Court of Queen's Bench of Alberta

Citation: Homes by Avi Ltd. v. Alberta (Workers' Compensation Board, Appeals Commission), 2007 ABQB 203

Date: 20070326
Docket: 0603 14909, 0603 14405, 0603 12833
Registry: Edmonton

In the Matter of In the Matter of *the Workers' Compensation Act*, R.S.A. 2000, c.W-15,
As Amended ("*WCA*")
And in the Matter of a Decision by the Appeals Commission Established under the *WCA* in
Respect of the Workers' Compensation Board's ("WCB")
Claim No. 462 1255, Decision No. 2006-978 and Application No. 29452

Between:

Homes by Avi Ltd.

Applicant

- and -

**Appeals Commission and the Workers' Compensation Board
and James Donald Miller**

Respondents

In the Matter of In the Matter of the *Workers' Compensation Act*, R.S.A. 2000, c. W-15,
As Amended ("*WCA*")
And in the Matter of a Decision by the Appeals Commission Established
Under the *WCA* in Respect of the Workers' Compensation Board's ("WCB")
Claim No. 3 04859-8, Decision No. 2006-1056 and Application No. 29320

And Between:

Michael Joseph Labby and Maiko's Trucking (1990) Ltd.

Applicants

- and -

**Appeals Commission and the Workers' Compensation Board, and
Calvin Philip Speakman**

Respondents

In the Matter of In the Matter of the *Workers' Compensation Act*, R.S.A. 2000, c.W-15, As Amended ("*WCA*")
And in the Matter of a Decision by the Appeals Commission Established Under the *WCA* in Respect of the Workers' Compensation Board's ("WCB")
Claim No. 487 1 0 1 7 and Application No. 28795

And Between:

Quattro Oilfield Construction Ltd., and Lucky Lee Stotz

Applicants

- and -

Appeals Commission and the Workers' Compensation Board and Sharon Lee Pederson, Personal Representative of the Estate of Kenneth Paul Pederson, Deceased

Respondents

Reasons for Judgment of the Honourable Madam Justice M.T. Moreau

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I. INTRODUCTION

[1] The question raised in each of these appeals/applications for judicial review is whether a director of a corporation without individual coverage can also be regarded as a "worker" who falls under the umbrella of coverage provided by the *Workers' Compensation Act*, R.S.A. 2000, c. W-15 (the "*WCA*"), having regard to amendments to the *WCA* passed in 2002.

[2] The individuals who are the subject of these application were involved in unrelated accidents while performing work-related duties for corporations of which they were also directors. The Workers' Compensation Board (the "WCB") determined in each case that the provisions of the *WCA* did not apply to these individuals as they were directors and had not obtained optional personal coverage. The Appeals Commission (the "Commission") upheld the WCB's decisions. Appeals and applications for judicial review were filed in this Court in each

case. With the consent of the parties, the three matters were ordered to be heard together. For ease of reference, I will refer to the parties initiating the present proceedings as the Applicants.

II. THE *WCA*

[3] The *WCA* provisions germane to this appeal, including relevant provisions of the *WCA* in effect prior to 2002, are set out in the attached Appendix.

III. BACKGROUND FACTS

A. *Quattro Oilfield Construction Ltd. Appeal*

[4] On October 28, 2004, Kenneth Paul Pederson was operating a tractor-trailer for 641617 Alberta Ltd., which had contracted with Northwest Tank Lines Inc., when he was killed in an accident involving a vehicle operated by Ricky Lee Stotz and owned by Quattro Oilfield Construction Ltd. ("Quattro"). At the time of the accident, Pederson was a director of 1035494 Alberta Ltd., incorporated on March 10, 2003. His job duties for 641617 Alberta Ltd. had not changed following his incorporation of 1035494. At Pederson's request, Northwest Tank Lines paid 1035494 for his work. At the time of the accident, Pederson did not have optional personal coverage available to directors through the WCB.

[5] On November 3, 2004, a WCB case manager denied the claim by Pederson's dependents for fatality benefits on the basis that he was a director of 1035494 without optional personal coverage at the time of the accident.

[6] On November 10, 2005, Pederson's dependents and his estate commenced a tort action against Quattro and Stotz arising from the accident.

[7] At the request of the insurers for Quattro, the WCB's Dispute Resolution & Decision Review Body (the "DRDRB") reviewed the decision of the WCB case manager. The DRDRB upheld the case manager's denial of the claim, again on the basis that Pederson was a director of 1035494 and that he did not have personal coverage at the time of the accident.

[8] Quattro's insurers appealed the DRDRB's decision to the Commission. In its decision of August 22, 2006, the Commission noted it to be undisputed that Pederson was the sole director of Company A [1035494 Alberta Ltd.] and had not applied for personal coverage as a director under the *WCA*. The Commission made the following additional findings of fact:

- Company B [641617 Alberta Ltd.] had a contract for trucking services with Company C [Northwest Tank Lines Inc.];

- Company B subcontracted the trucking services to Company A;

- Pederson was providing services pursuant to the subcontract between Company B and Company A;

- Pederson had previously been an employee of Company B, which had remitted premiums to the WCB for coverage for him;

- At the time of the accident, Company B was paying Company A rather than paying Pederson for his services.

[9] The Commission determined that there are four provisions in the *WCA* pursuant to which an individual can be considered a worker. With respect to the first provision, the s.1(1)(z) definition of worker, the Commission stated at para. 10:

> Because the definition says "means," all the words in this subsection before the word "includes" comprise an exhaustive definition. Therefore, only an individual who enters into a contract to perform work or who works under a "contract of service" can be a worker. Where there is a contract of service, an employment relationship is implied.

[10] The Commission distinguished situations in which a service is being performed by a person in business on his own account (a contract for service) from those where the individual works in the service of another (a contract of service). It noted at para. 11 that the amount of control an individual has over his activities is a major characterizing factor and also cited additional factors such as choice in accepting a job, hiring helpers, method of payment and ownership of equipment. The Commission observed at para. 11 that "[t]he greater the degree of responsibility an individual exercises over those things, the greater the likelihood that a contract for services exists."

[11] The Commission determined that if the individual is not a worker under the definition section, the *WCA* provides a second opportunity to acquire the status of worker under s.15(1) through an application to the Board. It stated that s.16(1) provides a third opportunity in situations where a contract of service is not clearly established on the evidence. It noted that the exclusions listed in s.16(1) harmonize with the s.15(1) provisions prohibiting certain categories of individuals from gaining worker status through the deeming provision of s. 16 other than through an approved application. The Commission stated that a fourth provision by which an individual can attain worker status is s.16(2), which allows an individual to be deemed to be a worker by order of the Board.

[12] Addressing each of the four provisions in turn, the Commission characterized the relationship between 1035494 and 641617 as a contract for services. It concluded that the evidence did not support a finding that there was a contract of services between Pederson and 641617 or between Pederson and Northwest Tank. Rather, Pederson had chosen to provide services to 641617 and possibly others by way of a contract for services through 1035494. The incorporation of 1035494 and the appointment of himself as its sole director changed the nature

of his employment relationship with 641617. Accordingly, he was not a worker under the definition section of the *WCA*.

[13] The Commission went on to consider the other identified avenues for attaining worker status. It noted that there was no evidence that Pederson had obtained personal coverage so as to acquire worker status under s.15(1), nor was there any evidence of a Board order deeming him to be a worker under s.16(2).

[14] Finally, the Commission determined that the deeming provision of s.16(1) did not apply to Pederson as directors of corporations who perform work that is the business of the corporation are excluded. The Commission stated at para. 28: "The panel interprets this provision to mean that no matter what task the director is doing on behalf of the corporation, he cannot circumvent the application and approval requirements for coverage in section 15."

[15] The Commission observed that while s. 11 of the *WCA* as it stood prior to amendment in 2002 had been interpreted by the Court as allowing an individual who was a director of a corporation also to have worker status, depending on the nature of the task he or she was performing, the amended Act no longer sustains that interpretation. Accordingly, the Commission dismissed the Applicants' appeal.

[16] The effect of the Commission's decision is that the Pederson Estate tort action commenced against the Applicants is not barred by the *WCA*.

[17] It is the Applicants' position that the Commission correctly found that there are four distinct means of gaining worker status under the *WCA*. However, they submit that having characterized the relationship between 1035494 and 641617 as a contract for service, the Commission should have gone on to consider whether Pederson had a contract of service with 1035494, which would have allowed him to come under the s. 1(1)(z) definition of worker. They state that the Commission failed to apply the legal definition of worker to the facts before it.

B. *Homes by Avi Ltd. Appeal*

[18] James Donald Miller sustained injuries when he fell from a ladder while working at a Homes By Avi Ltd. construction site on March 13, 2003. At the time of the accident, Miller was a director of Cent-2-B-Sure Ltd. and performing work associated with the business of that corporation. He had not obtained personal coverage available to directors through the WCB.

[19] On March 25, 2003, a WCB adjudicator denied Miller's claim for compensation on the basis that he was a director of Cent-2-B-Sure without optional personal coverage at the time of the accident.

[20] On July 23, 2004, Miller and Cent-2-Be-Sure commenced a tort action against Homes by Avi and others.

[21] The insurers for Homes by Avi asked the DRDRB to review the adjudicator's decision denying Miller coverage under the *WCA*. The DRDRB upheld the adjudicator's decision, again on the basis that Miller was a director of Cent 2-B-Sure and did not have personal coverage at the time of the accident.

[22] Homes by Avi appealed the DRDRB's decision to the Commission. It referred to the following undisputed facts in its decision of October 4, 2006:

- Miller was performing work in an industry to which the *WCA* applies;
- At the time of the accident, Miller was performing manual labour on behalf of Company B [Cent 2-B-Sure Ltd.];
- Miller was a director of Company B;
- At the time of the accident, Miller did not have personal coverage with the WCB;
- The applicable legislation was the *WCA*, with amendments in force as of January 1, 2003.

[23] According to the evidence before the Commission, Cent-2-Be-Sure did not pay Miller a wage. However, there was evidence that the corporation had made some payments to him by way of loan reimbursement and dividends. The Commission also noted that Cent-2-Be-Sure had contracted Miller's services to Homes by Avi, which paid Cent-2-Be-Sure, not Miller personally, for the labour work he performed.

[24] Echoing the earlier reasoning of the panel hearing the Quattro appeal, the Commission referred to the four *WCA* provisions by which an individual can be considered a worker for the purposes of coverage under the Act, namely, s.1(1)(z), s. 15(1), s. 16(1) and s. 16(2). It noted with respect to the s. 1(1)(z) definition that only a person who works under a contract of service can be characterized as a worker and that an employment relationship is implied in such a case, whereas in a contract for service situation the person performs services as a person in business in their own right.

[25] The Commission concluded that Miller was not in a contract of service, as Cent-2-Be-Sure functioned as a subcontractor to Homes by Avi, which paid Cent-2-Be-Sure for Miller's manual labour services, and there was no evidence that Miller worked under a contract of service with either Cent-2-Be-Sure or Homes by Avi.

[26] The Commission went on to consider whether Miller was a worker under s.15(1) of the *WCA* and concluded that as he was a director of Cent-2-Be-Sure and had not applied for optional personal coverage, he did not qualify for worker status.

[27] The Commission also concluded that Miller was not a worker under s.16(1) as he was a director of a corporation and was performing manual labour as part of the business of the corporation. While recognizing that prior to the 2002 statutory amendments, the *WCA* had been interpreted to allow a director of a company to have worker status depending on the nature of the task he was performing at the time of the incident, the Commission determined that the current wording of s.16(1) no longer permits this interpretation. Miller, therefore, was excluded from the deeming provisions of s.16(1) of the *WCA* by virtue of s.16(1)(c). Finally, as there was no suggestion that a deeming order had been made by the Board under s.16(2), the Commission concluded that Miller was not a worker under the *WCA*.

[28] The effect of the Commission's decision is that the tort action commenced against Homes By Avi and others by Miller and Cent-2-Be-Sure Ltd. is not barred by the *WCA*.

[29] It is the Applicant Homes by Avi's position that the Commission correctly found that there are four distinct means of gaining worker status under the *WCA*, and that Cent-2-Be-Sure contracted Miller's services to the Applicant. However, the Applicant submits that the Commission erred in determining that there was no evidence that Miller had a contract of service with Cent-2-Be-Sure. It maintains that as he was performing manual labour for Cent-2-Be-Sure and not the duties of a director, and as there was no evidence to suggest that he was being paid director's fees, he was in a contract of service with Cent-2-Be-Sure and, accordingly, came within the s.1(1)(z) definition of a worker. It argues that s.15(1) only operates to exclude those directors performing directors' duties who do not obtain personal coverage. As Miller should have been considered a worker under s.1(1)(z), according to the Applicant, there is no need to consider the deeming provisions of s.16(1) of the *WCA*.

C. *Labby and Maiko's Trucking (1990) Ltd. Appeal*

[30] On October 12, 2004, Michael Labby was operating a trailer/tractor owned by Maiko's Trucking (1990) Ltd. when the unit was struck by a vehicle operated by Calvin Speakman. At the time of the accident, Labby was a director of Maiko's Trucking. However, he had not purchased optional personal coverage available to directors through the WCB.

[31] On November 30, 2004, the Legal Services Department of the WCB notified Labby's insurers that Labby was not in the course of his employment as defined by the *WCA* at the time of the accident, as he had not obtained personal coverage.

[32] On March 22, 2005, Speakman commenced a tort action against Maiko's Trucking and Labby.

[33] Labby's insurers requested that the DRDRB review the denial of WCB coverage by the Legal Services Department. The DRDRB upheld the decision, again on the basis that Labby was a director of Maiko's Trucking and did not have personal coverage at the time of the accident.

[34] On appeal by Labby's insurers, the Commission made the following fact findings:

- The *WCA* applies to Labby's industry;

- At the time of the accident, Labby was a director of Maiko's Trucking and had not purchased personal coverage through the WCB;

- An action had been commenced by Speakman against Maiko's Trucking and Labby with respect to the injuries he had sustained in the accident.

[35] There is some dispute before this Court as to whether the Commission made a finding that Labby was in a contract of service with Maiko's Trucking. In that regard, the Commission stated the following at paras. 18-21 of its decision of October 26, 2006 (the contentious passages being underlined):

> For the purpose of argument, the panel accepts that the worker was in a contract of service with the company [Maiko's Trucking], that he was a director of at the time of the accident, and that he was performing a function that would be typically associated with a worker.
>
> The definition of a worker contemplates a relationship. The person must enter into or work under a contract of service with some person. In this case, it is submitted that the appellant has entered into a contract of service with a company of which he is a director. The panel finds that there are specific provisions in the Act dealing with directors who seek the status of a worker.
>
> The panel finds that it is reasonable and necessary to refer to sections 15 and 16 of the Act because they speak to the circumstances of the case, namely that the appellant is a director.
>
> The panel finds that an exception has been carved out of the definition of worker and it would be contrary to the rules of statutory interpretation to ignore a section that is specific to directors....

[36] The Applicants submit that the Commission made a finding of fact that Labby was in a contract of service with Maiko's Trucking, and that this finding impacts on the standard of review to be applied as increased deference should be shown to findings of fact. The WCB and the Commission submit that on a close review of the above passage, no such finding was made.

[37] I interpret the passage to mean that, even assuming for the sake of argument that the worker was in a contract of service with the company, s.15(1) of the *WCA* carves out an exception to s.1(1)(z). This interpretation is supported by the phrases "[f]or the purposes of argument...," and "it is submitted that...," and also the Commission's conclusion at para. 22 that s.15(1) of the *WCA* is not concerned with what an individual was doing at the time of the accident, but only with what an individual is.

[38] The Commission determined that even if an individual has a contract of service, s.15(1) applies to exclude coverage if that individual is a director without personal coverage, and s.16(1)(c) exempts directors from being deemed to be workers regardless of the function they are performing, whether manual labour or otherwise.

[39] The Commission also observed that this exemption, applicable to directors, would be rendered meaningless if there was no need to consider it in situations where a director is performing a worker's function (i.e. "manual labour or otherwise"). It added that in such situations, the s. 1(j) definition of "employer," that includes in subsection (iii) "a corporation where the application of a director of the corporation is approved under section 15..." would be rendered meaningless in the case of solely owned corporations.

[40] While the Commission recognized that prior to the 2002 amendments to the *WCA*, a director of a corporation could be categorized as a worker depending on the task he was performing at the time of the accident, it concluded that the current wording of s.16 does not allow that to be the case. Labby was notified in 2001 of his failure to obtain the personal coverage available to directors, but elected not to obtain it. The Commission concluded that Labby was not a worker under the *WCA*.

[41] The effect of the Commission's decision is that the Speakman tort action commenced against Labby and Maiko's Trucking is not barred by the *WCA*.

[42] It is the position of the Applicants that the Commission erred in applying the exclusionary provisions of s.15(1) of the *WCA* to the s.1(1)(z) definition of worker, Labby having satisfied the definition of a worker in s. 1(1)(z) on the basis that he had a contract of service with Maiko's Trucking.

IV. STANDARD OF REVIEW

[43] Section 13.4(1) of the *WCA* provides for an appeal to the Court from a decision of the Commission on a question of law or jurisdiction. Issues of pure fact or mixed fact and law are subject to judicial review: ***Alberta (Workers' Compensation Board) v. Buckley***, 2007 ABCA 7 at para. 13. As noted by Slatter J.A. for the Court in ***Buckley*** at para. 14, given that the appeal is to the Court of Queen's Bench, there is no concern that an application for judicial review on a question of law or jurisdiction will undermine an administrative appeal structure. Accordingly, judicial review is available for questions of law or jurisdiction notwithstanding the right of appeal, and the standard of review will be the same whichever way the matter is brought forward.

[44] Fruman J.A., writing for the Court in ***Alberta (Workers' Compensation Board) v. Appeals Commission*** (2005), 371 A.R. 318, 2005 ABCA 276 ("***Davick***"), confirmed that the functional and pragmatic approach to the judicial review of administrative decisions as articulated in ***Pushpanathan v. Canada (Minister of Citizenship and Immigration)***, [1998] 1

S.C.R. 982 applies both to statutory appeals and applications for judicial review. She described that approach in the following terms at para. 10:

> The analysis involves an examination of four factors: (1) the presence or absence of a privative clause or statutory right of appeal; (2) the expertise of the tribunal relative to that of the reviewing court on the issue in question; (3) the purpose of the legislation and the provision in particular; and (4) the nature of the question: law, fact or mixed law and fact. A reviewing court must consider and balance these four factors to determine the level of deference the legislature intended, and to select the appropriate standard of review for each question. The three standards, in decreasing order of deference, are correctness, reasonableness and patent unreasonableness. The chosen standard is then applied to the question under review.

A. *Characterize the question*

[45] Fruman J.A. observed in ***Davick*** at paras. 15-16 that determining whether the question before the Court is one of law, fact, or mixed fact and law is perhaps the judge's most difficult task in *WCA* appeals or judicial review applications and should be addressed first. Properly characterizing the question is necessary as the legislature intended to give a different level of protection to different types of questions, which in turn are subject to different court review processes. Questions of law or jurisdiction give rise to a right of appeal under s.13.4(1) of the *WCA,* indicating that less protection from judicial scrutiny was intended, while other questions are subject to the full privative clause in s.13.1, mandating greater deference.

[46] Where an appeal or application for judicial review involves several questions, each must be characterized separately. Having characterized the questions, the Court must proceed with a ***Pushpanathan*** analysis of each in order to select the appropriate standard of review for the particular question involved and then apply that standard. There is no one, correct, standard of review of general application for all decisions of a specific tribunal or all questions within a general category. In each case, the court must select the standard of review, using the functional and pragmatic approach: ***Davick*** at para.12.

[47] Each of the present appeals relates to the status of corporate directors under the *WCA* and raises one, and possibly two questions: (1) whether a director of a corporation who has no personal coverage can fall within the definition of worker under s.1(1)(z) when performing work as part of the business of the corporation of which he or she is a director; and, if so, (2) whether the individual who is the subject of the appeal was a worker under the s.1(1)(z) definition, which requires a determination of whether he was working under a contract of service.

[48] In ***Davick***, Fruman J.A. referred to the distinction that was drawn in ***Housen v. Nikolaisen***, [2002] 2 S.C.R. 235 at paras. 27-31 between pure questions of law and questions of mixed fact and law, stating at para. 22:

> ...questions of mixed fact and law involve the application of a legal standard to a set of facts; conversely, errors of law involve an incorrect statement of the legal standard, or a flawed application of the legal test...The Court also acknowledged an exception to the distinction between questions of law and questions of mixed fact and law, when it is possible to extricate a pure legal question from what appears to be a question of mixed fact and law.

[49] Errors attributable to the application of an incorrect standard, a failure to consider a required element of a legal test, and similar errors in principle were offered by Fruman J.A. in ***Davick*** at para. 29 as examples of extricable errors of law. She emphasized, however, that it is not an extricable error of law when the issue on appeal involves a trial judge's interpretation of the evidence as a whole, or the application of the correct legal test to the evidence.

[50] On the appeal in ***Nabors Canada LP v. Alberta (Workers' Compensation Appeals Commission)***, 2006 ABCA 371, leave to appeal to the S.C.C. reserved, there was no dispute as to the essential facts involved. McFadyen J.A. observed in para. 86 of her dissent (concurred with on the standard of review by Conrad J.A.) that the appellant's complaint was that the Commission had erred in its interpretation of the *WCA* and WCB policy. She concluded that there was an extricable question of law raised, namely, whether an employee could be deemed to be acting in the course of his employment in the circumstances of that case.

[51] As in ***Nabors***, the relationship between various provisions of the *WCA* is at the heart of the first question raised in the three appeals before me. The essential issue of whether a director who has no personal coverage can fall within the s.1(1)(z) definition of worker when performing work as part of the business of the corporation of which he or she is a director is a legal question which is extricable from the facts. Less deference is warranted with respect to that question.

[52] If the answer to the first question is that a director without personal coverage performing work as part of the business of the corporation of which he or she is a director can fall within the s. 1(1)(z) definition of worker, the second question to be addressed in each case is whether the individual was in a contract of service and, therefore, was a worker pursuant to the s. 1(1)(z) definition of that term.

[53] The Applicants in the Quattro appeal do not take issue with the Commission's determination that there was a contract <u>for</u> services between 1035495 (the corporation of which Pederson was a director) and 641617. They submit, however, that the Commission erred in failing to even consider whether Pederson was in a contract <u>of</u> service with 1035494.

[54] The Applicants in the Homes by Avi appeal do not dispute the Commission's finding that there was a contract <u>for</u> services between Cent-2-Be-Sure and Homes by Avi, but argue that the Commission, on the evidence before it, erred in concluding (at para. 22.4 of its decision) that there was "<u>no evidence</u>, nor was any provided at hearing, that the respondent [Miller] entered into or worked under a contract <u>of</u> service" with either Cent-2-Be-Sure or Homes by Avi (emphasis added).

[55] In the Labby appeal, the Commission simply assumed for argument's sake that there was a contract of service between Labby and Maiko's Trucking, but did not actually analyze their relationship, having concluded that s.1(1)(z) is limited by s.15(1) so as to bar coverage under the *WCA* of directors who do not carry personal coverage.

[56] Whether the individual in each case was in a contract of service is a question of mixed fact and law, as the question is whether the facts satisfy a legal test: ***Davick*** at para. 21. Given the privative clause in s. 13.1 of the *WCA*, greater deference is justified in relation to such questions. The complicating feature in the appeals, however, is the suggestion that the Commission failed to consider whether there was a contract of service on the evidence before it in both the Quattro and Labby appeals, and that in the Homes by Avi appeal it failed to consider evidence that might have supported a finding that a contract of service existed between Miller and Cent-2-Be-Sure.

[57] Iacobucci and Major JJ., in their majority decision in ***Housen*** at para. 27, referred to the following illustration from ***Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.***, [1997] 1 S.C.R. 748 at para. 39 of how an apparent question of mixed fact and law can actually be an error of law:

> ...if a decision-maker says that the correct test requires him or her to consider A, B, C, and D, but in fact the decision-maker considers only A, B, and C, then the outcome is as if he or she had applied a law that required consideration of only A, B, and C. If the correct test requires him or her to consider D as well, then the decision-maker has in effect applied the wrong law, and so has made an error of law.

[58] Iacobucci J. for the Court in ***Southam*** also stated at para. 41 that:

> If the Tribunal did ignore items of evidence that the law requires it to consider, then the Tribunal erred in law. Similarly, if the Tribunal considered all the mandatory kinds of evidence but still reached the wrong conclusion, then its error was one of mixed fact and law.

[59] Kerans J.A., writing for the Court in ***Penny v. Alberta (Workers' Compensation Board)*** (1993), 145 A.R. 20 (C.A.), commented at paras. 21-22 that a failure to consider a relevant factor is as important as the consideration of an irrelevant matter. He found that the Commission in that case had failed to address a causation issue (whether the total disability of the worker resulted from the accident or an unrelated cause), which he characterized as a "clear and harmful error."

[60] Based on these authorities, I find that the question of whether the Commission erred in failing to consider on the evidence before it whether there was a contract of service between the individual involved and the corporation of which he was a director in each of the Quattro and Labby appeals is a question of law, warranting less deference.

[61] As to the Homes by Avi appeal, the characterization of the second question is more complex. There was evidence before the Commission that at the time of the accident: (i) Miller was a director of Cent-2-Be-Sure and was performing manual labour for that corporation; (ii) Miller was not being paid a wage by the corporation but was receiving dividends and other forms of reimbursement from it; (iii) Homes by Avi was paying Cent-2-Be-Sure, not Miller; and (iv) Cent-2-Be-Sure had about 20 staff. However, the Commission concluded at para. 22.4 that there was "no evidence" of a contract of service between Miller and Cent-2-Be-Sure. In para. 23, the Commission stated: "Nor do we find that there was a contract *of* service between Company B [Cent-2-Be-Sure] and the respondent; rather, it was not disputed that he was a director in Company B" (emphasis in the original).

[62] It is unclear from these two passages whether the Commission failed to consider the evidence on the issue of whether Miller had a contract of service with Cent-2-Be-Sure, considered the evidence and found it to have no relevance or weight in relation to that issue, or found that, as a director, Miller could not be in a contract of service with Cent-2-Be-Sure. Disregarding or failing to consider relevant evidence raises a question of law, while the proper weight to be attributed to evidence is a question of fact. The question of whether Miller, as a director, could be in a contract of service with Cent-2-Be-Sure is a question of law.

B. *Examination of privative clause or statutory appeal provision*

[63] The full privative clause contained in s.13.1 of the *WCA* indicates the legislature's confidence in the ability of the Commission to determine questions of fact and mixed fact and law (where there is no extricable question of law). As noted in ***Alberta (Workers' Compensation Board) v. Alberta (Workers' Compensation Appeals Commission)*** (2005), 371 A.R. 62, 2005 ABCA 235 at para. 17 ("***Schumaker***"), the privative clause suggests that the Commission's decisions are owed "considerable deference" (see also ***Buckley*** at para.25).

[64] The privative clause is subject to the right of statutory appeal on questions of law or jurisdiction, indicating that less deference is called for in determining such questions: ***Davick*** at para. 35; ***Nabors*** at paras. 51 and 89; ***Buckley*** at para. 25. As noted by Topolniski J. in ***Alberta (Workers' Compensation Board) v. Alberta (Workers' Compensation Board, Appeals Commission)*** (2005), 382 A.R. 120, 2005 ABQB 543 at para. 10 ("***Maxwell***"), this is reinforced by s. 13.4(8), which provides that the Court on appeal can receive further evidence, which also suggests less deference.

C. *Examination of the tribunal's expertise*

[65] In ***Dr. Q. v. College of Physicians and Surgeons of British Columbia***, [2003] 1 S.C.R. 226, McLachlin C.J., for the Court, remarked at para. 28 that greater deference will be called for only where the decision-making body is, in some way, more expert than the courts and the question under consideration is one that falls within the scope of this greater expertise. The court must characterize the expertise of the tribunal, consider its own expertise relative to that of the tribunal, and identify the nature of the specific issue before the administrative decision-maker

relative to this expertise. She added at para. 29 that relative expertise can arise from a number of sources and can relate to questions of pure law, mixed fact and law, or fact alone.

[66] The reviewing court must consider both the general expertise of the tribunal and its expertise on the particular question on appeal: ***Davick*** at paras. 36-38. A greater degree of deference is afforded to the tribunal's decision if it has a particular expertise in achieving the aims of an Act, because of specialized knowledge, special procedures, or non-judicial means employed to implement a statute. Where the tribunal has no advantage (by way of expert qualifications or accumulated experience) on the particular issue before it as compared with the reviewing court, less deference is due. Even where the question falls within a statutory appeal, a specialized tribunal will often be shown some deference on matters squarely within its jurisdiction.

[67] Determining whether an individual is a worker within the meaning of the *WCA* is something that the Commission is commonly asked to decide: ***Dr. Q*** at para. 29. McFadyen J.A. noted in ***Nabors*** at para.91 that while consideration of legal questions such as whether an employee was acting in the course of employment fall squarely within the Court's expertise, the Commission clearly has an expertise in interpreting and applying WCB policy. She concluded that some deference was warranted to the Commission's decision addressing that issue. In her concurring opinion on the standard of review, Conrad J.A. agreed with McFadyen J.A.'s reasoning and further referred at para. 51 to the central role played by the Commission in fulfilling the purpose of the *WCA*.

[68] While the reviewing Court will have relatively greater expertise than the Commission in deciding pure questions of law, this does not mean that the Court should not show some deference to the tribunal, especially where the question of law is at the heart of the tribunal's jurisdiction. The *WCA* contemplates that the WCB and the Commission will be primarily responsible for deciding which workers are covered by the Act: see ***Buckley*** at para. 29.

[69] In terms of the second question to be addressed, whether the individual involved was in a contract of service, the privative clause protecting the Commission's decisions on questions of fact and mixed fact and law is an acknowledgment of the tribunal's relative expertise in deciding such matters.

D. *Examination of the purpose of the WCA and specific provisions of the Act*

[70] In ***Pasiechnyk v. Saskatchewan (Workers' Compensation Board)***, [1997] 2 S.C.R. 890 at para. 27, Sopinka J., for the majority of the Court, referred to the four basic principles on which workers' compensation schemes are based, as set out in ***Medwid v. Ontario*** (1988), 48 D.L.R. (4th) 272 at 279 (Ont. H.C.J.):

> (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.

[71] McLachlin C.J. noted in ***Dr. Q*** at para. 30 that if the question before the administrative body is one of law or engages a particular aspect of the legislation, the analysis must also consider the specific legislative purpose of the provision(s) under review. She observed at paras. 31-32 that, as a general principle, increased deference is called for where legislation is intended to resolve and balance competing policy objectives or the interests of various constituencies. A legislative purpose that deviates substantially from the normal role of the courts suggests greater deference, while the more the legislation approximates the judicial paradigm, the less deference is suggested.

[72] Fruman J.A. added in ***Davick*** at para.40 that the adjudicative functions of tribunals charged with determining rights between parties, resolved largely by the facts before the tribunal, generally call for less deference. Even in that case, an examination of the purpose of the statute or the particular provision may indicate that the legislature intended that the tribunal be accorded deference.

[73] Fruman J.A. commented at para. 74:

> The Appeals Commission is not required to undertake a polycentric analysis, taking into account broad policy objectives, or the public interest; rather, it routinely resolves disputes among workers, employers and the WCB. Nevertheless, one of the principal purposes of the *WCB Act* is to provide a system of compensation independent of court involvement, as recognized by the reviewing judge at paras. 29-31. The Appeals Commission's role is central to this purpose, indicating deference to the Appeal Commission's decision. In addition, the *WCB Act* is properly described as a policy-laden statute, further suggesting deference.

[74] In addressing the Commission's interpretation of a WCB policy, the Court of Appeal in ***Schumaker*** stated at para. 26:

> Moreover, to the extent that interpretation of the policy was required, that interpretation is deep within the expertise of the AC. As Iacobucci J. stated in ***Pezim v. British Columbia (Superintendent of Brokers)***, [1994] 2 S.C.R. 557, "[c]ourts have also enunciated a principle of deference that applies not just to the facts as found by the tribunal, but also to the legal questions before the tribunal in light of its role and expertise" (para. 62). As noted in ***Pushpanathan***, ***Pasiechnyk*** is an example of a case where the correctness standard did not apply even to a

> question of law. Bastarache J. stated at para. 37 that "[t]he creation of a legislative 'scheme' combined with the creation of a highly specialized administrative decision-maker, as well as the presence of a strong privative clause, was sufficient to grant an expansive deference even over extremely general questions of law.

[75] In ***Nabors***, McFadyen J.A. noted at para. 93 that:

> One of the principal purposes of the *WCA* is to provide a system of compensation for workers who are injured or killed arising out of or in the course of employment, independent of court involvement. The Appeals Commission's role is central to this purpose, indicating deference. As well, the Act is a "policy laden statute", also suggesting deference: ***Davick***, para. 74. Further, the Policy at issue, directed at the determination of entitlement to compensation for accidents occurring during the course of travel, is "deep within the expertise" of the Appeals Commission: ***Schumaker***, at para. 26.

[76] Although the present appeals primarily involve the interpretation of the *WCA*, rather than Board policy as in ***Schumaker*** and ***Nabors***, determination of who is a worker for purposes of the Act is "deep within the expertise" of the Commission. Accordingly, some deference is warranted.

E. *Conclusion as to the appropriate standards of review*

[77] McFadyen J.A. observed in ***Nabors*** at para. 94 that consideration of the four ***Pushpanathan*** factors yielded a mixed result in the circumstances of that appeal. She concluded (Conrad J.A. concurring) that the appropriate standard of review of the extricable questions of law was that of reasonableness *simpliciter*.

[78] In ***Buckley***, Slatter J.A. determined that reasonableness *simpliciter* was the appropriate standard of review to apply to the pure question of law in that appeal, which arose in large part from the proper interpretation of various interrelated provisions of the *WCA*. At para. 33, he commented:

> This sets the proper standard of deference, recognizing as it does the proper role of the Appeals Commission in applying the principles that underlie the workers' compensation system, while permitting the court to correct obvious errors of law. It is the standard previously selected by this Court in ***Nabors***.

[79] The Applicants conceded at the hearing before me that in light of recent pronouncements of the Court of Appeal on the role and expertise of the Commission, the reasonableness *simpliciter* standard of review should be applied in all three appeals to the question of whether s.15(1) of the *WCA* narrows the scope of s. 1(1)(z), and in the Quattro and Labby appeals to the question of whether the Commission erred in failing to determine on the evidence before whether the individuals involved were workers under s.1(1)(z). They further suggested that the

same standard should be applied in the Homes by Avi appeal to the issue of whether the Commission erred in failing to consider evidence relevant to that determination.

[80] The WCB agrees that reasonableness *simpliciter* is the appropriate standard to apply to the interrelationship between s.15(1) and s.1(1)(z). The WCB submits, however, that the question of whether the individuals were workers under s.1(1)(z) involves the application of a legal test to the facts of the case and, as the Commission was applying legislation over which it has expertise, the standard of review should be that of patent unreasonableness.

[81] The Commission takes the position that the issue on appeal is whether it erred in determining that the individual director in each case was not a worker. It characterizes the question as one of mixed fact and law, noting that Topolniski J. in ***Maxwell*** characterized a similar issue arising under the *WCA* prior to the 2002 amendments as a question of mixed fact and law. At para. 12 of her decision, Topolniski J. stated:

> The same issue was before Smith J. in ***Chauvet***, whether an injured employee was a "worker" or a "director" under the Act. The AC was required to assess the particular facts and apply its interpretation of the legislation and policy to reach a conclusion.

[82] The Commission submits that as the issue in each appeal is one of mixed fact and law, its rulings are protected by the full privative clause in s.13.1 of the *WCA*. It maintains that the issues are analogous to those in ***Schumaker*** and ***Davick***, in which the patent unreasonableness standard was applied, and submits that the same standard should be applied in all three appeals.

[83] As indicated above, the Commission points to the ***Maxwell*** case in which Topolniski J. characterized the question as one of mixed fact and law. However, I note that after reviewing a number of recent Alberta decisions dealing with the standard of review applicable to workers' compensation appeals and judicial review applications, Topolniski J. settled on a standard of review of reasonableness *simpliciter*, having concluded at para. 11 that the scheme of the *WCA* provides sufficient evidence that the legislature intended that the Commission be accorded some, but not complete, deference. In ***Chauvet v. Alberta (Workers' Compensation Board, Appeals Commission***, 2005 ABQB 348 (presently under appeal - 0503-0304 AC), Smith J. applied the same standard of review.

[84] Having regard to: (i) my characterization of the first question posed in each of these appeals as a question of law arising from the proper interpretation of the *WCA*; (ii) the inapplicability of the privative clause in s. 13.1 of the *WCA* to the determination of questions of law; (iii) the fact that one of the principal purposes of the *WCA* is to provide a system of compensation independent of court involvement; (iv) the Commission's central role in achieving this purpose along with its experience and expertise in determining questions involving the nature of employment and entitlement to coverage; and (v) recent appellate pronouncements on the application of the ***Pushpanathan*** factors in the *WCA* context, I conclude that the appropriate

standard to be applied in reviewing the Commission's decision in relation to the first question in all three appeals is that of reasonableness *simpliciter*.

[85] The Commission in the Quattro appeal did not address the second question, namely, whether Pederson was in a contract of service with the corporation of which he was a director. In the Labby appeal, the Commission assumed for argument's sake that a contract of service existed, but did not make any finding, having concluded that a director without personal coverage could not be a worker under s.1(1)(z).

[86] I am of the view that the Commission's failure to decide the second question in the Quattro and Labby appeals, which I have characterized as a question of law, should be evaluated on the same standard, namely reasonableness *simpliciter*, having regard to the Commission's central role in interpreting the *WCA* and determining who may qualify as a worker under the Act.

[87] In the Homes by Avi appeal, the Commission indicated that there was no evidence Miller worked under a contract of service with Cent-2-Be-Sure. It stated that it did not find there was a contract of service between that company and Miller, commenting that it was undisputed that he was a director of Cent-2-Be-Sure. As I indicated earlier, it is not clear whether; (i) the Commission failed to consider certain of the evidence before it; (ii) it considered all of the evidence and concluded that none of it suggested that Miller was in a contract of service with Cent-2-Be-Sure; or (iii) it determined that a director cannot be in a contract of service when performing work as part of the business of the corporation of which he is a director. Given the uncertainty as to whether the Commission's comments reflect a factual finding or legal ruling, the degree of deference to which the Commission otherwise would be entitled on a question of fact or mixed fact and law is not warranted. Accordingly, if it is necessary to review its response to the second question, the review should be conducted using a standard of reasonableness *simpliciter*.

F. *The reasonableness simpliciter standard of review*

[88] As stated by Iacobucci J. for the court in ***Law Society of New Brunswick v. Ryan***, [2003] 1 S.C.R. 247 at paras. 53:

> A decision may be unreasonable without being patently unreasonable when the defect in the decision is less obvious and might only be discovered after "significant searching or testing" (***Southam***, *supra*, at para. 57). Explaining the defect may require a detailed exposition to show that there are no lines of reasoning supporting the decision which could reasonably lead that tribunal to reach the decision it did.

[89] The reviewing court is to look to the reasons given by the tribunal. As explained by Iacobucci J. at para. 55 of ***Ryan***:

> A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see ***Southam*** at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see ***Southam*** at para. 79).

Not every element of the reasoning must pass the test of reasonableness. The question is whether the reasons as a whole provide tenable support for the decision (***Ryan*** at para. 56).

V. APPLICATION OF THE STANDARD OF REVIEW TO THE ISSUES UNDER APPEAL

A. *The Labby Appeal*

1. Reasoning of the Commission

[90] In the Labby appeal, the Commission concluded that the *WCA* must be read as a whole. It expressed the view that, even assuming the existence of a contract of service between Labby and Maiko's Trucking, s. 15(1) of the *WCA* deals specifically with directors and this provision carves out an exception to the definition of worker in s. 1(1)(z). The Commission commented at para. 19 that it would be "contrary to the rules of statutory interpretation to ignore a section that is specific to directors." It determined at para. 20 that s. 15(1) is "not concerned with what an individual was doing at the time of the accident, only what the individual is." It concluded that Labby was not a worker as he was a director and had not applied for coverage under s. 15(1) and no order had been made under s. 16(2) deeming him to be a worker. Further, it held that he could not be deemed to be a worker under s. 16(1) as the exclusion could no longer be interpreted as applying only to directors performing directorial duties. Were the Commission's conclusions reasonable?

2. General principles of interpretation of the *WCA*

[91] The trade-off in the *WCA* must be borne in mind when interpreting the Act: workers lose their cause of action against their employers, but through an efficient claims adjudication system handled by an independent commission they gain compensation that depends neither on the fault of the employer nor its ability to pay: ***Pasiechnyk***.

[92] As noted by Costigan J. (as he then was) in ***Perma Clad Exteriors (EDM) Ltd. v. Alberta (Workers' Compensation Board)*** (1995), 173 A.R. 29 at para. 31 (Q.B.), one of the core objects of the *WCA* is to ensure that workers exposed to the hazards of industry are covered by the

workers' compensation scheme. At para. 32, he cited Barry C.J.K.B.'s comments in ***Fleck v. New Brunswick (Workmen's Compensation Board)***, [1934] 2 D.L.R. 145 at pp. 152-153 (N.B.S.C.(K.B.D.)), aff'd [1934] 3 D.L.R. 301 (N.B.S.C.(A.D.)) regarding the purpose and policy of the New Brunswick workers' compensation legislation:

> The *Workmen's Compensation Act* is a long step forward in social legislation designed to rehabilitate and aid in getting injured workmen back to work, and to assist in lessening or removing any handicap resulting from their injuries ... And for the attainment of those objects the Board is given large discretionary powers, and may take such measures and may make such expenditures...Such being the policy of the Act, it should, in my opinion, receive a broad and liberal construction, free from entangling technicalities which do not affect the merits of the case, and administered without too close an attention to slight deviations from the letter of the law, which, if strictly adhered to, might, in many cases, defeat the very object which the Legislature had in view.

[93] Costigan J. referred at para. 33 to the similar view expressed by Crocket J. in ***Lewis Estate v. Nisbet & Auld Ltd.***, [1934] S.C.R. 333, [1934] 3 D.L.R. 241 at 250, leave to appeal to P.C. refused [1934] S.C.R. vii, that: "... the enactment is a special one which was clearly passed to extend the liability of the employer in favour of the workman. It is an enactment, therefore, which ought not to be narrowly construed against the workman."

[94] As the *WCA* is benefit-conferring legislation, it is to be interpreted in a broad and generous manner and any doubt arising from difficulties of language should be resolved in favour of the claimant: ***Re Rizzo & Rizzo Shoes Ltd.***, [1998] 1 S.C.R. 27 at para. 36.

[95] Also of application to the interpretation of the *WCA* is s. 10 of the *Interpretation Act*, R.S.A. 2000, c. I-18, which mandates that: "An enactment shall be construed as being remedial, and shall be given fair, large and liberal construction and interpretation that best ensures the attainment of its objects."

3. Is s. 1(1)(z) a stand-alone provision?

[96] The Applicants contend that Labby should have been considered a worker pursuant to s. 1(1)(z), having entered into or worked under "a contract of service...whether by way of manual labour or otherwise." They argue that while s.1(1)(z) goes on to state that the term "worker" includes a person whose application to the Board under section 15(1) is approved, in situations where an individual fulfills the requirements of the definition of worker set out in s. 1(1)(z) (i.e. is in a contract of service), there is no need for any further enquiry; that individual is considered to be a worker under the *WCA*. In essence, they submit that s. 1(1)(z) is a stand-alone provision.

[97] As noted in *Sullivan and Driedger on the Construction of Statutes*, 4th ed., (Markham, Ont.: Butterworths, 2002), at pp. 281 and 284:

> Each provision or part of a provision must be read both in its immediate context and in the context of the Act as a whole. When words are read in their immediate context, the reader forms an impression of their meaning. This meaning may be vague or precise, clear or ambiguous. Any impressions based on the immediate context must be supplemented by considering the rest of the Act, including both other provisions of the Act and its various structural components.
>
> . . .
>
> When analysing the scheme of an Act, the court tries to discover how the provision or parts of the Act work together to give effect to a plausible and coherent plan. It then considers how the provision to be interpreted can be understood in terms of the plan.

[98] Section 1(1)(z) is not a stand-alone provision. The scope of the definition of the term "worker" found in that section is narrowed by s.14, which provides that:

> 14(1) This Act applies to all employers and workers in all industries in Alberta <u>except the employers and workers in the industries designated by the regulations as being exempt</u>. [Emphasis added.]

[99] In my view, it was reasonable for the Commission to interpret s. 1(1)(z) in the context of the Act as a whole and to conclude that, just as s.14 limits the application of the definition of worker under that section to workers in industries that are not designated as exempt, s.15(1), which specifically provides that (subject to s. 16) a director of a corporation is not a worker for purposes of the Act unless he or she applies to the Board to have the Act apply to them as a worker, serves as another limitation on the general definition of worker in s. 1(1)(z). As stated in *Sullivan and Driedger on the Construction of Statutes* at p. 273, to the extent there is any conflict between two sections, the "specific provision implicitly carves out an exception to the general one."

4. <u>Is s. 15(1) ambiguous?</u>

[100] The Applicants submit that: (i) the interrelationship between s.15(1) and s.1 is unclear and ambiguous having regard to use of the word "includes" in s.1(1)(z); (ii) the *WCA* does not explicitly state that directors can never be considered to be workers; and (iii) the *WCA* is a benefits-conferring piece of legislation. They argue that any doubt arising from difficulties with language should be resolved in favour of extending coverage: ***Re Rizzo*** at para. 36.

[101] The Commission was aware that ambiguities in the Act are to be construed in favour of allowing coverage. However, it did not find any ambiguity. It concluded that s. 15(1) is clear and interpreted s. 1(1)(z) in light of s. 15(1) in order to give effect to the latter provision.

[102] The Applicants acknowledge that words in a statute are to be given effect and that no legislation should be interpreted in such a way that parts of it are mere surplusage or meaningless: ***Subilomar Properties (Dundas) Ltd. v. Cloverdale Shopping Centre Ltd.***, [1973] S.C.R. 596 at 603. However, they submit that s.15(1) is not rendered meaningless as a result of their suggested interpretation of s.1(1)(z). It still comes into play to exclude coverage where the individual is acting in his or her capacity as a director or the individual performs only directorial functions and has no dual role (as director and as worker) within a corporation. Individuals in these situations may obtain optional personal coverage under the *WCA*. The Applicants contend that this narrow construction of s.15(1) fulfills the objects of the *WCA* and ensures a large and liberal interpretation of the Act.

[103] The Applicants maintain that to read s.15(1) as applying to all workers who also happen to be directors would subvert an important underlying purpose of the WCA, namely, to ensure that workers exposed to the hazards of the industry they work in are covered by the workers' compensation scheme. They point out that Labby was performing a worker function rather than duties generally associated with a director's position at the time of the accident and that his role in his corporation was not uniquely that of a director. Accordingly, they suggest that he was not required to obtain personal coverage.

[104] In my view, the Commission's conclusion that s. 15(1) is clear was reasonable. There is nothing on a plain reading of s. 15(1) to suggest that it applies only to directors performing directorial duties. It makes no distinction in regard to the capacity in which a director is performing the work.

5. Amendment of the *WCA*

[105] Prior to the 2002 amendments to the *WCA*, there was greater scope for the Applicants' argument that ss. 15(1) and 16 [ss. 10 and 11 prior to the 2000 consolidation of the Act] should be narrowly construed to apply only to directors when acting in their capacity as directors or whose sole role in the company was that of a director.

[106] The Applicants cite ***Perma Clad***, ***Skyline Roofing Ltd. v. Alberta (Workers' Compensation Board)*** (1996), 186 A.R. 69 (Q.B.), and ***Maxwell*** in support of their argument in this regard.

[107] The applicant in ***Perma Clad*** initially employed a number of salespersons and was assessed by the WCB for the work they performed. Perma Clad subsequently incorporated another company and installed the salespersons as that company's directors. The salespersons continued to sell Perma Clad products, but rather than pay the salespersons directly, Perma Clad paid the new company for their work, the new company in turn paying the salespersons. These arrangements were made to take advantage of what Perma Clad perceived to be an exemption from assessment for directors in the *WCA*. When Perma Clad ceased active business, the other Applicant, C.H.E.C., adopted the same procedure as Perma Clad with respect to work performed

by the new company's directors. The WCB assessed both Perma Clad and C.H.E.C. for the work performed by the new company's directors.

[108] Costigan J. reviewed the deeming provisions of s. 11(1) of the pre-2002 version of the *WCA*, in particular the exception in s.11(1)(b) "when the individual performing the work is a director of a corporation and is performing the work for the principal in his capacity as a director of the corporation." He determined at para. 42 that it was not patently unreasonable for the Commission to have considered the capacity in which the directors of the new company had performed the work, and held that the applicants were properly assessable as the evidence supported the conclusion that they were performing the work in their capacity as workers, not as directors.

[109] Costigan J. went on to remark at para. 48 that the references in s.11(1)(b) to "the principal" and "the corporation" suggested they could be separate entities. Therefore, he concluded that the Commission's finding that the salespersons (the workers) performed work for the applicants (the principals) was not clearly irrational.

[110] A similar situation arose in ***Skyline Roofing Ltd.***, also decided before the coming into force of the 2002 amendments. In that case, a numbered company had been created whose directors were roofers formerly employed by the applicants. Despite the incorporation of the new company, the fundamental work activities of the roofers had not changed. Phillips J. found that the legislature was concerned about *bona fide* workers becoming de-insured. At para. 21 she commented that: "...if the descriptive status of a 'director' was taken to its broadest interpretation... employers could make all of their workers directors so that there would be no workers which would come within the framework of the Act." She concluded that this was not the intention of the legislature. Phillips J. found that the individuals named as directors were wearing more than one hat. As they provided services to the applicants in their capacity as workers, not directors, the decision of the Commission deeming them to be workers was not patently unreasonable.

[111] In ***Heikkila v. Alberta (Workers' Compensation Appeals Commission)*** (2003), 347 A.R. 174 (Q.B.), Hawko J. commented in *obiter* that he disagreed with the Commission's finding that the "principal" and "corporation" referred to in s. 11(1)(b) could be the same entity and that a director of a corporation could still be a worker of that corporation, but he held that its finding was not so "clearly irrational or so evidently not in accordance with reason" that it was patently unreasonable. The application before Hawco J. was for judicial review only, the statutory appeal provisions not being in force at the time of the Commission's decision.

[112] ***Maxwell*** was a case decided under the old provisions but after the coming into force of the 2002 amendments. After extensively reviewing case authorities addressing the standard of review applicable to statutory appeals under the *WCA*, Topolniski J. applied a reasonableness *simpliciter* standard of review to the issue of whether a corporate director who was engaged in the logging activities of his corporation at the time of his death was covered by the *WCA*. She

determined that the Commission's conclusion that the logger was not performing his duties in his capacity as a director and therefore was not excluded from coverage was reasonable.

[113] Of interest to the present appeals is Topolniski J.'s discussion in ***Maxwell*** of legislative history as an aid to interpretation of statutory intent in the context of the 2002 amendments to the *WCA* in regard to directors. At para. 25, she referred to ***2747-3174 Québec (Régie des permis d'alcool***), [1996] 3 S.C.R. 919, in which L'Heureux-Dubé J., for the minority, stated at paras. 223-224:

> The evolution of a provision over time can furnish useful information for interpreting it. As noted by Pigeon J. in ***Gravel v. City of St-Léonard***, [1978] 1 S.C.R. 660, at p. 667:
>
> > Legislative history may be used to interpret a statute because prior enactments may throw some light on the intention of the legislature in repealing, amending, replacing or adding to it.
>
> This interpretation principle is based on the presumption that changes to legislation are intended to effect a substantive change in the law.

[114] Topolniski J. found at para. 26 that the amendment embodied in s. 16(1)(c) of the *WCA* clarified that a director who is performing work as part of the business of the corporation, whether in his capacity as a director or not, is excluded from the deeming provisions. As changes to legislation are presumed to effect change in the law, she found it reasonable to presume that the amendment had accomplished that change.

[115] ***Chauvet*** also dealt with the pre-amendment exclusion to the deeming provision. Smith J. held that it was reasonable for the Commission to decide that the individual was performing activities of a director and not as a worker at the time of the accident and therefore was not covered by the *WCA* as he did not have personal coverage.

[116] I note that none of these decisions dealt with the issue of whether the s. 1(1)(z) definition of worker is limited by the provisions of s. 15(1) of the *WCA*.

[117] In my view, it was reasonable for the Commission to conclude that in removing the words "...is performing the work for the principal in his capacity as a director..." from the exclusion to the deeming provisions of the *WCA*, and replacing them with "... is performing the work as part of the business of the corporation, whether by way of manual labour or otherwise," the legislature intended to eliminate the "two hats" approach to the classification of directors and exhibited a clear intent to specifically address and put an end to the principle reflected in ***Perma Clad*** and ***Skyline*** that a director is excluded from coverage under the *WCA* only when performing directors' duties.

[118] As there was no dispute that Labby was a director and was performing work as part of the business of the corporation of which he was a director at the time of the accident, it was reasonable for the Commission to determine that he could not be deemed a worker under s.16(1).

[119] As noted earlier, the evolution of a provision over time can furnish useful information about legislative intent when interpreting it. Changes to legislation are intended to effect a substantive change in the law. The exception in s. 16(1)(c) no longer distinguishes between the capacities in which a director may be performing the work that is part of the business of the corporation. Accordingly, a reasonable interpretation of s. 15(1), which is subject to s. 16, is that it no longer makes such a distinction.

6. Does the Commission's interpretation of s. 15(1) of the *WCA* remove a benefit?

[120] The Commission rejected the Applicants' argument that adopting an interpretation of s. 15(1) that ignores the type of work being performed by a director takes a benefit away and denies coverage to directors even though they are as exposed as other workers to the hazards of the industry they work in. The Commission pointed out that, "the Act allows a corporation and a director to arrange their affairs and elect coverage if they deem it appropriate."

[121] I recognize that directors who are performing workers' duties are exposed to the hazards of the industry and that the *WCA* ought to be construed in a manner that best reflects its objects. As noted by Phillips J. in ***Skyline***, some employers may insist that everyone working for them perform their work through companies for which they are directors so that the employers are no longer responsible for WCB assessments. While this concern remains, I cannot say that it was unreasonable for the Commission to conclude that the 2002 amendments reflected a legislative intent to exempt directors from the application of the Act unless they obtain personal coverage and to interpret s. 15(1) accordingly.

7. Internal consistency of the Act

[122] The Applicants submit that their interpretation of s.15(1) (as pertaining only to directors performing directorial duties) would not render s.16(1)(c) superfluous. It would continue to apply to situations where an individual does not satisfy the s.1(1)(z) definition of worker (i.e. has no contract of service) and is excluded by s. 15(1).

[123] In my view the contextual interpretation applied by the Commission is reasonable in maintaining internal consistency in the *WCA*. Section 16(1)(c) excludes a director who is performing any type of work as part of the business of the corporation of which he or she is a director from being deemed a worker. Interpreting s. 15(1) as a limitation on s. 1(1)(z) results in the exclusion of all directors performing any type of work as part of the business of the corporation of which they are directors from falling within the s. 1(1)(z) definition of worker, unless their application to the Board under s. 15(1) is approved.

[124] The Commission's interpretation, however, still allows directors in certain situations to be considered workers even if they have not obtained approval under s. 15(1). In responding to the Applicants' submission that the legislature could have, but did not, expressly exclude directors of corporations from the s.1(1)(z) definition of worker (as it did in the case of persons who ordinarily reside outside Canada and who are employed by an employer based outside of Canada but carrying on business on a temporary basis in Alberta), counsel for the WCB suggested that care had to be taken by the drafters not to be overly broad in excluding directors who also work on their own account. A director of Corporation A who performs work as part of the business of Corporation A but who, on his own account, also works for and is paid directly by Corporation B, and who is injured during the course of his employment with Corporation B, should not be excluded from coverage under the *WCA*.

[125] In view of the evidence that Labby was performing work as part of the business of the corporation of which he was a director at the time of the accident and had no personal coverage under s. 15(1), it was reasonable for the Commission to conclude he was not a worker under ss. 1(1)(z) or 15(1) of the Act.

8. Other considerations in interpreting ss. 1(1)(z) and 15(1)

[126] Counsel for the WCB referred in oral argument to the practical difficulty that would be encountered in assessing an appropriate premium to cover directors who also are workers. He noted that premiums are assessed based on the employee's T4 information. However, there are a number of means by which a director may receive funds from his or her corporation: by way of directors' fees, repayment of shareholders' loans, dividends, wages and bonuses. He suggested that it would be difficult for the WCB to attempt to pin down the base income on which premiums are assessed and to differentiate between payments made to the individual *qua* worker and payments made to him or her *qua* director.

[127] I also note that the Commission's interpretation of the Act is consistent with Board policy. The relevant provisions of WCB Policy 06-01, Part II, A2 - Employers read as follows:

> *3. What coverage do directors of a corporation have? BoD Resolution 2000/06/26*
>
> Under the Act, the directors of a corporation are neither workers nor employers. They do not have workers compensation coverage or protection from lawsuits arising from work related injuries unless:
>
> • they have personal coverage in effect in the industry in which they are working (see Policy 06-02, Optional Coverage), or
>
> • They are deemed workers under s.16.

4. Is the director's status under the WCB affected by the type of duties performed for the organization?

This policy question is effective May 21, 2002

No. Section 16 of the Act refers to when a director of a corporation "is performing the work as part of the business of the corporation, whether by way of manual labour or otherwise." Many directors are actively involved in the day-to-day tasks of the business as well as the statutory duties defined in the *Alberta Business Corporations Act.*

For example, if John Doe is a director of XYZ Bobcat Inc. XYZ Bobcat Inc has a contract to clear snow from a parking lot and John Doe operates the bobcat. He is performing work for the company, XYZ Bobcat Inc as part of his director's duties.

However, if John Doe also has a contract under his own name to clear snow from another parking lot, he is not performing the work as part of the business of his corporation. This is because the contract is with John Doe as an individual, not with the corporation. Even though he is a director of XYZ Bobcat Inc, in this case the work he is doing is not for the corporation.

[128] According to this policy, s.1(1)(z) is not a stand-alone provision but rather must be read together with s.15(1) and s. 16. Question 4 of the policy distinguishes the situation in which the s.16 exclusion is said not to apply, namely, where the individual, *albeit* a director of a corporation, is performing work not as part of the business of the corporation, but on his or her own account and is being paid directly for that work.

9. Results of review of Commission's conclusions

[129] Having determined that it was reasonable for the Commission to conclude in relation to Question 1 that a director of a corporation who has no personal coverage cannot fall within the definition of worker under s.1(1)(z) when performing work as part of the business of the corporation of which he or she is a director, it was also reasonable for the Commission not to have considered Question 2, which required a finding of fact as to whether Labby was in a contract of service with Maiko's Trucking.

[130] Accordingly, the Applicants' appeal and application for judicial review are dismissed.

B. Quattro Appeal

1. Reasoning of the Commission

[131] Some aspects of the Commission's reasons in the Quattro appeal are not entirely clear. It referred to four ways by which an individual can be considered a worker under the Act: ss. 1(1)(z), 15(1), 16(1) and 16(2). It did not examine whether Pederson was in a contract of service with 1035495, but noted that by incorporating that company, he had chosen to perform his work for 641617 by way of a contract for services. The Commission stated that his employment relationship with 641617 had changed when he incorporated 1035495, became a director of that company and performed the work for 641617 through that company, and that his rights and obligations under the Act had thereby changed. It concluded that he did not qualify as a worker under s.1(1)(z).

[132] Further, the Commission found that, given the evidence before it, Pederson also failed to qualify as a worker under ss. 15(1) and 16.

2. Results of review of Commission's conclusions

[133] For the reasons outlined in my analysis of the Labby appeal, I would have considered the decision of the Commission to be reasonable if what it meant in saying that Pederson's rights and obligations under the Act had changed was that s. 1(1)(z) is informed by s. 15(1) and s. 16(1) (as amended) and that Pederson, having chosen to perform his work for 641617 through the vehicle of another company of which he was a director, could no longer be considered a worker by definition under. s. 1(1)(z).

[134] It does appear, however, that the Commission meant that s. 1(1)(z) is a stand-alone provision even as regards a director performing the work of the corporation of which he or she is a director, as it described the definition in s. 1(1)(z) before the word "includes" as "exhaustive." In that regard, the Commission appears to have failed to consider whether s. 15(1) limits the definition of s. 1(1)(z) as regards directors.

[135] In view of this critical gap in its reasoning, I conclude that the Commission's analysis was unreasonable in that it failed to consider whether s. 15(1) limits the s. 1(1)(z) definition of worker as regards directors. Accordingly, the decision of the Commission is set aside and the matter is referred back to it for reconsideration of that issue.

C. The Homes by Avi Appeal

1. Reasoning of the Commission

[136] In the Homes by Avi appeal, the Commission again indicated that there are four provisions in the *WCA* pursuant to which an individual can be considered to be a worker. It stated that if an individual is not a worker under s. 1(1)(z), then ss. 15(1), 16(1) and 16(2) provide other avenues by which he or she can gain worker status. The Commission indicated that the dispute in that case centered on whether Miller met the statutory definition of worker, specifically whether he had entered into a contract of service with Cent-2-Be-Sure or Homes by

Avi, although it commented that the applicability of ss. 15 and 16 of the *WCA* also was in dispute.

[137] The Commission found that there was no evidence Miller was in a contract of service with Cent-2-Be-Sure or Homes by Avi at the time of the accident and concluded that Miller was engaged in a contract for service. Therefore, it determined that he was not a worker under the statutory definition in s. 1(1)(z). It also found that he did not meet the criteria in ss. 15(1), 16(1) or 16(2).

[138] Homes by Avi argued on the appeal to the Commission that Miller satisfied the s. 1(1)(z) definition of worker and, therefore, s. 15(1) did not apply as it applies only to directors and s. 16(1) did not apply as it applies only to non-workers.

[139] In responding to this argument, the Commission noted s. 13 of the *Interpretation Act*, R.S.A. 2000, c. I-8, which provides in part that:

> Definitions and other interpretations provisions in an enactment
>
> (a) are applicable to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment.

[140] The Commission concluded that ss. 15(1) and 16 expand the definition of worker for purposes of WCB coverage and, therefore, were applicable in the circumstances of that case. The Commission commented that ss. 15(1) and 16 evidence a "contrary intention" as contemplated in the *Interpretation Act*, then stated:

> Notwithstanding this, we have found previously that the respondent was not a "worker" under the Act on the basis of the statutory definition of "worker" in section 1(1)(z) because he was not in an employment relationship or a contract of service with either Company A or Company B.

2. Results of review of Commission's conclusions

[141] In terms of Question 1, the Commission acknowledged Homes by Avi's argument that ss. 15(1) and 16 only apply to individuals who do not meet the s. 1(1)(z) definition of worker. It is unclear whether the Commission was responding to this argument when it said that ss. 15(1) and 16 "expand" the definition of worker and constitute a "contrary intention" as contemplated in the *Interpretation Act*.

[142] If the Commission in essence was agreeing with the argument advanced at the hearing by the WCB that all sections of the *WCA* must be read together to give the Act meaning and that ss. 14, 15 and 16 clarify and limit the definition of worker in s. 1(1)(z), I would have found this to be reasonable for the reasons outlined in my analysis of the Labby appeal. However, it did not

pursue this line of reasoning and reach any conclusion on the effect of ss. 15(1) and 16 on s.1(1)(z).

[143] Instead, the Commission decided the matter on the basis of its finding that Miller was not in a contract of service. As I indicated in my discussion of the appropriate standard of review to be applied, it is unclear whether the Commission failed to consider the evidence on the issue of whether Miller had a contract of service with Cent-2-Be-Sure, considered the evidence and found it to have no relevance or weight in relation to that issue, or found that Miller, as a director, could not be in a contract of service with Cent-2-Be-Sure.

[144] In order to pass a reasonableness review, there must be a line of reasoning supporting the Commission's decision which could reasonably have lead the tribunal to reach the decision it did. As the Commission's line of reasoning on the first Question and its finding on the second Question both are unclear, I cannot conclude that its decision was reasonable. Therefore, its decision is set aside and the matter is referred back to the Commission for reconsideration, in respect of the issue of whether s.15(1) limits the s.1(1)(z) definition of worker as regards directors.

VI. CONCLUSION

[145] For the reasons given, the Labby appeal and application for judicial review are dismissed while the decisions in the Quattro and Homes by Avi matters are set aside and the matters referred back to the Commission for reconsideration on the issues indicated in my reasons.

[146] Counsel may speak to costs within 30 days if they are unable to come to an agreement.

[147] I wish to thank counsel for their thorough and insightful oral and written submissions.

Heard on the 8th day of February, 2007.
Dated at the City of Edmonton, Alberta this 26th day of March 2007.

M.T. Moreau
J.C.Q.B.A.

Appearances:

Raymond G. Baril Q.C.
for the Applicants

Sandra Hermiston
for the Respondent, Appeals Commission

Manoj Gupta
for the Respondent, Workers' Compensation Board

Randall Fowle
for the Respondent, Calvin Philip Speakman

Doug Perras
for the Respondent, Sharon Lee Pederson, Personal Representative of the Estate of Kenneth Paul Pederson, Deceased

Walter W. Kubitz
for the Respondent, James Donald Miller

APPENDIX

Workers' Compensation Act, RSA 2000, c. W-15 (Present Version)

1(1) In this Act,

(j) "employer" means

(i) an individual, firm, association, body or corporation that has, or is deemed by the Board or this Act to have, one or more workers in the individual's or its service and includes a person considered by the Board to be acting on behalf of that individual, firm, association, body or corporation,

(ii) a proprietor whose application is approved under section 15,

(iii) a corporation where the application of a director of the corporation is approved under section 15, and

(iv) a partnership where the application of a partner in the partnership is approved under section 15,

and includes the Crown in right of Alberta and the Crown in right of Canada insofar as the latter, in its capacity as employer, submits to the operation of this Act;

(z) "worker" means a person who enters into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes

(i) a learner,

(ii) a person whose application to the Board under section 15 is approved, and

(iii) any other person who, under this Act or under any direction or order of the Board, is deemed to be a worker,

but does not include a person who ordinarily resides outside Canada and is employed by an employer who is based outside Canada and carries on business in Alberta on a temporary basis.

[Part 2 of Act repealed and substituted with current version of ss. 10 to 13.5, by S.A. 2002, c. 27, s. 7, effective September 1, 2002]

13.1(1) Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

> (a) appeals from decisions under section 46 made by a review body appointed under section 45,
>
> (b) appeals from decisions under section 120 made by a review body appointed under section 119,
>
> (c) appeals from determinations of the Board under section 21(3), and
>
> (d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court.

(2) The chief appeals commissioner may authorize a panel of 2 or more appeals commissioners to act on behalf of the Appeals Commission under subsection (1) and that panel may exercise the powers of the Appeals Commission for that purpose.

. . .

(9) No proceedings by or before the Appeals Commission shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Appeals Commission or any member of the Appeals Commission in respect of any act done or decision made in the honest belief that it was within the jurisdiction of the Appeals Commission.

13.2(1) A person who has a direct interest in and is dissatisfied with

> (a) a decision under section 46 made by a review body appointed under section 45,
>
> (b) a decision under section 120 made by a review body appointed under section 119, or
>
> (c) a determination of the Board under section 21(3)

may, in accordance with this section, the regulations and the Appeals Commission's rules, appeal the decision or determination to the Appeals Commission.

. . .

(6) In the hearing of an appeal under this section, the Appeals Commission

. . .

(b) is bound by the board of directors' policy relating to the matter under appeal,

. . .

13.4(1) The Board and any person who has a direct interest in a decision of the Appeals Commission made pursuant to section 13.2 may appeal the decision to the Court of Queen's Bench on a question of law or jurisdiction.

. . .

(11) On the hearing of the appeal the Court may

(a) confirm or set aside the decision of the Appeals Commission or any part of it, and

(b) where it sets aside the decision, refer the matter back to the Appeals Commission for reconsideration in accordance with any directions the Court considers appropriate.

. . .

(13) The Court may make any award as to the costs of the appeal that it considers appropriate.

(14) An appeal from a decision of the Court under this section lies to the Court of Appeal.

14(1) This Act applies to all employers and workers in all industries in Alberta except the employers and workers in the industries designated by the regulations as being exempt.

. . .

15(1) Subject to section 16, an employer, a partner in a partnership, a proprietor and a director of a corporation are not workers for the purposes of this Act unless they apply to the Board in accordance with the regulations to have the Act apply to them as workers and the Board approves the application.

(2) [Repealed: S.A. 2002, c. 27, s. 8, effective May 21, 2002]

(3) [Repealed: S.A. 2002, c. 27, s. 8, effective May 21, 2002]

(4) If approval of an application under this section is delayed by inadvertence of the Board, the Board may make its approval effective from the date the application would otherwise have been approved.

(5) The Board may at any time revoke an approval given under this section and, on the revocation, the person referred to in the revocation ceases to be a worker to whom this Act applies as of the effective date of the revocation.

16(1) [s. 16(1) repealed and substituted with current version by S.A. 2002, c. 27, s. 9, effective May 21, 2002] Where an individual performs any work for any other person in an industry to which this Act applies, that individual is deemed to be a worker of the other person, except when the individual

> (a) is performing the work as the worker of another employer,
>
> (b) is an employer and is performing the work as part of the business of the employer, whether by way of manual labour or otherwise,
>
> (c) is a director of a corporation and is performing the work as part of the business of the corporation, whether by way of manual labour or otherwise,
>
> (d) is a partner in a partnership who is a worker under section 15(1) and is performing the work as part of the business of the partnership, whether by way of manual labour or otherwise, in the industry for which coverage has been approved, or
>
> (e) is a proprietor who is a worker under section 15(1) and is performing the work as part of the business of the proprietorship, whether by way of manual labour or otherwise, in the industry for which coverage has been approved.

(2) Notwithstanding anything in this Act, the Board may, in its discretion or on the application of any interested party, by order deem any person or class of persons who have performed or are performing work for or for the benefit of

another person to be workers of that other person for the purposes of this Act for the period or periods of time that the work was or is performed.

. . .

23(1) If an accident happens to a worker entitling the worker or the worker's dependants to compensation under this Act, neither the worker, the worker's legal personal representatives, the worker's dependants nor the worker's employer has any cause of action in respect of or arising out of the personal injury suffered by or the death of the worker as a result of the accident

(a) against any employer, or

(b) against any worker of an employer,

in an industry to which this Act applies when the conduct of that employer or worker that caused or contributed to the injury arose out of and in the course of employment in an industry to which this Act applies.

(2) [s. 23(2) amended by S.A. 2005, c. 48, s. 5, effective December 1, 2005] In an action to which section 22 applies, a defendant may not bring third party or other proceedings against any employer or worker whom the plaintiff may not, by reason of this section bring an action against, but if the court is of the opinion that that employer or worker, by that employer's or worker's fault or negligence, contributed to the damage or loss of the plaintiff, it shall hold the defendant liable only for that portion of the damage or loss occasioned by the defendant's own fault or negligence.

24(1) Subject to this Act, compensation under this Act is payable

(a) to a worker who suffers personal injury by an accident, unless the injury is attributable primarily to the serious and wilful misconduct of the worker, and

(b) to the dependants of a worker who dies as a result of an accident.

(2) The Board shall pay compensation under this Act to a worker who is seriously disabled as a result of an accident notwithstanding that the injury is attributable primarily to the serious and wilful misconduct of the worker.

(3) If a worker is found dead at a place where the worker had a right, during the course of the worker's employment, to be, it is presumed that the worker's death was the result of personal injury by accident arising out of and during the course of the worker's employment, unless the contrary is shown.

(4) [s. 24(4) amended by S.A. 2002, c. 27, s. 12, effective May 21, 2002] If the personal injury or death of a worker arose out of the employment, unless the contrary is shown, it is presumed that it occurred during the course of the employment, and if the personal injury or death of a worker occurred during the course of the employment, unless the contrary is shown, it is presumed that it arose out of the employment.

Workers' Compensation Amendment Act, 1984, S.A. 1984, c. 68

2. Section 1(1) is amended

(a) by repealing clause (h)(ii) [renumbered 1(1)(j)(ii) in R.S.A. 2000, c. W-15] and substituting the following:

(ii) a proprietor whose application is approved under section 10 [renumbered 15 in R.S.A. 2000, c. W-15],

(iii) a corporation where the application of a director of the corporation is approved under section 10 [renumbered 15 in R.S.A. 2000, c. W-15], and

(iv) a partnership where the application of a partner in the partnership is approved under section 10 [renumbered 15 in R.S.A. 2000, c. W-15],

(c) by repealing clause (y) [renumbered 1(1)(z) in R.S.A. 2000, c. W-15], and substituting the following:

(y) "worker" means a person who enters into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes

(i) a learner,

(ii) a person whose application to the Board under section 10 [renumbered 15 in R.S.A. 2000, c. W-15], is approved, and

(iii) any other person who, under this Act or under any direction or order of the Board, is deemed to be a worker...

6. Section 10(1) is repealed and the following is substituted:

10(1) [renumbered 15(1) in R.S.A. 2000, c. W-15] Subject to section 11 [renumbered 16 in R.S.A. 2000, c. W-15], an employer, a partner in a partnership,

a proprietor and a director of a corporation are not workers for the purposes of this Act unless they apply to the Board in accordance with the regulations to have the Act apply to them as workers and the Board approves the application.

7. Section 11 is repealed and the following is substituted:

11(1) [renumbered 16 in R.S.A. 2000, c. W-15] Where an individual performs any work in an industry to which this Act applies for any other person engaged in that industry (in this section called the principal) that individual shall, for all purposes of this Act, be deemed to be a worker of the principal except

(a) when the individual performing the work is himself

(i) an employer, or

(ii) the worker of an employer, other than the principal,

and is performing the work for the principal in his capacity as such an employer or worker,

(b) when the individual performing the work is a director of a corporation and is performing the work for the principal in his capacity as a director of the corporation,

(c) when the individual performing the work

(i) is a partner in a partnership that does not employ any other workers,

(ii) has his application as a partner approved by the Board under section 10 [renumbered 15 in R.S.A. 2000, c. W-15],, and

(iii) performs the work for the principal in his capacity as a partner in the partnership,

or

(d) when the individual performing the work is a proprietor in respect of whom the Board approves an application under section 10 [renumbered 15 in R.S.A. 2000, c. W-15], and who is performing the work for the principal in his capacity as a proprietor.

(2) Notwithstanding anything in this Act, the Board may, in its discretion or on the application of any interested party, by order deem any person or class of

persons performing work for or for the benefit of another person to be workers of that other person for the purposes of this Act.

Workers Compensation Act, S.A. 1981, c. W-16 [Effective January 1, 1982, this Act replaced the R.S.A. 1980 version]

1(1) In this Act

(h) "employer" means

(i) an individual, firm, association, body or corporation that has, or is deemed by the Board or this Act to have, one or more workers in his or its service and includes a person considered by the Board to be acting on behalf of that individual, firm, association, body or corporation,

(ii) a partner in a partnership or a proprietor whose application has been approved under section 10...

(y) "worker" means a person who enters into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes

(i) a learner, and

(ii) any other person who, under this Act or under any direction or order of the Board, is deemed to be a worker.

10(1) Compensation is not payable under this Act to an employer, a partner in a partnership, a proprietor or a director of a corporation unless an application in respect of that person is made to the Board to have this Act apply to him as a worker and the Board approves that application in accordance with the regulations.

11. The Board may, in its discretion or on the application of a principal, by order deem any persons or classes or persons performing work for or for the benefit of that principal or on his behalf to be his workers.

12(1) The Board has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act or the regulations and the action or decision of the Board thereon is final and conclusive, and is not open to question or review in any court.

(2) No proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Board or any member of the Board in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of the Board.

Workers' Compensation Act, R.S.A. 1980, c. W-15

1 (j) "employer"

(i) means every person, firm, association, body or corporation having, or deemed by the Board or by this Act to have, in his or its service one or more workers and includes an independent operator to whom the Act has been made applicable under section 10, and

. . .

(y) "worker" means 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, and includes

(i) a learner, and

(ii) any other person who, under this Act or under any direction or order of the Board, is deemed to be a worker.

10(1) Subject to section 11, compensation is not payable to an independent operator or to an employer or a director of a corporation unless an application to have the Act apply to that person has been received and approved by the Board in accordance with the regulations.

. . .

11(1) If a person does any work in an industry to which this Act applies, for a person engaged in that industry (in this section called "the principal"), the person doing that work shall, for all purposes of this Act, be deemed to be a worker of the principal except when the person doing the work

. . .

(b) is a person to whom compensation is not payable by reason of his being a director of a corporation, or

. . .

12(1) The Board has exclusive jurisdiction to examine, inquire into, hear and determine, all matters and questions arising under this Act or the regulations and the action or decision of the Board on those matters and questions is final and conclusive and is not open to question or review in any court.

(2) No proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Board or any member of the Board in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of the Board.