR.

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[112] There is more detailed factual evidence before WCAT, than was before the court in *British Airways*. Particulars have been provided in this application concerning the specifics of the job duties of the flight crew, in preparing for a flight departing from YVR. It may be that similar preparations would have been required by a flight crew which came to YVR as passengers, who were required to stay overnight in Vancouver due to weather or aircraft maintenance work, and who were then on duty on the outgoing flight. In any event, the decision in *British Airways* clearly included consideration of circumstances in which the employees would be required to stay in Vancouver for a longer period due to weather or non-scheduled repair.

[113] The policy in the *Assessment Manual* at item #AP1-2-1 provides that some workers and employers are excluded from coverage under Part 1 and Part 3 of the Act as a matter of constitutional law as they have no attachment to B.C. industry. This includes consulates and trade delegations from foreign countries, and, with respect to air transportation firms from outside of B.C. conducting business in B.C., flight crews (cockpit crew and cabin crew) who are on turn-around in B.C. for a short period of time provided the three cited conditions are met.

[114] The term "includes" indicates the list is not exhaustive. Consideration may be given to other circumstances giving rise to an exclusion from coverage under Part 1 of the Act as a matter of constitutional law. The policy was amended effective January 1, 2016 to use the phrase "Some examples are" rather than "This includes." Both wordings would not preclude the consideration of other circumstances giving rise to an exclusion from coverage under Part 1 of the Act as a matter of constitutional law.

[115] An interpretive issue concerns whether the policy, by its provision of criteria concerning flight crews and use of the phrase "turn-around," was intended to fully and exhaustively establish the boundaries of the "sufficient connection" test in relation to foreign airline flight crews. An alternative interpretation is that in addition to situations meeting these criteria, there is room to consider other specific factual circumstances in order to determine whether the "sufficient connection" test is met.

[116] I agree with the Assessment Department research and evaluation analyst that in *British Airways*, the court found that the incidental activities of the flight and cabin crew in the province in "staying in a hotel, travelling to and from the airport, or leaving or entering the aircraft" did not establish a sufficient presence in B.C. for them to qualify as workers under the Act. I consider that while the *British Airways* decision was primarily concerned with the situation of employees on a turn-around, it may be read more broadly as including consideration of employees engaging in such other activities (which would occur on a layover, rather than a turn-around).

[117] As noted above, an interpretive question is whether by providing a set of criteria in relation to air transportation firms from outside of B.C. conducting business in B.C., the policy intended to exhaustively define the scope of any constitutional exclusion for foreign flight crews.

[118] The policy uses the phrase "This includes," in describing the exclusion which applies to flight crews on a turn-around. Inasmuch as the policy uses the phrase "This includes" in connection with the examples provided, I do not interpret it as precluding consideration of other situations. Given that the policy appears to leave room for consideration of other circumstances, I do not consider that the policy should be viewed as patently unreasonable in its provision of an example of a situation in which the exclusion as a matter of constitutional law applies. Rather,

consideration of other circumstances remains available, albeit outside of the terms of the example provided in policy. I consider that the policy may reasonably be interpreted as providing an example of a situation which clearly falls outside the scope of the Act (based upon the decision in *British Airways*), but leaves room for consideration of other circumstances.

[119] The policy provides a clear-cut example of workers with no attachment to B.C. industry. However, the legal test applied in *British Airways* concerned whether the employees had sufficient connection with B.C. for the Act to apply. I do not consider, in this regard, that the performance of any productive work in B.C., no matter how minimal, necessarily establishes sufficient connection with B.C. for the Act to apply.

[120] I interpret the phrase "This includes" as conferring discretion to consider other situations not expressly listed in the policy. It would be strange to object to a policy as being patently unreasonable on the basis that it did not recognize some other situation, when the policy itself leaves room to consider other situations. I find that the policy leaves room for consideration of the plaintiffs' circumstances, notwithstanding the fact they do not fall within the terms of the situation described in the example in the policy (which involves a situation in which the constitutional exclusion is obvious).

[121] To the extent the policy is ambiguous regarding whether it is intended to exhaustively define the circumstances in which foreign flight crews may be recognized as being exempt as a matter of constitutional law, I interpret the policy as conferring discretion to consider other circumstances as to whether the test of sufficient connection to B.C. is met. I do not read the example provided in the policy, concerning flight crews on a turn-around, as excluding consideration of flight crews on a layover.

[122] In summary, I interpret the policy at item #AP1-2-1 of the *Assessment Manual* as providing an example of a situation in which the exclusion from the Act as a matter of constitutional law clearly applies, based upon the "typical" scenario addressed in *British Airways*. I agree with the Assessment Department analyst that the plaintiffs' circumstances do not come within the terms of the specific example contained in the policy. I find, however, that the wording of the policy contemplates consideration of other situations, on their particular facts.

[123] The word "sufficient" concerns whether there is enough of something for a particular purpose. Upon careful consideration, I am not persuaded that the plaintiffs' circumstances are sufficiently different in their nature, character, or extent, to warrant a different conclusion than was provided in *British Airways*. Their residence and usual place of employment was in the U.S., their contracts of employment were made in the U.S., they were paid in the U.S., and their presence in B.C. was only transitory. Apart from some limited incidental and preparatory activities (including rest periods), their productive work activities were performed in the airplane. The activities of staying in a hotel overnight, and traveling between the hotel and the airport, were included in the court's consideration in the *British Airways* case, in which the court found insufficient connection to B.C. to permit the Board to levy assessments on British Airways. The activities of the British Airways crew which were performed on the ground (including staying in a hotel and traveling to the airport, when necessary) were essentially incidental to the performance of their duties in the aircraft. Notwithstanding the brief productive work activities engaged in by the plaintiffs outside of the aircraft, and fulfillment of rest requirements mandated by applicable foreign health and safety regulations, I find that their connection to B.C. was not sufficient to warrant the

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application of the Act. Notwithstanding the factual differences which are present, I find that the plaintiffs' circumstances fall within the scope of the BCCA decision in *British Airways*. The plaintiffs are excluded from coverage under Part 1 of the Act as a matter of constitutional law as they have insufficient connection to B.C. industry.

[124] Upon consideration of all of the foregoing, I find that at the time of the accident on September 22, 2010, the plaintiffs were not workers within the meaning of Part 1 of the Act. It necessarily follows that any injury suffered by any of the plaintiffs did not arise out of and in the course of employment within the scope of Part 1 of the Act.

Status of the Defendants, Remo Guolo and CanUsa Limos Ltd.

[125] By letter of March 25, 2013, counsel for the defendants Guolo and CanUsa requested determinations that CanUsa was an employer at the time the cause of action arose, and that any alleged negligence on its part arose out of and in the course of employment. He further requested determinations that Guolo was a worker or an employer at the time of the accident, and that any alleged negligence on his part arose out of and in the course of his employment.

[126] By memorandum dated March 8, 2013, a research and evaluation analyst, Audit and Assessment Department of the Board, advised that CanUsa, account number 855056, registered with the Board in 2010 and was registered at the time of the September 22, 2010 accident.

[127] An unsigned copy has been provided of a typewritten statement described as having been provided by Guolo to the Insurance Corporation of British Columbia on October 6, 2010. He advised that he was basically retired but had been hired as a limousine driver for CanUsa for the past couple of months. He was on call, and worked two to three hours per day, two to three days a week. He advised that at the time of the accident, he was taking the five Delta employees from the Renaissance Hotel to the airport.

[128] Guolo provided evidence in an examination for discovery on October 18, 2013. He was not injured in the September 22, 2010 motor vehicle accident (Q 30). He was driving the SUV (Q 110) as an employee of CanUsa (Q 117), with the consent of the company and its owner (Q 125). He had been working for CanUsa for about a year and a half (Q 118). The five plaintiffs were passengers in the SUV (Q 133). He was transporting the plaintiffs from the Renaissance Hotel to the airport (Q 279 to 280). It was his routine to pick up passengers at 5:00 a.m. or 6:00 a.m., five or six days per week, and to drive them to the airport (Q 278 to 279). His employer had a contract with Delta (Q 279).

[129] Guolo was driving eastbound on Davie Street (Q 176). As he approached the intersection of Davie Street and Hornby Street, the light changed to yellow and he sped up and went through the intersection (Q 173 to 177). The accident occurred in the intersection. The other vehicle was traveling north on Hornby Street (Q 183).

[130] In a judgment dated January 8, 2016, the BCSC found that Guolo failed to meet the common-law duty he owed to Pavan and the other plaintiffs as he should have stopped safely rather than speeding up when he saw the traffic light turn from green to amber.

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[131] By submissions of March 31, 2017, counsel for these defendants submitted that Guolo was a worker employed by CanUSA and that he was acting within the course and scope of his employment at the time of the accident. At the time of the accident, Guolo was driving a vehicle leased by his employer, fulfilling his employer's contractual obligations to Delta, following his employer's instructions, receiving pay, and performing activities that were a regular part of his job on a direct route from the Renaissance Hotel to YVR.

[132] Section 1 of the Act sets out the following definitions:

> **"employer"** includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry;
> **"worker"** includes
>
> (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;
>
> …

[133] Policy at item #AP1-1-2 of the *Assessment Manual* provides:

> The definitions of "worker" and "employer" are treated as complementary. The question in each case is whether the relationship between two parties is to be classified as one of employment.

[134] No dispute has been raised concerning the status of these defendants. I infer that counsel's March 25, 2013 request for determinations regarding CanUsa's status remain before WCAT, although not expressly addressed in submissions. The determinations regarding the status of CanUsa are largely incidental to the determination of Guolo's status, in any event.

[135] At the time of the accident, policy at item #C3-19.00 of the RSCM II defined traveling employees as including workers who typically travel to more than one work location in the course of a normal work day as part of their employment duties. The policy provides that an employment connection generally exists throughout the travel undertaken by traveling employees, provided they travel reasonably directly and do not make major deviations for personal reasons. Examples of traveling employees include, but are not limited to, taxi drivers, emergency response personnel, transport-industry drivers, cable installers, home care workers, many sales representatives, and persons attending off-site business meetings.

[136] I consider that Guolo was a traveling employee who typically traveled to at least two work locations in the course of a normal work day in which he transported passengers between the Renaissance Hotel and the airport. At the time of the accident, he was performing his normal work duties and there is no evidence of a deviation for personal reasons from a direct route leading from the hotel to the airport. The discrepancies in the evidence concerning the extent and duration of his employment for CanUsa do not affect the determination of his status of the day of the accident.

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[137] Policy at RSCM II item #C3-17.00, “Deviations from Employment,” provides:

> Carelessness or exercising bad judgment are not bars to compensation where it is reasonable that a worker would exercise some discretion as part of the worker’s employment. Thus an act that is done in good faith for the purpose of the employer’s business may form part of a worker’s employment, even if not specifically authorized by the employer.

[138] In *Pasiechnyk v. Saskatchewan (W.C.B.)*, [1997] 2 S.C.R. 890, the Supreme Court of Canada reviewed the “history and purpose” of workers’ compensation legislation and cited a decision which identified the four fundamental principles on which this system was based, at paragraph 27:

> Montgomery J. also commented on the purposes of workers compensation in *Medwid v. Ontario* (1988), 48 D.L.R. (4th) 272 (Ont. H.C.). He stated at p. 279 that the scheme is based on four fundamental principles:
>
> (a) **compensation paid to injured workers without regard to fault**;
>
> (b) injured workers should enjoy security of payment;
>
> (c) administration of the compensation schemes and adjudication of claims handled by an independent commission, and
>
> (d) compensation to injured workers provided quickly without court proceedings.
>
> [emphasis added]

[139] It is a basic principle of workers’ compensation that a worker will not be found to be outside the scope of his or employment because of negligence or fault in the performance of his or her work. I do not consider that any negligence on the part of Guolo, in respect of the manner in which he was performing his work duties as a driver, was such as to involve a departure from his employment.

[140] Upon consideration of the foregoing, I find that at the time of the September 22, 2010 accident:

- the defendant, CanUsa Limos Ltd., was an employer engaged in an industry within the meaning of Part 1 of the Act;
- any action or conduct of the defendant, CanUsa Limos Ltd., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act;
- the defendant, Remo Guolo, was a worker within the meaning of Part 1 of the Act; and,
- any action or conduct of the defendant, Remo Guolo, 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.

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Status of the Defendant, Roberto Angelo Pavan

[141] By letter of April 8, 2013, Pavan's former counsel stated that Pavan was seeking a section 257 determination in these matters. He did not expressly request a determination of Pavan's status. By letter of August 9, 2018, counsel for Pavan advised that no submission would be provided on behalf of Pavan and that they would not be participating further in these applications. No submission has been received concerning Pavan's status. In the absence of a clear request for a determination of Pavan's status at the time of the absence, I have not addressed that question.

Status of the Defendants, Brown Bros. Motor Lease Canada Ltd. d.b.a. Brown Bros. Motor Lease, Brown Bros. Motor Lease

[142] A determination has not been requested concerning the status of these defendants.

[143] In the event that any further determination is required for the legal action, a request may be made for a supplemental certificate.

Conclusion

[144] I find that at the time the cause of action arose on September 22, 2010:

(a) the plaintiff, Dean E. Butler, was not a worker within the meaning of Part 1 of the Act;

(b) any injury suffered by the plaintiff, Dean E. Butler, did not arise out of and in the course of employment within the scope of Part 1 of the Act;

(c) the plaintiff, Patrick William Evans, was not a worker within the meaning of Part 1 of the Act;

(d) any injury suffered by the plaintiff, Patrick William Evans, did not arise out of and in the course of employment within the scope of Part 1 of the Act;

(e) the plaintiff, Edonna A. Fisher, was not a worker within the meaning of Part 1 of the Act;

(f) any injury suffered by the plaintiff, Edonna A. Fisher, did not arise out of and in the course of employment within the scope of Part 1 of the Act;

(g) the plaintiff, Julie K. Savage-Wade, was not a worker within the meaning of Part 1 of the Act;

(h) any injury suffered by the plaintiff, Julie K. Savage-Wade, did not arise out of and in the course of employment within the scope of Part 1 of the Act;

(i) the plaintiff, Cheryl Skaar, was not a worker within the meaning of Part 1 of the Act;

(j) any injury suffered by the plaintiff, Cheryl Skaar, did not arise out of and in the course of employment within the scope of Part 1 of the Act;

(k) the defendant, CanUsa Limos Ltd., was an employer engaged in an industry within the meaning of Part 1 of the Act;

(l) any action or conduct of the defendant, CanUsa Limos Ltd., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act;

(m) the defendant, Remo Guolo, was a worker within the meaning of Part 1 of the Act; and,

(n) any action or conduct of the defendant, Remo Guolo, 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.

Herb Morton
Vice Chair

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NO. VLC-S-M-121540
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:

DEAN E. BUTLER

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Plaintiff, DEAN E. BUTLER, 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 action arose, September 22, 2010:

1. The Plaintiff, DEAN E. BUTLER, was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injury suffered by the Plaintiff, DEAN E. BUTLER, did not arise out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, CANUSA LIMOS LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, CANUSA LIMOS LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

5. The Defendant, REMO GUOLO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Defendant, REMO GUOLO, 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 *Workers Compensation Act.*

CERTIFIED this 12th day of December, 2018.

____

Herb Morton
VICE CHAIR

NO. VLC-S-M-121540
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:

DEAN E. BUTLER

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
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NO. VLC-S-M-120546
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:

PATRICK WILLIAM EVANS

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Plaintiff, PATRICK WILLIAM EVANS, 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 action arose, September 22, 2010:

1. The Plaintiff, PATRICK WILLIAM EVANS, was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injury suffered by the Plaintiff, PATRICK WILLIAM EVANS, did not arise out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, CANUSA LIMOS LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, CANUSA LIMOS LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation* Act.

5. The Defendant, REMO GUOLO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Defendant, REMO GUOLO, 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 *Workers Compensation Act.*

CERTIFIED this 12th day of December, 2018.

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Herb Morton
Vice Chair

NO. VLC-S-M-120546
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:

PATRICK WILLIAM EVANS

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

SECTION 257 CERTIFICATE

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NO. VLC-S-S-121076
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:

EDONNA A. FISHER

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Plaintiff, EDONNA A. FISHER, 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 action arose, September 22, 2010:

1. The Plaintiff, EDONNA A. FISHER, was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injury suffered by the Plaintiff, EDONNA A. FISHER, did not arise out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, CANUSA LIMOS LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, CANUSA LIMOS LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation* Act.

5. The Defendant, REMO GUOLO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Defendant, REMO GUOLO, 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 *Workers Compensation Act.*

CERTIFIED this 12th day of December, 2018.

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Herb Morton
Vice Chair

NO. VLC-S-S-121076
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:

EDONNA A. FISHER

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

SECTION 257 CERTIFICATE

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NO. VLC-S-M-123759
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:

JULIE K. SAVAGE-WADE

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Plaintiff, JULIE K. SAVAGE-WADE, 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 action arose, September 22, 2010:

1. The Plaintiff, JULIE K. SAVAGE-WADE, was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injury suffered by the Plaintiff, JULIE K. SAVAGE-WADE, did not arise out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, CANUSA LIMOS LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, CANUSA LIMOS LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation* Act.

5. The Defendant, REMO GUOLO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Defendant, REMO GUOLO, 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 *Workers Compensation Act.*

CERTIFIED this 12th day of December, 2018.

____

Herb Morton
Vice Chair

NO. VLC-S-M-123759
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:

JULIE K. SAVAGE-WADE

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

SECTION 257 CERTIFICATE

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

A1603750

NO. VLC-S-M-123762
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:

CHERYL SKAAR

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Plaintiff, CHERYL SKAAR, 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 action arose, September 22, 2010:

1. The Plaintiff, CHERYL SKAAR, was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injury suffered by the Plaintiff, CHERYL SKAAR, did not arise out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, CANUSA LIMOS LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, CANUSA LIMOS LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation* Act.

5. The Defendant, REMO GUOLO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Defendant, REMO GUOLO, 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 *Workers Compensation Act.*

CERTIFIED this 12th day of December, 2018.

____

Herb Morton
Vice Chair

NO. VLC-S-M-123762
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:

CHERYL SKAAR

PLAINTIFF

AND:

BROWN BROS. MOTOR LEASE CANADA LTD. D.B.A. BROWN BROS. MOTOR LEASE, BROWN BROS. MOTOR LEASE, CANUSA LIMOS LTD., REMO GUOLO and ROBERTO ANGELO PAVAN

DEFENDANTS

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