COURT FILE NO. 36300

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

BETWEEN:

WORKERS' COMPENSATION APPEAL TRIBUNAL

Appellant
(Respondent)

- and –

FRASER HEALTH AUTHORITY,
KATRINA HAMMER, PATRICIA SCHMIDT, and
ANNE MACFARLANE

Respondent
(Respondent)

AND BETWEEN:

KATRINA HAMMER, PATRICIA SCHMIDT, and
ANNE MACFARLANE

Appellants
(Appellants)

- and –

WORKERS' COMPENSATION APPEAL TRIBUNAL and
FRASER HEALTH AUTHORITY

Respondents
(Respondents)

ATTORNEY GENERAL OF CANADA, ONTARIO NETWORK OF INJURED WORKERS' GROUPS AND INDUSTRIAL ACCIDENT VICTIMS' GROUP OF ONTARIO, COMMUNITY LEGAL ASSISTANCE SOCIETY AND BRITISH COLUMBIA FEDERATION OF LABOUR, ATTORNEY GENERAL FOR ONTARIO

Interveners

FACTUM OF THE INTERVENERS, ONTARIO NETWORK OF INJURED WORKERS' GROUPS and INDUSTRIAL ACCIDENT VICTIMS' GROUP OF ONTARIO

(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada)

IAVGO Community Legal Clinic
489 College Street, Suite 203
Toronto, ON M6C 1A5

Ivana Petricone/ Maryth Yachnin/ Joel Schwartz
Tel: (416) 924-6477
Fax: (416) 924-2472
E-mail: petricoiv@lao.on.ca
Counsel for the Interveners, Ontario Network of Injured Workers' Groups and Industrial Accident Victims' Group of Ontario

Community Legal Services-Ottawa Carleton
1 Nicholas Street, Suite 422
Ottawa, ON K1N 7B7

Michael Bossin
Tel: (613) 241-7008 Ext: 224
Fax: (613) 241-8680
E-mail: bossinm@lao.on.ca
Agent for the Interveners, Ontario Network of Injured Workers' Groups and Industrial Accident Victims' Group of Ontario

Workers' Compensation Appeal Tribunal
150-4600 Jacombs Road
Richmond, B.C. V6V 3B1

Timothy J. Martiniuk
Telephone: (604) 664-7800
Fax: (604) 713-0443
tim.martiniuk@wcat.bc.ca

Counsel for the Appellant/Respondent Workers' Compensation Appeal Tribunal

Borden Ladner Gervais LLP
Barristers & Solicitors
World Exchange Plaza
100 Queen Street, suite 1300
Ottawa, ON K1P 1J9

Tel: (613) 237-5160
Fax: (613) 230-8842
E-mail: neffendi@blg.com

Ottawa Agent for the Appellant/Respondent Workers' Compensation Appeal Tribunal

Harris & Company
Barristers & Solicitors
1400 - 550 Burrard St
Vancouver, B.C. V6C 2B5

Nazeer T. Mitha
Tel: (604) 684-6633
Fax: (604) 684-6632
nmitha@harrisco.com

Counsel for the Respondent Fraser Health Authority

Gowling Lafleur Henderson LLP
Barristers & Solicitors
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel: (613)233-1781
Fax: (613_563-9869
jeff.beedell@gowlings.com

Ottawa Agent for Counsel for the Respondent Fraser Health Authority

Health Sciences Association of British Columbia
180 East Columbia Street
New Westminster, BC V3L 0G7

Randall Noonan and
Tonie Beharrell
Tel: (604)617-0994
Fax: (604)515-8889
rnoonan@hsabc.org
tbeharrell@hsabc.org

Counsel for the Respondents / Appellants Katrina Hammer et al.

Gowling Lafleur Henderson LLP
Barristers & Solicitors
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3

Matthew S. Estabrooks
Tel: (613)233-1781
Fax: (613_563-9869
matthew.estabrooks@gowlings.com

Ottawa Agent for Counsel for the Respondents / Appellants Katrina Hammer et al.

Attorney General of Canada
3400 - 130 King Street West
The Exchange Tower, Box 36

Attorney General of Canada
50 O'Connor Street
Suite 500, Room 557

Toronto, ON M5X 1K6

Christine Mohr and
Alexander Pless
Tel: (416) 973-4111
FAX: (416) 952-4518
E-mail: christine.mohr@justice.gc.ca

Counsel for the Intervener, Attorney General of Canada

Ottawa, ON K1A 0H8

Christopher M. Rupar

TEL: (613) 670-6290
FAX: (613) 954-1920
E-mail: christopher.rupar@justice.gc.ca

Agent for the Intervener, Attorney General of Canada

Ethos Law Group LLP
1124 - 470 Granville Street
Vancouver, British Columbia
V6C 1V5

Monique Pongracic-Speier

Tel: (604) 569-3022
FAX: (866) 591-0597
E-mail: monique@ethoslaw.ca

Counsel for the Intervener, Community Legal Assistance Society and British Columbia Federation of Labour

Juristes Power
130, rue Albert
Bureau 1103
Ottawa, ON K1P 5G4

Justin Dubois

TEL: (613) 702-5560
FAX: (613) 702-5560
E-mail: jdubois@juristespower.ca

Agent for the Intervener**,** Community Legal Assistance Society and British Columbia Federation of Labour

Attorney General of Ontario
720 Bay Street
8th Floor
Toronto, Ontario
M5G 2K1

Sara Blake
Sandra Nishikawa

TEL: (416) 326-4155
FAX: (416) 326-4181
E-mail: sara.blake@jus.gov.on.ca

Counsel for the Intervener, Attorney General for Ontario

Burke-Robertson
441 MacLaren Street
Suite 200
Ottawa, Ontario
K2P 2H3

Robert E. Houston, Q.C.

TEL: (613) 236-9665
FAX: (613) 235-4430
E-mail: rhouston@burkerobertson.com

Agent for the Intervener, Attorney General for Ontario

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PART I – OVERVIEW AND FACTS

1. Affirming the decision of the British Columbia Court of Appeal would upend a longstanding approach to determining causation. It would require workers' compensation tribunals to deny claims where there is no conclusive medical or scientific evidence. This would effectively import a new scientific certainty standard of proof – a standard higher than that intended by the legislature.
2. The legislature intended workers' compensation schemes to lighten the burden of occupational disease on workers and their survivors. Requiring scientific certainty would shift much of the burden back by unfairly denying compensation, undermining health and safety, and stripping injured workers of the dignity that comes with workers' compensation entitlement.
3. ONIWG is the largest injured workers' network in Ontario and a recognized stakeholder in the workers' compensation system. IAVGO is a community legal clinic that has represented thousands of injured workers in their workers' compensation appeals.
4. ONIWG and IAVGO accept the facts as set out by the Appellants.

PART II – POSITION ON THE QUESTION AT ISSUE

5. ONIWG and IAVGO's position in this appeal is limited to the issues identified above.

PART III - ARGUMENT

A. Scientific Certainty is Not Required

i. The decision

6. The Workers' Compensation Appeal Tribunal decided that workplace exposures were a cause of Ms. Hammer, Ms. Schmidt and Ms. MacFarlane's breast cancer. The WCAT's decision was based on established principles of law common to workers' compensation schemes across Canada. There was nothing unreasonable about its reliance on these principles.
7. The evidence supporting the WCAT's inference that the Appellants' breast cancer was related to their work included a study of the particular workplace which found a) a statistically significant cluster of cancer cases among all workers in the area; b) a statistically significant incidence rate of breast cancer among laboratory workers more than eight times that

expected in the general population, and c) a history of exposures to chemical carcinogens, and reason to believe past exposures were likely much higher than those at present.[1][2]

8. Many elements of both the evidence and the science were unknown and uncertain. Documentation about the extent of past exposures was incomplete.[3] Like most cancer cluster investigations, this one was not able to identify a specific cause for the cluster.[4] The broader epidemiological literature included few studies of laboratory workers. The scientific literature on the interaction of multiple chemical exposures in causing breast cancer was sparse.[5]

9. This was not an easy case. But that is not unusual in workers' compensation, where decision-makers regularly decide cases despite limited evidence. Many medical conditions have multiple possible causes. Claimants or co-workers have died along with their knowledge of the work processes. Exposure measurements are lost or were never taken. There is little, no, or inconclusive scientific research on the workplace hazard at issue.[6]

ii. The current approach to causation

10. To ensure that the vagaries of evidence don't undermine its remedial purposes, the Ontario Legislature, similar to that in British Columbia, established the workers' compensation scheme based on the following laws and principles:

    - work must have made a significant contribution to the injury or disease but need not be the main causal factor;
    - the workers' compensation board is investigative and there is no burden of proof on either the worker or the employer;
    - the system is no-fault;
    - each case is adjudicated on its merits and justices; and,

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[1] WCAT Decision, Joint Record of the Appellants and Respondents (JAR), Volume 1, p. 36, para. 129.
[2] WCAT Decision, JAR, Volume 1, pp. 27-28, paras. 89, 91; pp. 39-40, paras. 144-145; p. 48, para. 192. In occupational disease cases before the Ontario Appeals Tribunal, a standardized incidence ratio of 2.0 or higher in epidemiological evidence is considered sufficient evidence to favour entitlement; *Decision No. 2804/07I4*, [2015] O.W.S.I.A.T.D. No. 87, 2015 ONWSIAT 95, *Book of Authorities of the Interveners, ONIWG and IAVGO (*BOAONIWG), Tab 13, at para. 45.
[3] WCAT Decision, JAR, Vol.1, p. 29, para. 91; p. 32, paras. 106-107.
[4] *Cancer Cluster Investigation within the Mission Memorial Hospital Laboratory, Final Report, JAR*, Vol. 3, p. 140.
[5] WCAT Decision, JAR, Vol. 1, paras. 73-74.
[6] Industrial Disease Standards Panel, *Compensation for Industrial Disease Under the Workers' Compensation Act of Ontario* by Terence G. Ison , LLD (Toronto: 1989), BOAONIWG, Tab 22, p. 29 [Ison]; *Decision No. 2157/09,* [2014] O.W.S.I.A.T.D. No. 1048, 2014 ONWSIAT 938, BOAONIWG, Tab 13, para. 232.

- the balance of probabilities standard applies, modified by the statutory requirement that, when the evidence on any contentious issue is of equal weight, that issue must be resolved in favour of the claimant worker or survivor.[7]

11. These principles reflect the legislative intention that is better to allow a claim that is not work-related than deny one that is work-related.[8]

12. The final decision-makers in these schemes are independent appeals tribunals. By enacting strong privative clauses, the legislatures decided that these specialized tribunals, not the courts, should make the final decisions on causation.[9]

13. In interpreting the legislation, the Ontario's Appeals Tribunal and policy-makers have set out the following principles for use of scientific evidence:

    - The robust and pragmatic approach to causation, urged by this Court in *Snell v. Farrell*, applies. Decision-makers must determine whether the medical or scientific evidence, even if not definitive, permits a reasonable inference.[10]

    - The robust and pragmatic approach applies to all workers' compensation claims including those for occupational diseases like cancer.[11]

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[7] The Ontario *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A (*WSIA*), ss. 119(1), (2), 124 (1), (2). While the significant contributing factor test does not appear in the *WSIA*, it is well established in the case law of the Ontario Workplace Safety and Insurance Appeals Tribunal (see e.g. *Decision No. 72*, [1986] O.W.C.A.T.D. No. 120, 2 W.C.A.T.R. 28, BOAONIWG, Tab 1, para. 64).
Brock Smith, *Final Report of the Chair of the Occupational Disease Advisory Panel* (2005), BOAONIWG, Tab 25, online: http://www.wsib.on.ca/, p. 10 [ODAP Report].
The same principles as set out in B.C. law are summarized in the Factum of the Appellants Katrina Hammer, Patricia Schmidt, and Anne MacFarlane, paras. 106-107, 112.

[8] Paul C. Weiler, *Protecting the Worker from Disability: Challenges for the Eighties* (Ontario: Ministry of Labour, 1983), BOAONIWG, Tab 26, p. 34. It is also worthy of note that the Ontario legislature has also given Board and Appeals Tribunal decision-makers the ability to reconsider or revoke entitlement should new evidence emerge to show the disease was not in fact work-related; *WSIA*, sections 129, 121.

[9] *WSIA*, sections 123(5); *Workers' Compensation Act*, R.S.B.C. 1996, c. 492, s. 255. In *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, [2008] O.J. No. 4103, 2008 ONCA 719, BOAONIWG, Tab 16, para. 22, the Court of Appeal observed that the WSIA's privative clause is the "toughest privative clause known to Ontario law".

[10] These principles arise from this Honourable Court's decision in *Snell v. Farrell*, [1990] 2 S.C.R. 311, [1990] S.C.J. No. 73, BOAONIWG, Tab 18, paras. 29, 33-38. In *Snell*, the medical professionals could not reach a conclusion to a scientific certainty but the Court held that causation could nonetheless be established. The Workplace Safety and Insurance Appeals Tribunal (WSIAT) has applied the robust and pragmatic approach to many occupational disease claims. See e.g. *Decision No. 688/96*, [1998] O.W.S.I.A.T.D. No. 402, BOAONIWG, Tab 7, para. 52; *Decision No. 452/94*, 1997 CanLII 13131 (ON WSIAT), BOAONIWG, Tab 5, para. 28; *Decision No. 1024/05*, [2006] O.W.S.I.A.T.D. No. 236, 2006 ONWSIAT 224, BOAONIWG, Tab 9, paras 37-38; *Decision 1386/03*, 2004 ONWSIAT 2516 (CanLII), BOAONIWG, Tab 10, para. 32.

[11] The WSIAT has applied the robust and pragmatic approach in many cancer cases; e.g. *Decision No. 268/95,* [1996] O.W.C.A.T.D No. 1038, BOAONIWG, Tab 2, para. 27; *Decision No. 432/02*, 2004 ONWSIAT 2311 (CanLII), BOAONIWG, Tab 4, para. 29. Contrary to the suggestion of the dissent at the Court of Appeal in the instant case, there is no reason to create different legal tests for the same legal question simply because the worker suffered a disease instead of a back injury. One of the founding purposes of workers' compensation in Ontario is to ensure injuries and diseases are treated equally. In his 1913 report, Justice Meredith stated: "It would, in my opinion, be a blot on the act if a workman who suffers from an industrial

- There is "no pre-condition that the evidence must be of any particular type or of any particular weight". As long as the evidence in favour of work-relatedness is not mere speculation, the claim must be allowed unless an alternative hypothesis has been identified that is supported by stronger evidence.[12]

- Decision-makers do not have the "luxury of deferring a conclusion pending greater scientific certainty."[13] Decisions must be made using the best available evidence. If the scientific evidence is weak or conflicting, decision-makers must adjudicate the other evidence including circumstantial evidence, which may include the fact of a cluster of cases. Circumstantial evidence may be enough to establish causation.[14]

- The inability to identify a specific workplace causal agent is not sufficient to deny a claim.[15]

14. These principles animated the WCAT's decision. The majority at the Court of Appeal was wrong that some kinds of cases require positive expert scientific evidence.[16] The legislative intention is that, if the evidence favouring entitlement is equal to or greater than the evidence against it, the case should be allowed. It is inappropriate for the decision-maker to decline entitlement because "something more" is required.

iii. A more restrictive standard of proof

15. If the Court accepts the Court of Appeal's analysis, it will effectively impose a new scientific certainty standard of proof of causation that is higher than the balance of probabilities standard intended by the legislature. The scientific standard for finding causation is different and more restrictive than the legal test.[17] Under the Court of Appeal's reasoning, the WCAT was obliged to defer to the conclusions of the researchers – no causation to a scientific certainty – as its legal conclusion on causation. This would require the WCAT to abandon the balance of probabilities standard on the causation issue.

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disease contracted in the course of his employment is not to be entitled to compensation"; ODAP Report, supra, BOAONIWG, Tab 25, p. 6.

12 *Decision No. 955/95*, [1998] O.W.S.I.A.T.D. No. 858, BOAONIWG, Tab 8, paras 27-29.

13 *Decision No. 473/91*, [1994] O.W.C.A.T.D. No. 691, 32 W.C.A.T.R. 14, BOAONIWG, Tab 6, p. 16.

14 ODAP Report, *supra*, BOAONIWG, Tab 25, pp. 10, 12-13.

15 ODAP Report, supra, BOAONIWG, Tab 25, pp. 12-13.

16 Judgment of the Court of Appeal, JAR, Vol. 1, para 210.

17 *Snell v. Farrell, supra*, BOAONIWG, Tab 18, para. 34.

16. If the Court finds that the WCAT's decision was patently unreasonable, it would likely mean that the workers in cases like the following, allowed by the Ontario Appeals Tribunal, would be denied compensation and would bear the full burden of occupational disease:

    - A worker with a history of smoking, as well as 17 years of employment in a foundry, died of lung cancer. He had worked with a number of carcinogens, but there was no evidence regarding the intensity of the workplace exposures. The Board consultant recommended a mortality study of the employer's workforce, which the employer refused to allow. A medical expert opined that, while the workplace exposures played some role, it was most likely a "minor" one. The Panel, led by the current Chair of the Ontario Appeals Tribunal, allowed entitlement. It accepted that its decision was "somewhat arbitrary", noting, "Since we lack specific information on the degree of exposure to the various carcinogens and since precise scientific information on the effect of synergism is unavailable, a degree of arbitrariness is unavoidable."[18]

    - A worker developed idiopathic Parkinson's and sought entitlement related to a head injury at work 18 years earlier. An expert medical assessor determined that there was only a suggestion of association between single head trauma and Parkinson's disease but no clear evidence of a causal link. Assessing the medical evidence as a whole, the Panel found that the opinions were "based almost entirely on varying interpretations of epidemiological evidence". Some studies found a fairly strong link to a single blow to the head, while others found no link at all. Combining the available studies with the facts of the individual case, especially the early onset of the disease and the latency period between trauma and onset, the Panel granted entitlement. The epidemiological evidence was "equivocal" and the possibility of a link was "more than just a speculative possibility", so the benefit of the doubt was granted to the worker.[19]

    - A worker with occupational exposure to diesel fumes and a history of smoking developed bladder cancer. The expert medical assessor, an epidemiologist, reviewed existing studies and opined that being a truck driver might place a worker at a slightly increased risk, and it was "possible" that the bladder cancer in this case was related to work. Despite this equivocal expert opinion, the Panel allowed entitlement. It was influenced by factors including the expert's mistaken finding - contrary to the Panel's -

[18] *Decision No. 331/89*, [1991] O.W.C.A.T.D. No. 224, BOAONIWG, Tab 3, para. 22.
[19] *Decision No. 1796/09,* [2010] O.W.S.I.A.T.D. No. 1650, 2010 ONWSIAT 1588, BOAONIWG, Tab 12, para. 45.

that the worker was not exposed to charcoal black, the expert's overestimation of the worker's smoking history and the Panel's finding that while the epidemiology was still in an early phase, the average standardized incidence ratio of 2.0 for exposed workers invited a finding of causation in individual cases.[20]

17. Changing the standard of proof for causation to scientific certainty would also unfairly deny compensation to workers with claims for other types of injuries. Challenges of uncertain science arise in all types of injuries, not just occupational diseases. The Ontario Appeals Tribunal has said that "[d]etermining causation is often difficult due to the multifactorial nature of many conditions (from carpal tunnel to lung cancer) [and] the lack of conclusive epidemiological evidence on the particular exposure or working conditions in issue."[21] Gold-standard scientific evidence on work-related causation rarely, if ever, exists, even for routine cases like back injuries and other musculoskeletal conditions.

B. Decision-makers Must Decide, Not Scientists

18. The legislatures have assigned the final word on causation to expert legal tribunals applying legal principles, not to scientists applying scientific principles.[22] The legislatures' approach avoids an inappropriately restrictive view of causation that would undermine statutory goals. And, it allows specialized decision-makers room to analyse medical and scientific findings.

19. Here, the WCAT was presented with scientific and medical evidence that was uncertain. But it had to resolve the claim and it could not simply deny entitlement because of inconclusive scientific evidence.[23] Instead it did a comprehensive review of the epidemiological evidence to see what inferences it could make about causation based on the best evidence available, using the adjudicative tools provided to it by the statute and policy. These tools included the "Bradford Hill" criteria, which provide a detailed framework – developed by an epidemiologist but appropriate for use by policy-makers and adjudicators – for thinking about when an

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[20] *Decision No. 2804/07I4, supra*, BOAONIWG, Tab 14.

[21] *Decision No. 2157/09*, [2014] O.W.S.I.A.T.D. No. 1048, 2014 ONWSIAT 938, BOAONIWG, Tab 13, paras. 229-238.

22 *Decision No. 432/02, supra*, BOAONIWG, Tab 4, para.29

23 As the WSIAT states, "The Supreme Court has taken the position in *Snell v. Farrell* and in *Laferrière v. Lawson (1991)* … that scientific evidence is neither necessary nor determinative. Rather, it is a piece of evidence to be weighed with the rest"; *Decision No. 1645/99R*, 2000 ONWSIAT 3074, BOAONIWG, Tab 11, para. 23. Of course, adjudicators at the WCAT and Ontario Appeals Tribunal don't have medical expertise. This means they cannot decide, for example, that a worker is not suffering from PTSD if that disease has been diagnosed by a medical professional and there is no contradictory medical evidence; *Page v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2009 BCSC 493, paras. 62-66.

association can reasonably be considered a causal relationship.[24] The WCAT did not simply accept or deny the OHSAH findings; it analyzed the value of the researchers' work and its strengths and limitations. This is precisely what a decision-maker should do.[25]

20. A scientist might object to the WCAT's adjudication – which weighed the value of circumstantial evidence and evidence that was inconclusive – as "a process of guesswork".[26] But, such a response "suggests a lack of recognition or of sympathy for the difference in function between the two."[27] The scientist can decline to reach any conclusion because necessary data is not available; the adjudicator has no such choice and must decide the matter now.[28] Causation can have different content in different contexts.

21. Scientists might also fail to see how their usual procedures must be adjusted within the context of workers' compensation adjudication. For example, the researchers in the instant case recommended a follow-up study after five years to determine whether this was a true cancer cluster.[29] This makes sense if one is attempting to identify and eliminate an ongoing hazard. But here, a drop in the cancer rate over time would be perfectly consistent with the accepted theory of likely causation – the workers were subject to a past source of exposure that was reduced or eliminated through changes in the work process over time.

22. A common sense approach to scientific evidence also protects the gatekeeping role of workers' compensation decision-makers. Both the courts and policy-makers have highlighted the danger of legal adjudicators deferring to the opinion of medical experts, and emphasized the need for adjudicators to act as gate-keepers against faulty or overbroad expert opinion.[30]

C. Requiring Scientific Certainty Would Undermine Legislative Goals of Workers' Compensation Systems

23. A scientific certainty standard of proof of causation would undermine the legislative goals animating workers' compensation systems, including i) shifting the burden of occupational

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[24] WCAT Decision, JAR, Volume 1, pp. 33-42, paras. 112-160.
[25] Workers' compensation tribunals like the WCAT are well-situated to deal with epidemiological evidence. As the main adjudicator of occupational illness in Ontario, the WSIAT is regularly called upon to assess and weigh epidemiological evidence. A CanLII search of the Tribunal's cases reveals 1,180 cases in which epidemiology is discussed.
[26] Ison, supra, BOAONIWG, Tab 22, pp. 29-30.
[27] Ibid.
[28] Ibid.
[29] *Cancer Cluster Investigation within the Mission Memorial Hospital Laboratory*, Final Report, JAR, Vol. 3, p. 147.
[30] See Ontario. *Inquiry into Pediatric Forensic Pathology in Ontario*. Report, Vol. 3 (Commissioner: The Honourable Stephen T. Goudge), BOAONIWG, Tab 22, p. 470; *R. v. J.-L.J.,* [2000] SCR 600, 2000 SCC 51, BOAONIWG, Tab 17.

disease off workers through compensation; ii) promoting health and safety and iii) facilitating return to work and recovery.[31]

i. The need for certainty would unfairly burden workers

24. A central goal of workers' compensation law in Ontario is to compensate injured workers and their survivors.[32] The Ontario Legislature, and legislatures across Canada, adopted Sir William Meredith's 1913 recommendation to create a compensation law that would "provide for the injured workman and his dependants and … prevent their becoming a charge upon their relatives or friends, or upon the community at large."[33] Workers' compensation schemes try to ensure that industry – not victims of occupational disease and their families – collectively bears the costs of the injuries it creates.

25. A restrictive standard of proof requiring conclusive scientific evidence would make workers bear the full brunt of the unknown and uncertain in occupational injury and disease. Disease victims already go uncompensated in far too many cases. For example, accepted claims for deaths from occupational cancer likely "only represent a fraction of the true burden" of occupationally-caused cancers.[34]

26. We see that all victims of occupational disease struggle to provide evidence that their diseases are work-related. Documentary evidence of exposures is often lost, destroyed or was never created, while witnesses' memories fade with time and they pass away. Even where detailed exposure evidence is available, epidemiological or toxicological evidence may be non-existent, sparse or not directly applicable to the case at hand. It takes years of expensive studies to produce quality results. Medical science rarely speaks with certainty, especially about diseases with multiple causes and decades-long latency periods, where experimental work is limited to tissue and animal studies.

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[31] Ontario *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, s. 1, reads:
The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:
1. To promote health and safety in workplaces.
2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
4. To provide compensation and other benefits to workers and to the survivors of deceased workers.

[32] WSIA, s. 1.

[33] Ontario, *Workmen's Compensation Commission, Final Report on Laws Relating to the Liability of Employers* (Toronto: LK Cameron for The Legislative Assembly of Ontario, 1913), BOAONIWG, Tab 24.

[34] Ann Del Biano and Paul Demers, "Trends in compensation for deaths from occupational cancer in Canada: a descriptive study", *CMAJ Open*, 1(3), BOAONIWG, Tab 20.

27. Scientists can't and don't research every possible occupational hazard; there is often a long time between even compelling circumstantial evidence of hazards and purposeful research into causal mechanisms. Based on the circumstantial evidence of death rates compiled by their actuaries, Canadian insurance companies knew enough about the dangers of asbestos to stop selling life insurance policies to asbestos workers in 1918. But no full-scale scientific studies were done on asbestos workers until nearly forty years later in the 1950s. In the meantime, thousands of workers were exposed to a deadly substance.[35] Surely this attempt by insurers to maintain their capital in the face of uncertainty was not an irrational decision based on "no evidence". Neither is the reliance of the WCAT on the more refined circumstantial evidence in the instant case. The legislature has made clear where the burden of uncertainty should lie.

28. Shifting the burden of occupational disease to workers would hurt the most vulnerable. Many of IAVGO's clients and ONIWG's members face additional barriers in accessing justice. They are non-unionized workers in precarious employment. Many are new immigrants for whom English is a second-language, who struggle to even understand the basic requirements to launch an appeal. They rarely have any records of workplace exposures and cannot afford to pay for complex medical reports. For precarious workers, the burden of proving claims to a restrictive standard of scientific certainty would exclude them from the workers' compensation scheme.

ii. The need for certainty would undermine health and safety

29. This Court has observed the power imbalance that informs virtually all facets of the employment relationship.[36] This imbalance includes the employer's physical control of the workplace. Usually, only the employer has documents proving exposure to workplace carcinogens. Only the employer has unfettered access to the workplace, and the employer alone determines who else may access the workplace and where, when and by whom exposure measurements are taken. When they are taken, only employers and a few large unions are able to maintain records – and determine when they are destroyed.

30. In this case, the WCAT struggled with the lack of historical records of exposure.[37] If this Court imposes a more restrictive standard of proof, it would effectively establish a rule in occupational disease claims that absence of evidence is the evidence of absence. This would undermine health and safety by discouraging employers from generating and keeping

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[35] S. Epstein, *The Politics of Cancer Revisited* (USA: East Ridge Press, 1998), BOAONIWG, Tab 21, at 55.
[36] *Wallace v. United Grain Growers Ltd.,* [1997] 3 SCR 701, 1997 CanLII 332, BOAONIWG, Tab 19, para. 92.
[37] WCAT Decision, JAR, Volume 1, p. 47, para. 188.

information about workplace hazards, for fear that such records might later be used as evidence in claims.

iii. The need for certainty would undermine rehabilitation

31. Increasing the standard of proof of causation also undermines the legislative goal of facilitating workers' return to work and rehabilitation into the workforce and community.[38]

32. Exclusion from compensation is not just a matter of financial benefits. As this Court has observed, beyond the financial benefits at stake, injured workers denied compensation "are also deprived of ameliorative benefits, such as vocational rehabilitation services, medical aid and a right to accommodation, which would clearly assist them in preserving and improving their dignity by returning to work when possible".[39] The Court has consistently emphasized the crucial importance of work and employment as elements of human dignity.[40]

33. ONIWG and IAVGO regularly see how workplace injury and disease marginalize injured workers both in society and the workforce. We see the importance of compensation in injured workers' lives and their sense of dignity, and the devastating effects when workers are unfairly excluded.

PART IV – NATURE OF THE ORDER SOUGHT CONCERNING COSTS

34. ONIWG and IAVGO seek no costs and ask that no costs be awarded against them.

PART V – NATURE OF THE ORDER SOUGHT

35. ONIWG and IAVGO respectfully seek to present oral submissions not to exceed 10 minutes.

ALL OF WHICH is respectfully submitted this 21st day of December 2015.

Ivana Petricone (LSUC # 19656P)

Maryth Yachnin (LSUC #51467L)

Joel Schwartz (LSUC #51155J)

IAVGO COMMUNITY LEGAL CLINIC
Counsel for the Interveners, ONIWG and IAVGO

[38] *WSIA*, *supra*.
[39] *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, [2003] 2 SCR 504, 2003 SCC 54, BOAONIWG, Tab 15, para. 104.
[40] *Ibid.*

PART VI – TABLE OF AUTHORITIES

Case	**Paragraph(s) referenced**
Decision No. 72, [1986] O.W.C.A.T.D. No. 120, 2 W.C.A.T.R.28	10
Decision No. 268/95, [1996] O.W.C.A.T.D No. 1038	13
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Decision No. 432/02, 2004 ONWSIAT 2311 (CanLII)	13,18
Decision No. 452/94, 1997 CanLII 13131 (ON WSIAT)	13
Decision No. 473/91, [1994] O.W.C.A.T.D. No. 691, 32 W.C.A.T.R. 14	13
Decision No. 688/96, [1998] O.W.S.I.A.T.D. No. 402	13
Decision No. 955/95, [1998] O.W.S.I.A.T.D. No. 858	13
Decision No. 1024/05, [2006] O.W.S.I.A.T.D. No. 236, 2006 ONWSIAT 224	13
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Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur, [2003] 2 SCR 504, 2003 SCC 54	31
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Other Authorities	**Paragraph(s) Referenced**
Ann Del Biano and Paul Demers, "Trends in compensation for deaths from occupational cancer in Canada: a descriptive study*", CMAJ Open*, 1(3)	25
Samuel S. Epstein, *The Politics of Cancer Revisited* (USA: East Ridge Press, 1998)	26
Industrial Disease Standards Panel, *Compensation for Industrial Disease Under the Workers' Compensation Act of Ontario* by Terence G. Ison , LLD (Toronto: 1989)	9, 20
Ontario, *Inquiry into Pediatric Forensic Pathology in Ontario*. Report, Vol. 3 (Commissioner: The Honourable Stephen T. Goudge)	21
Ontario, Workmen's Compensation Commission, *Final Report on*	23

Laws Relating to the Liability of Employers (Toronto: LK Cameron for The Legislative Assembly of Ontario, 1913)	
Brock Smith, *Final Report of the Chair of the Occupational Disease Advisory Panel* (2005), online: http://www.wsib.on.ca/ [ODAP Report]	10, 13
Paul C. Weiler, *Protecting the Worker from Disability: Challenges for the Eighties* (Ontario: Ministry of Labour, 1983),	11

PART VII – STATUTES

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A

English

1. The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:
   1. To promote health and safety in workplaces.
   2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
   3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
   4. To provide compensation and other benefits to workers and to the survivors of deceased workers.

119. (1) The Board shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.
(2) If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

121. The Board may reconsider any decision made by it and may confirm, amend or revoke it. The Board may do so at any time if it considers it advisable to do so.

123 (5) No proceeding by or before the Appeals Tribunal shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court.

124. (1) The Appeals Tribunal shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.
(2) If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

129. The Appeals Tribunal may reconsider its decision and may confirm, amend or revoke it. The tribunal may do so at any time if it considers it advisable to do so.

Francais

1. La présente loi a pour objet d'accomplir ce qui suit en pratiquant une saine gestion financière assortie de l'obligation de rendre des comptes :
   1. Promouvoir la santé et la sécurité en milieu de travail.
   2. Faciliter le retour au travail et le rétablissement des travailleurs qui subissent une lésion corporelle survenant du fait et au cours de l'emploi ou qui souffrent d'une maladie professionnelle.
   3. Faciliter la réintégration sur le marché du travail des travailleurs ainsi que des conjoints des travailleurs décédés.
   4. Indemniser les travailleurs ainsi que les survivants des travailleurs décédés et leur fournir d'autres prestations.

119. (1) La Commission rend sa décision selon le bien-fondé et l'équité de chaque cas et n'est pas liée par la jurisprudence.
(2) Si, relativement à une demande de prestations dans le cadre du régime d'assurance, il n'est pas possible dans les circonstances de décider d'une question parce que les preuves pour ou contre ont approximativement le même poids, la question est réglée en faveur de la personne qui demande les prestations.
124. (1) Le Tribunal d'appel rend sa décision selon le bien-fondé et l'équité de chaque cas et n'est pas lié par la jurisprudence.
(2) Si, relativement à une demande de prestations dans le cadre du régime d'assurance, il n'est pas possible dans les circonstances de décider d'une question parce que les preuves pour ou contre ont approximativement le même poids, la question est réglée en faveur de la personne qui demande les prestations.
129. Le Tribunal d'appel peut réexaminer sa décision et peut la confirmer, la modifier ou la révoquer. Il peut le faire à n'importe quel moment s'il le juge souhaitable.

***Workers' Compensation Act,* R.S.B.C. 1996, c. 492**

255 (1) Any decision or action of the chair or the appeal tribunal under this Part is final and conclusive and is not open to question or review in any court.
(2) Proceedings by or before the chair or appeal tribunal under this Part must not
(a) be restrained by injunction, prohibition or other process or proceeding in any court, or
(b) be removed by certiorari or otherwise into any court.
(3) The Board must comply with a final decision of the appeal tribunal made in an appeal under this Part.
(4) A party in whose favour the appeal tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the Supreme Court.
(5) A final decision filed under subsection (4) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.