DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT DECISION DATE: **January 03, 2019**

WCAT DECISION NUMBER: **A1702737**

WCAT PANEL: **Guy Riecken**

RE: Richard Thompson v. Myron Effa, Campbell Construction Ltd., 838 Broughton Holdings Ltd. and The Corporation of the City of Victoria
Victoria Registry No. 165050
Section 257 Determinations
WCAT No. A1702737

Applicants:	Campbell Construction Ltd. and 838 Broughton Holdings Ltd. (the "Defendants")
Respondents:	Richard Thompson (the "Plaintiff")
	The Corporation of the City of Victoria (the "Defendant")
Interested Person:	Themis Security Services Ltd.
Representatives:	
For Applicants:	Justine Forsythe Whitelaw Twining Law Corporation
For Respondents:	
• Richard Thompson	Rajinder Sahota Acheson Sweeney Foley Sahota LLP
• The Corporation of the City of Victoria	Caroline Alexander Carfra Lawton LLP

For Interested Person:	Willa Forbes Employers' Advisers Office

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

[1] The plaintiff, Richard Thompson, commenced a civil action with respect to injuries sustained when the defendant, Myron Effa, assaulted him on September 2, 2016, causing the plaintiff to fall into a trench that had been excavated across the roadway and the sidewalk in front of a construction project located at 838 Broughton Street (the site), in the City of Victoria, in the Province of British Columbia (the incident).

[2] In the same action, the plaintiff claims in negligence against the defendants Campbell Construction Ltd. (Campbell), 838 Broughton Holdings Ltd. (Broughton), and The Corporation of the City of Victoria (Victoria). At the time of the incident Campbell was acting as the general contractor for the construction of a new multi-storey residential building on the site which was owned by Broughton. Victoria owned the sidewalk and the roadway adjacent to the site. As part of the construction project Victoria had excavated a trench across the roadway and the sidewalk so that water service to the new building could be installed. The plaintiff was a security guard with Themis Security Services Ltd. (Themis), which had been retained by Campbell to provide security services at the site.

[3] Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning civil actions based on a disability caused by occupational disease, a personal injury, or death.

[4] On August 18, 2017 WCAT received a section 257 application from counsel for the defendants, Campbell and Broughton, seeking determinations of the status of the plaintiff, and of Campbell, Broughton, and Themis, at the time of the incident. On November 30, 2017 WCAT received a section 257 application from counsel for Victoria, seeking determinations of the status of the plaintiff and of Victoria. No request has been received for a determination of the status of the defendant, Myron Effa.

Issue(s)

[5] Determinations have been requested of the status of the plaintiff, of the defendants Campbell, Broughton, and Victoria, and of the plaintiff's employer Themis.

Workers' Compensation Appeal Tribunal

150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
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Jurisdiction and Method of Hearing

[6] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to making the WCAT decision (section 257(3)).

[7] WCAT is not bound by legal precedent (section 250(1) of the Act). WCAT must make its decision based on the merits and justice of the case but, in so doing, must apply a published policy of the board of directors of the Workers' Compensation Board (Board), operating as WorkSafeBC, that is applicable (section 250(2)). The applicable policies are found in the Board's *Assessment Manual* and in the Board's *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). Unless otherwise indicated, the policies referred to in this decision are those in effect at the date of the incident.

[8] Section 254(c) of the Act provides that WCAT has exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)).

[9] The court determines the effect of the certificate on the legal action.

[10] WCAT has received a copy of the transcript of the examination for discovery of the plaintiff held on February 28, 2018, and written submissions from counsel for the plaintiff and from counsel for the defendants Campbell, Broughton, and Victoria, respectively.

[11] WCAT has not been provided with an address for the defendant, Myron Effa, to which notice of the section 257 applications, or an invitation to provide written submissions, can be delivered. WCAT has been advised that the defendant, Myron Effa, was served with the plaintiff's amended notice of civil claim on July 26, 2017, but that he did not file a response, and that the plaintiff obtained a default judgment against him on March 2, 2018. The plaintiff's affidavit of service of the amended notice of civil claim on Mr. Effa indicates that he was served at the Victoria courthouse. It appears from the pleadings that Mr. Effa's address is unknown to the other parties, and legal counsel for Victoria has informed WCAT that it has no information concerning Mr. Effa's address. Mr. Effa has not been notified of the section 257 applications.

[12] WCAT invited Themis to participate as an interested person, and Themis is participating. An adviser from the Employers' Advisers Office has provided a written submission on behalf of Themis.

[13] In September 2016 the plaintiff submitted a claim for compensation to the Board with respect to the injuries sustained in the September 2, 2016 incident. Certain evidence from the claim file was disclosed to the parties to the civil action. I am considering that

evidence anew for the purposes of this application, and any prior Board decisions are not binding on me.

[14] None of the parties' legal counsel requested an oral hearing. The requested status determinations involve largely undisputed facts and matters of law and policy. To the extent that there are disputed facts, I am able to resolve them based on the written evidence and submissions. Accordingly, the application is being decided on the basis of the written evidence and submissions.

Background and Evidence

[15] In addition to the transcript of the examination of discovery of the plaintiff and documents from the plaintiff's workers' compensation claim file, WCAT has received the following documents:

- an unsigned witness statement to the Victoria Police Department by Rosalinde Pearce, a Themis security guard, dated September 3, 2016;
- a memorandum from the Board's Assessment Department, dated August 24, 2017, which states, in part, that, according to the Board's records:
  - Campbell Construction Ltd. has been registered with the Board since July 1, 1976 and was registered at the time of the September 2, 2016 incident;
  - there is no record of registration in the name of 838 Broughton Holdings Ltd.;
  - while there is no record of registration in the name of The Corporation of the City of Victoria, an account in the name of The City of Victoria has been registered with the Board since December 30, 1968 and was registered at the time of the September 2, 2016 incident;
  - an account in the name of Themis Security Services Ltd. has been registered with the Board since March 25, 2010 and was registered at the time of September 2, 2016 incident.
- an affidavit of Eric de Jong, construction supervisor for Victoria's Underground Utilities Operations Engineering and Public Works Department, sworn September 20, 2018; attached to the affidavit is a photograph of the location of the incident and a copy of Victoria's employer incident investigation report dated September 24, 2016;
- a statutory declaration of Cameron Scott-Polson, site superintendent for Campbell, sworn September 24, 2018;
- an affidavit of the plaintiff, Richard Thompson, sworn October 4, 2018;
- an affidavit of Helena Mitchell, a paralegal with legal counsel for the plaintiff, sworn October 5, 2018;

- a signed statement by Cedric Nagy, operations manager of Themis, dated October 12, 2018, stating that the site at which Themis was contracted to provide security was fenced and gated, and that Themis was responsible for providing security services within the worksite and to such an extent as to ensure there was no breach or interference with the fence and/or gate; he was unaware of any direction given to Themis security staff to patrol the area outside of the site.

[16] The following information is not disputed.

[17] The plaintiff started working for Themis as a security guard in May 2016. He worked part-time and was a permanent employee who was paid an hourly wage. He worked at locations and at times as assigned by Themis. Prior to the incident, the plaintiff had worked two to three shifts at the site, which he described as “static shifts” (as distinct from some “mobile” shifts he had previously worked for Themis that involved patrolling in a vehicle).

[18] On the day of the incident the plaintiff was assigned to work a shift at the site from 9:00 p.m. to 6:00 a.m. The plaintiff was required to be at the site 15 minutes prior to the start of his shift to receive a report from the security guard (in this case, Rosalinde Pearce) whose shift would end at 9:00 p.m. The worker, who drove to work from his home in Sooke, was in the habit of getting to work early. He would stop on the way to buy a coffee at Tim Hortons and then, once he arrived at a work location, he would sit in his parked truck drinking coffee until he started work.

[19] On the day of the incident the plaintiff followed his routine. At approximately 8:10 to 8:15 p.m. he arrived at Broughton Street near the construction site and drank his coffee in his truck. He could see the trench that crossed Broughton Street and the sidewalk in front of the construction site, which continued into the site. The trench crossed the part of Broughton Street where the plaintiff had parked on previous occasions when working at the site. The part of the trench that crossed the street was covered with metal plates, and the part that crossed the sidewalk was covered with two pieces of plywood. The plaintiff noticed that part of the trench was not covered, which the plaintiff considered to be a hazard. (In the colour photograph provided by Victoria, it can be seen that there is a large gap between the metal plate and the plywood at the point where the roadway meets the sidewalk.)

[20] The plaintiff, who was wearing his Themis uniform, got out of his truck to speak to Rosalinde Pearce. She was inside the perimeter chain link fence of the building site and the plaintiff was outside the fence on the sidewalk speaking to her. She mentioned there was a man up the street who had been yelling. At approximately 8:20 p.m. while Ms. Pearce was speaking to the plaintiff about the man (who is now known to be Myron Effa), the man, Myron Effa, approached the plaintiff and spoke to the plaintiff and Ms. Pearce. He asked them if they were royalty, and this and his other comments led the plaintiff to think Mr. Effa was mentally disturbed. The plaintiff cautioned Mr. Effa to

stay away from the trench. Mr. Effa was apparently offended, and he pushed or kicked the plaintiff against the fence and as the plaintiff came back off the fence toward Mr. Effa, Mr. Effa kicked him again and the plaintiff fell into the trench. (In her statement to the Victoria Police Department, Ms. Pearce says that after Mr. Effa first pushed and kicked the plaintiff, the plaintiff kicked and pushed back at Mr. Effa, and then Mr. Effa kicked the plaintiff again and the plaintiff fell into the trench.)

Law and Policy

[21] Section 1 of the Act includes the following definitions:

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

[22] RSCM II policy item #6.10, "Nature of Employment Relationship," provides that, where a person contracts with another to provide labour in an industry covered by the Act, the Board considers that the contract may create one of three types of relationship in which the person doing the work may be an independent firm, a labour contractor, or a worker. The policies in the Board's *Assessment Manual*, including policy item #AP1-1-1, "Coverage under *Act* – Description of Terms," provide detailed provisions with respect to those categories.

[23] The *Assessment Manual* at policy item #AP1-1-1 includes general descriptions of the following terms:

- *Employer* – An employer is a person or entity employing workers. The employer may be a sole proprietor, a partner in a partnership, a corporation, or another type of legal entity. "Employer" is defined under section 1 for purposes of Part 1 of the *Act*. An employer is an "independent firm".

- *Worker* – A worker is an individual who performs work under a contract with an employer and has no business existence under the contract

independent of the employer. “Worker” is defined under section 1 for purposes of Part 1 of the *Act*. A worker cannot be an “independent firm”.

[24] The *Assessment Manual* at policy item #AP1-1-4, “Coverage under *Act* – Employers,” provides:

> **(a) General**
>
> An employer is a person or entity employing workers. The employer may be a sole proprietor, a partnership, a corporation, or another type of legal entity. An employer may also be an independent contractor who employs workers or a labour contractor who employs workers and elects to be registered as an employer. An employer is an “independent firm” for purposes of Item AP1-1-3.
>
> **(b) Proprietors and partners**
>
> Proprietors and partners of an unincorporated business are employers if the business has workers and independent operators if the business does not have workers. They do not have personal compensation coverage unless they have Personal Optional Protection.
>
> The children of a proprietor or partner who are paid by the proprietorship or partnership and have an employment relationship are considered to be workers, regardless of age. Spouses of single proprietors have been exempted from coverage, but the spouse of a partner who is working for the partnership and is paid for his or her services is a worker.
>
> **(c) Principals of corporations or similar entities**
>
> As the incorporated entity is considered the employer, a director, shareholder or other principal of the company who is active in the business operations of the company is generally considered to be a worker under the *Act*. A spouse, child or other family member of a principal or a shareholder for whom earnings are reported for income tax purposes is considered to be active in the business operations and a worker.
>
> …

[25] Policy item #C3-14.00 of the RSCM II explains that “in the course of the employment” generally refers to whether the injury happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of

the employment. “Arising out of the employment” generally refers to the cause of the injury. The policy recognizes that “employment” is a broader concept than “work.”

[26] Policy item #C3-14.00 sets out a list of nine non-medical factors to be considered in making a decision as to whether an injury arose out of and in the course of a worker’s employment. The policy explains that all of these factors may be considered in making a decision but that no one of them may be used as an exclusive test. This list is not exhaustive, and other relevant factors may also be considered. As well, other policies in Chapter 3 of the RSCM II may provide further guidance. The nine factors are, , as follows:

1. Whether the injury occurred on the employer’s premises;
2. Whether the worker was doing something for the employer’s benefit when the injury occurred;
3. Whether the worker was acting on the employer’s instructions at the time of the injury;
4. Whether the injury occurred while the worker was using equipment supplied by the employer;
5. Whether the injury occurred while the worker was being paid (picking up their pay);
6. Whether the injury occurred during a time period for which the worker was being paid;
7. Whether the injury occurred as result of the activity of the employer or a fellow employee or the worker;
8. Whether the injury occurred while the worker was doing something that was part of his job; and,
9. Whether the injury occurred while the worker was being supervised by the employer.

[27] Policy item #C3-18.00 of the RSCM II provides guidance for differentiating between a worker’s employment functions and a worker’s personal actions, when determining whether a personal injury or death arises out of and in the course of the employment. The policy recognizes that there is a broad intersection and overlap between employment and personal affairs. An incidental intrusion of personal activity into the process of employment is not a bar to compensation. Conversely, an incidental intrusion of some aspect of employment into the personal life of a worker at the moment of an injury or death does not automatically entitle the worker to compensation. The policy states, in part, that:

> In the marginal cases, it is impossible to do better than weigh the employment features of the situation against the personal features to reach a conclusion, which can never be devoid of intuitive judgment, as to whether the test of employment connection has been met. …

[28] Policy item #C3-19.00 states the general principle that injuries occurring in the course of travel between a worker's home and the normal place of employment are not compensable. The policy also states, in part:

> **A. Regular Commute**
>
> An employment connection generally begins when the worker enters the employer's premises for the commencement of a shift, and terminates on the worker leaving the premises following the end of the shift.
>
> …
>
> The following provides guidance as to how some of the factors in Item C3-14.00 may be applied when considering specific cases relating to a worker's regular commute.
>
> **1. On Employer's Premises**
>
> Did the injury or death occur on the employer's premises? If so, this is a factor that favours coverage.
>
> It is the responsibility of an employer to provide a safe means of access to and egress from the place of work. Thus, where a worker is traveling by public roadway to a place of work that is not adjacent to the public roadway, and must travel along a captive road or through a special hazard before reaching the employer's premises, the employment connection may begin at the point of departure from the public roadway rather than at the point of entry to the employer's premises.
>
> It is not considered significant that an injury or death occurs while a worker is seeking to gain access to the employer's premises by a method that is different from that which the employer intends. However, it may be considered significant if the worker chooses a method that he or she has been advised is specifically forbidden by the employer, or if the worker chooses a route that is clearly dangerous.
>
> …
>
> **b. Special Hazards of Access Route**
>
> Where a place of work is so located that for access and egress the worker must pass through special hazards beyond the ordinary risks of travel, an injury or death sustained from those hazards may be one arising out of and in the course of the employment.

> A "special hazard" for the purpose of this policy is one that goes beyond those hazards normally encountered by the traveling public and which the worker would not normally encounter, but for the location of the employer's premises.
>
> For a claim to succeed on the grounds of a special hazard, the hazard need not lie on the only route to the employer's premises. It is sufficient if it is on the worker's regular commute route.
>
> **c. Extension of the Employer's Premises**
>
> An injury or death that occurs to a worker in the immediate approaches to the place of work, though still on the public roadway, may be considered to arise out of and in the course of the employment if the hazard causing the injury or death is a spill-over from the employer's premises.
>
> …

Status of the plaintiff, Richard Thompson

[29] It is not disputed that at the time of the incident the plaintiff was a worker employed by Themis as a security guard.

[30] The issue in dispute is whether the worker's injuries arose out of and in the course of his employment.

[31] In addressing the factors in policy item #C3-14-00 I will also refer to relevant portions of policy items #C3-18.00 and #C3-19.00.

On Employer's Premises

[32] Policy provides that if an injury occurs on the employer's premises, this generally favours worker's compensation coverage.

[33] Victoria's position is that the injuries sustained by the plaintiff as a result of the incident which out of and in the course of his employment. Victoria refers to the nine factors in policy item #C3-14.00 and the statement in policy item #C3-19.00[1] that compensation coverage generally begins when a worker enters the employer's premises for the commencement of a shift.

[1] Victoria's counsel refers to the former policy item #18.01, "Entry to Employers Premises," as it read prior to amendments to Chapter 3 of the RSCM II that came into effect on July 1, 2010. The equivalent provision in effect at the time of the incident is found in policy item #C3-19.00.

[34] Victoria argues that the plaintiff's injuries occurred on his employer's premises, in the sense that he was injured at his place of work. Victoria notes that in the employer's report of injury which Themis filed with the Board (and which is found in the documents from the plaintiff's claim file) Themis confirmed that the incident occurred at the employer's premises / authorized work site.

[35] Victoria notes that the plaintiff, in describing his job duties during his examination for discovery, stated that when working a static shift at the site his job duties included a patrol of the site along Broughton Street by walking along the sidewalk on Broughton Street to the intersection with Blanshard Street. He also stated that his duties included conducting a safety inspection of the site upon first coming on shift, and ensuring that the buildings in the area were secure and free from trespassers (EFD[2] of the plaintiff, Q 85 to Q 88).

[36] The submissions of the defendants Campbell and Broughton, with respect to the plaintiff's status, are similar to Victoria's submissions.

[37] The plaintiff relies on his affidavit which was filed in relation to the section 257 application. He argues that the incident occurred outside his work site, since it occurred on the sidewalk and at the intersection of the sidewalk and the roadway (at the gap in the coverings over the trench). Therefore, it is the plaintiff's position that the incident and his injuries did not occur on his "employer's premises."

[38] Themis relies on the statement of Cedric Nagy and submits that the area where the incident occurred was immediately adjacent to and outside the "employer's premises."

[39] Policy item #C3-14.00 of the RSCM II states:

> An employer's premises includes any land or buildings owned, leased, rented, or controlled (solely or shared) for the purpose of carrying out the employer's business. An employer's premises may also include:
>
> - captive roads (see Item C3-19.00, *Work-Related Travel*); and
> - employer-provided facilities (see Item C3-20.00, *Employer-Provided Facilities*).

[40] The evidence does not suggest that the plaintiff's employer, Themis, owned, leased or rented the Broughton site. However, Themis may be seen as exercising shared control over the site for a purpose related to its business operations by reason of providing security services at the site, including ensuring that the fence and/or gate around the site were not breached by trespassers.

[2] Examination for Discovery; all references to the plaintiff's testimony are his answers to the referenced questions at discovery.

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[41] Even if the provision of security services at the site does not amount to the kind of control contemplated by this policy, I consider the site to come within the meaning of "employer's premises" in the policy, by reason of Themis' business operations occurring at the site pursuant to its contract with Campbell and by reason of the site being a work location for Themis' employees, including the plaintiff. For the purpose of the analysis under policy item #C3-14.00, I consider the Campbell / Broughton construction site, at which Themis had been contracted to provide security, to be the plaintiff's authorized assigned work location and therefore to be equivalent to the "employer's premises" for the purposes of the analysis of this factor under policy item #C3-14.00.

[42] A question remains, however, whether the incident that caused the plaintiffs' injuries, which occurred immediately outside the perimeter fence of the Campbell / Broughton building site, on property owned by Victoria, occurred at the plaintiff's assigned work location.

[43] It not disputed that it was Victoria, and not Campbell or Broughton, which conducted the excavation of the trench across the roadway and the sidewalk and into the Campbell / Broughton construction site. It is implicit in Eric de Jong's evidence and in Victoria's submissions that the steel plate and the plywood that covered the trench were put in place by Victoria's workers. It is not disputed that Victoria's workers installed the coverings over the trench and as well installed plastic pylons and safety tape to prevent (or at least discourage) pedestrians from walking along the portion of the sidewalk over or adjacent to the trench (Broughton's incident investigation report noted that these had been ripped down and that there was nothing preventing pedestrians from accessing the sidewalk, including an area with a hole through the inadequate sidewalk coverings).

[44] The question of whether the plaintiff's work location extended to the incident location on Victoria's property is made somewhat difficult by conflicting evidence provided at different times by the plaintiff and by Themis. As Victoria points out, in his discovery testimony (Q 85 to Q 88) the plaintiff stated that, when working on a static shift at the site, his job duties required him to:

(a) Conduct a safety inspection of the site upon coming on shift;

(b) Patrol the property along Broughton Street by walking along the sidewalk on Broughton Street to the intersection where Blanshard Street meets Broughton Street; and

(c) Ensure safety and make sure the buildings in the area were secure and free from trespassers.

[45] Victoria also points to the Employer's Report of Injury or Occupational Disease document that Mr. Nagy, Themis' operations manager, completed and submitted to the Board. Mr. Nagy indicated in that document that the plaintiff's actions at the time of the injury were for the purposes of Themis' business and that the incident occurred on the employer's premises/authorized worksite.

[46] The plaintiff and Themis, however, have also provided evidence to WCAT in relation to the section 257 application indicating that the plaintiff's work location did not extend beyond the perimeter fence and gate of the Campbell / Broughton site. In his October 4, 2018 affidavit (at paragraph 6), the plaintiff stated that, when the incident occurred, he "… was on the sidewalk outside of the Site" and that the "[i]ncident did not occur on my employer's premises." The submissions on behalf of the plaintiff also assert that when he was pushed into the trench the plaintiff was not on his employer's premises.

[47] In his October 12, 2018 statement, Mr. Nagy stated that the Campbell / Broughton site was gated and fenced, and that Themis was responsible for providing security services within the site "and to such an extent as to ensure that there was no breach or interference with the fence and/or gate." It was Mr. Nagy's understanding that the Themis security staff patrolled the area located within the fence and gate, and he was unaware of any direction given to security staff to patrol the area outside of the Campbell / Broughton site. With respect to policy item #C3-14-00, Themis' position in its submissions to WCAT is that the area where the incident occurred was immediately adjacent to and outside of the "employer's premises."

[48] The plaintiff's discovery evidence is capable of supporting a finding that his assigned work location extended to some areas outside the fence around the construction site, and that his duties included patrolling along the sidewalk outside the site. On the other hand, the plaintiff's affidavit evidence and the statement of Mr. Nagy could support a contrary conclusion, that the place outside the fence where he was injured was not part of his work location. It is difficult to reconcile the discovery evidence with the evidence given later in the section 257 proceeding.

[49] I do not interpret the evidence of Mr. Nagy as ruling out the possibility that the plaintiff's work location extended outside the fence. He stated that the security guards' duties included patrolling inside the fence, and also ensuring that the fence and gate were not interfered with. It is conceivable that some patrolling along the sidewalk outside the fence on Broughton Street would be done to ensure that the fence was not being interfered with. In addition, Mr. Nagy's statement that he was "not aware" that security guards were directed to patrol outside the fence does not amount to a direct contradiction of the plaintiff's discovery testimony that his duties included patrolling outside the fence.

[50] As for the plaintiff's evidence, where there is a difference between his compensation application and his discovery testimony on the one hand and his affidavit evidence on the other hand, I place more weight on the earlier application statements and the discovery evidence because he provided that evidence closer in time to the September 2016 incident. The plaintiff has not provided any persuasive evidence or argument explaining why the earlier evidence was not reliable.

[51] Having considered the matter, I find that it is likely that the plaintiff's duties were primarily focused on the area inside the fence, but that the scope of his work included some patrolling outside the fence on the sidewalk along Broughton Street. Accordingly, I find that the plaintiff's assigned work location included the area of the sidewalk along Broughton Street outside and adjacent to the fence. I find that the fact that the plaintiff was immediately outside the fence and on the sidewalk adjacent to the fence when the incident occurred favours workers' compensation coverage.

[52] Even if the plaintiff's work location did not extend to the sidewalk outside and adjacent to the fence, the discussion of the "employer's premises" factor in policy item #C3-19.00 of the RSCM II recognizes that there may be compensation coverage if a worker, while commuting to work, is injured while passing through a special hazard before entering onto the employer's premises. Similarly, if an injury occurs in the immediate approaches to a worker's place of work as a result of a hazard that is a spill-over from the employer's premises, the worker may be covered for workers' compensation purposes.

[53] The plaintiff's injuries, as described in his notice of civil claim, resulted from the plaintiff's fall into the trench as a result of Mr. Effa's assault. I have concluded that, even if the plaintiff's work location did not extend outside the perimeter fence and gate (as argued by the plaintiff and Themis), the trench and the gap in the coverings above the trench were a special hazard of the plaintiff's access route to his workplace.

[54] As noted earlier, policy item #C3-19.00 defines a "special hazard", for the purposes of the policy, as one that goes beyond the hazards normally encountered by the travelling public and which the worker would not normally encounter, but for the location of the employer's premises (or the assigned work location).

[55] In *WCAT-2015-01822* (*Guci v. Starline Architectural Windows Ltd., et al.*) a WCAT panel considered the case of a plaintiff (a tiler) who was employed at a high-rise building construction site to install tiles in the building[3]. The plaintiff had temporarily parked his vehicle on a public street near the construction site for the purpose of moving his tools from his vehicle to his work location in the building preparatory to commencing work. He planned to then return to his vehicle and move it to another location for the rest of the day. A large window fell from the 36th floor of the building, bounced off a truck, and landed on the worker's vehicle. The plaintiff narrowly missed being struck by the window and sued for psychological injury.

[56] The WCAT panel in *Guci v. Starline Architectural Windows Ltd., et al.* undertook a detailed analysis of the "special hazards of access route" provision in policy item #C3-19.00, including the history of this concept in the British Columbia workers' compensation system and the discussion of the principle in Larson's *Workers'*

[3] Previous decisions by WCAT and by its predecessor appellate tribunals are not binding, but may provide helpful analysis.

Compensation Law[4]. The panel concluded the installation of windows in the high-rise building which was under construction was a hazard of the plaintiff's work environment. In finding that the plaintiff's injury arose out of and in the course of his employment, the panel reasoned:

> [91] In this case, the plaintiff's employment required that he approach the high-rise construction site. The accident occurred as he was dropping off tools in preparation for his day's work, and involved the dropping of a window by two window installers before the window could be installed. The installation of windows in a high-rise was recognized as involving a potential hazard, which is why a control zone was established. As it happened, the window fell outside the control zone.
>
> [92] In the plaintiff's case, the installation of windows in the high-rise which was under construction was a hazard of his work environment. This hazard went beyond the normal risks of highway travel. The fact that some other members of the public would also encounter that risk would not preclude workers' compensation coverage. *Decision #50* [of the former commissioners of the Board] involved a type of railway crossing used in an industrial environment which differed from the type of railway crossing which would ordinarily be encountered by the travelling public. However, members of the general public who travelled to the industrial environment would also encounter such crossings, as this policy did not require that the industrial-type railway crossing be located in a captive-road setting. Accordingly, the special hazard need not be unique to workers.
>
> [93] I consider that the risks attendant on the installation of windows in a high-rise building under construction are sufficiently unusual as to amount to a hazard of the plaintiff's work environment. In this case, the plaintiff was employed at a high-rise construction site, and was required to approach that building (although still on a public road) to drop off his tools. There was a very close relationship between the plaintiff's employment at the high-rise construction site, and the risk of being struck by materials falling from the high-rise building (including tools or other debris which might fall by accident). The fact that the plaintiff was still on the public alley, rather than on the construction site itself, and the fact the hazard was not within the control of the plaintiff's employer, do not preclude workers' compensation coverage in such circumstances. I find that the

[4] LexisNexis Mathew Bender Online

> circumstances of the plaintiff's accident are such as to come within the terms of the policy at item #C3-19.00 regarding special hazards of the access route.

[57] I consider the circumstances in this case similar to those in *Guci v. Starline Architectural Windows Ltd., et al.* I view the fact that Victoria had placed plastic pylons and safety tape around the part of the trench that crossed the sidewalk (to dissuade pedestrians from accessing that part of the sidewalk) to reflect a recognition that the trench posed a hazard in spite of the steel plate and plywood coverings that had been placed over it. This conclusion is also supported by the plaintiff's evidence that he recognized the trench and the gap between the coverings to pose a hazard when he arrived for work on the day of the incident. I find that the trench, which had been dug to provide water services to the building under construction, was a hazard of the construction zone around the Campbell / Broughton site.

[58] I agree with the reasoning in *Guci v. Starline Architectural Windows Ltd., et al.* that the hazard need not be unique to the work location to amount to a "special hazard." The fact that some members of the public could also be exposed to the hazard does necessarily mean that the hazard is not a special hazard as defined in policy. The trench and the gap in the temporary coverings were beyond the kinds of hazards ordinarily encountered by the travelling public. The trench was closely associated with the construction project that the plaintiff's employer had been contracted to keep secure. As it was immediately adjacent to and outside the perimeter fence and gate, it was an area that the plaintiff would cross when accessing the entry into the Campbell / Broughton site. Even if the trench and sidewalk were not within the control of the plaintiff's employer, this does not preclude workers' compensation coverage for the plaintiff in the circumstances.

[59] For the "special hazards" principle in policy item #C3-19.00 to apply, the plaintiff's injuries must have been "sustained from those hazards." I recognize that the immediate cause of the worker falling into the trench was the assault upon him by Mr. Effa. However, the fact that there were multiple causes that contributed to the occurrence of the injuries does not preclude workers' compensation coverage.

[60] *Decision No. 10*, 1 W.C.R. 45[5], concerned a drunken fisher who drowned when he fell into the water whilst trying to jump on board a fishing vessel. The former commissioners of the Board reasoned (at page 46):

> No doubt the intoxication of the deceased was causative in producing the death. But it was not the sole cause. He must have been drunk for some

[5] This decision is no longer Board policy but it provides useful historical background to the development of current policy.

> time before arriving at the vessel; but his drunkenness did not kill him until its effect was combined with the hazards of his employment.
>
> Once it is apparent that a death was one arising out of and in the course of the employment, it does not cease to be so merely because some other factor, extrinsic to the employment, also had causative significance. …

[61] The foregoing reasoning is reflected in the discussion of the meaning of "arising out of the employment" in policy item #C3-14.00, which provides that employment factors need not be the sole cause of a worker's injury. They need only be of causative significance (meaning more than trivial or insignificant) to establish a sufficient causal connection. In this case the plaintiff's pleadings claim that it was the fall into the trench occasioned by the assault that caused his alleged injuries. It is reasonable to conclude that the hazard posed by the trench and the gap in the coverings was of causative significance and that the alleged injuries were sustained from the special hazard of the access route.

[62] I find that the circumstances of the incident and the plaintiff's resulting injuries come within the scope of policy item #C3-19.00 regarding special hazards of the access route. Accordingly, even if he was not yet on his "employer's premises" or at his assigned work location as contemplated by policy item #C3-14.00, as the plaintiff argues (but which I have not accepted), there was a strong connection between the plaintiff's employment and his injuries.

For the Employer's Benefit

[63] Relying on the plaintiff's discovery testimony, Victoria argues that part of the plaintiff's job was to ensure safety and that, in directing a member of the public (Mr. Effa) to stay away from the area around the trench, the plaintiff was doing something for the benefit of his employer, and that this weighs in favour of workers' compensation coverage.

[64] The plaintiff's position is that in speaking to his colleague Ms. Pearce who was still on shift about the hazard posed by the trench, and in trying to direct Mr. Effa away from the hazard, the plaintiff was not doing something that benefited his employer. The plaintiff states that he considered it the responsibility of his colleague who was still on shift to report the hazard posed by the trench, and that he was acting out of a sense of civic responsibility in trying to keep Mr. Effa away from the hazard.

[65] I view the plaintiff's activities at the time of the incident to have been of some minor benefit to his employer's business. The fact that the plaintiff was doing something that he might do as part of his work duties (hearing his colleague report to him about what had occurred during her shift such as a man yelling in the area, and warning a passerby who was approaching the area immediately adjacent to the fence about the hazard posed by the trench) can be seen as benefiting Themis to the extent that Themis was

responsible for security on the construction site and ensuring that the fence and gate were not interfered with. However, in the circumstances, I do not view the benefit to Themis as a significant factor.

Instructions from the Employer

[66] There is no evidence that the plaintiff was acting on specific instructions from his employer when he was speaking to his colleague about 40 minutes prior to the start of his shift, or in speaking to Mr. Effa about the hazard. This factor does not favour workers' compensation coverage.

Equipment Supplied by the Employer

[67] The plaintiff was not injured as a result of using equipment supplied by his employer. This factor does not favour workers' compensation coverage.

Receipt of Payment

[68] The plaintiff was not injured while receiving remuneration (drawing pay). This factor is neutral.

During a Time Period for which the Worker was Being Paid

[69] The policy provides that if the injury occurred during a period for which the worker was being paid a salary or during paid working hours, this factors favours workers' compensation coverage.

[70] The plaintiff was not injured during a period for which he was being paid wages or other compensation or during his regular working hours. The evidence is that he would have been paid only when his shift began at 9:00 p.m., but that his duties included arriving 15 minutes before the start of his paid shift to receive a report from the security guard going off shift. For the purposes of this policy, I consider the worker's regular working hours to begin at 8:45 p.m., even if he was not being his hourly wage until 9:00 p.m. Accordingly, when the incident occurred at approximately 8:20 p.m., it was about 25 minutes prior to the start of the plaintiff's regular working hours. Generally, if a worker is injured prior to the start of their shift, this weighs against workers' compensation coverage.

[71] Victoria, however, cites two previous WCAT decisions that dealt with workers who were injured on the employer's premises prior to the commencement of their shifts: *WCAT-2008-01919/WCAT-2008-01920* (*Davenport v. Harmer*) and *WCAT-2015-00367*. In each case, a WCAT panel found that the worker's injuries arose out of and in the course of their employment.

[72] In *Davenport v. Harmer* the worker arrived in the employer's parking lot early and was sitting in his car reading a newspaper when the accident occurred about 20 minutes prior to the commencement of his shift. In considering the policy factors respecting injuries that occur in parking lots, (then found RSCM II policy item #19.20, now found in policy item #C3-20.00), the WCAT panel addressed the question of the whether the injury occurred close to the start or stop of the worker's shift. The panel noted that, as the accident did not occur at the plaintiff's usual place of employment, the plaintiff did not have the option of commencing work early and that his time sitting in the parking lot could be characterized as being "personal time." The panel also thought that, given the time and duration of the plaintiff's commute, his arrival 20 minutes early for the start of the course he was attending could be viewed simply as being punctual. The panel found that the plaintiff was covered for workers' compensation coverage purposes during his travel to a temporary work location. The panel noted that even where workers have no discretion regarding the start time for their work, it is obvious that there will be some variation in the time of their arrival. Noting that the accident occurred on the employer's premises and that it involved the actions of a fellow employee, the panel concluded that the plaintiff in that case was not outside of the scope of his employment due to his arrival 20 minutes prior to the start of the course he was attending.

[73] In *WCAT-2015-00367* the panel considered the case of a worker who habitually arrived one hour early for work and sat in her car and smoked a cigarette before making her way into the employer's lunch room to pass some time before starting her shift. She was injured when she twisted her ankle on some loose gravel while walking across the employer's parking lot towards the entrance to the plant. In considering the facts in relation to policies policy item #C3-20.00, the panel found (at paragraphs 61 to 62) that the worker's habit of arriving at work early, sitting in her car smoking, and spending some time in the lunch room before her shift, involved personal activities but did not involve a substantial deviation from her employment. The panel accepted that historically the employer did not object to the worker arriving at work early. The panel concluded that the worker's injury arose out of and in the course of her employment.

[74] The present case differs from the two previous cases cited by Victoria, in that the plaintiff's injuries did not occur on the employer's parking lot but occurred up the public roadway from where the plaintiff had parked his vehicle, in an area on Victoria's property adjacent to and immediately outside the perimeter of the Campbell / Broughton construction site.

[75] However, there are some similarities to the cases cited by Victoria. The plaintiff, who had a considerable commute from his home in Sooke, was in the habit of arriving early and sitting in his truck while drinking coffee before the commencement of his scheduled work duties at 8:45 p.m. I view this a personal activity, as was his choice to leave his vehicle and stand at the perimeter fence speaking to his colleague prior to the commencement of his shift. However, there was some overlap at that time with his

employment activities, in that his colleague told him about the man in the vicinity whom she had heard shouting, and in that he spoke to her about the trench that lay immediately outside the fence and continued into the construction site. While still on his personal time, he was engaged in activity that he would also be engaged in during his regular work time (hearing his colleague report about events occurring during her shift). In addition, he was exposed to the same hazard at the immediate approach to the fence and gate that he would be exposed to when entering the work location at the beginning of his shift (the trench). As a result of these factors, I find that the timing of the incident, about 25 minutes before the commencement of his regular work activities, does not weigh significantly against workers' compensation coverage for the plaintiff's injuries.

Activity of the Employer or a Fellow Employee of the Worker

[76] The plaintiff's injuries were not caused by an activity of the plaintiff's employer or of a fellow employee of the plaintiff. This factor does not weigh in favour of workers' compensation coverage.

Part of the Job

[77] If the injury occurred while the plaintiff was performing activities that were part of his job this would favour workers' compensation coverage. This factor requires consideration of the scope of the plaintiff's job duties.

[78] I have found that the plaintiff was engaged in an activity associated with his job (listening to his colleague describe an event that occurred during her shift in the vicinity of the work site) immediately before the incident occurred. The activity that appears to have precipitated Mr. Effa's assault, however, was the plaintiff's warning to Mr. Effa to stay away from the trench. The plaintiff asserts in his affidavit that he was not performing a job duty when he warned Mr. Effa, but was acting out a sense of civic responsibility. If the plaintiff was acting solely out of a sense of civic duty in doing something unrelated to his employment, I would view his warning to Mr. Effa as a personal activity rather than as a part of the plaintiff's work duties.

[79] While a sense of civic duty may well have been the plaintiff's immediate motivation with respect to warning Mr. Effa not to approach to the hazard posed by the trench, I note that Themis asserts that part of a security guard's duties included ensuring that the fence and gate were not breached. Presumably, this would involve engaging with a member of the public who appeared to be trying, or even intending, to breach the fence or gate. I find that it is likely that, given the nature of the plaintiff's employment as a security guard, his job duties included engaging with members of the public on some occasions. In that sense, although there is no evidence that Mr. Effa was about to interfere with the fence, engaging with him verbally to warn him away can be seen as a kind of activity that the plaintiff would perform as part of his work duties.

[80] Accordingly, while the plaintiff's verbal warning to Mr. Effa had a personal component, it overlapped with some aspects of the plaintiff's employment activities. I find that this factor tends to favour workers' compensation coverage to a minor degree.

Supervision

[81] There is no evidence that the incident occurred while the plaintiff was being supervised by his employer. It was the nature of the plaintiff's job to work alone without supervision. I regard this factor as relatively neutral.

[82] I find that the majority of the factors in policy item #C3-14.00, as well as the special hazard of the trench within the meaning of policy item #C3-19.00, support worker's compensation coverage for the worker at the time of the incident.

[83] I will also address the further submission and evidence received from the plaintiff after the close of submissions. On October 22, 2018, the WCAT Registry wrote to the parties' respective counsels and advised that submissions were considered complete. On December 10, 2018, WCAT received a letter from counsel for the plaintiff setting out a further submission based on Ms. Pearce's September 3, 2016 e-mail statement to the Victoria Police Department. Counsel explained that the police records were only made available to the plaintiff on November 5, 2018, and that it was important that WCAT had this information. The gist of the plaintiff's new submission is that Ms. Pearce's evidence shows that the plaintiff pushed and kicked back at Mr. Effa, and that in doing so the plaintiff acted contrary to his training as a security guard and took himself out of his employment.

[84] Although Ms. Pearce's statement was received after the close of submissions, I have admitted it into evidence. Having considered Ms. Pearce's statement and the new submission on behalf of the plaintiff, I have decided that it is not necessary to invite further submissions from the other parties in reply. For the following reasons I have decided that Ms. Pearce's evidence and the new submission on behalf of the plaintiff do not establish that the plaintiff, through his conduct, took himself outside of his employment.

[85] Without referring to it, the plaintiff's December 10, 2018 submission implicitly raises the discussion of unauthorized activities, including assaults, in policy item #C3-17.00 of the RSCM II. This policy provides guidance for determining a worker's entitlement to compensation where a worker's participation in an unauthorized activity may have had causative significance in the worker's injury. It discusses various factors in policy item #C3-14.00, such as the factors concerning instructions of the employer and the activity of the employer, a fellow employee or the worker

[86] Under the heading "B. Instructions of the Employer," policy item #C3-17.00 states that it is clearly impossible for an employer to lay down fixed rules covering every detail of a

worker's employment activity, and that carelessness or exercising bad judgment are not bars to compensation where it is reasonable that a worker would exercise some discretion. On the other hand, a worker's injury may not be considered to arise out of and in the course of employment if the worker's act is specifically prohibited by the employer or is known or should have been reasonably have been known to the worker to be unauthorized, or if the worker had been previously warned against doing it.

[87] In this case the worker has stated that he was trained not to engage physically with an aggressive individual but to walk away and call 911. He testified that this was part of the training he received to become a security guard. As his job with Themis was not part his first security guard job, and as he received his training prior to getting his first job, I do not interpret the evidence as showing that the worker was trained or instructed by Themis not to engage physically with an aggressive person. Nor does the evidence indicate that the plaintiff had been previously warned by Themis about engaging physically with members of the public. At the same time, I accept that since security guard training programs are likely similar, and given the nature of the plaintiff's employment with Themis, the plaintiff should reasonably have known that Themis expected that he would not engage physically with an aggressive person. In her statement Ms. Pearce refers to the plaintiff kicking back at Mr. Effa after Mr. Effa initiated the assault. Even if this were true (it is not consistent with the plaintiff's own evidence), I do not consider the plaintiff's response to Mr. Effa, as described by Ms. Pearce, would be a substantial departure from the plaintiff's employment.

[88] In reaching this conclusion, I have also considered the discussion of assaults in policy item #C3-17.00. The policy states that if a worker's injury is the result of an assault that arises out of and in the course of employment, the worker may be entitled to compensation. However, if the worker initiated the assault, this may constitute a substantial deviation from the worker's employment. The policy states that the Board considers the spontaneity of the assault, whether the worker's aggressive response was in proportion to the triggering incident or provocation, and whether there is connection between the employment and the subject matter of the dispute.

[89] The policy also provides that, just as a worker's initiation of an assault may take the worker out of the course of the employment, an assailant's attack on a worker may bring the worker into the course of the employment even though the assault does not occur at the workplace or during working hours. The circumstances are carefully considered so as to determine whether the employment was of causative significance. If the employment aspects of the assault are more than just an incidental intrusion into the personal life of the worker at the moment of injury, the worker may be entitled to compensation.

[90] In her statement to the police Ms. Pearce said that the man (now known to be Mr. Effa) walked over and started talking to the plaintiff. Ms. Pearce believed the man was

intoxicated because she could smell alcohol on his breath from where she was standing on the inside of the fence of the construction site. The man was not making any sense and when the plaintiff warned him to "watch his step," the man said "no lets walk over it [the trench covering] together." The plaintiff said "no I dont think so," and when the plaintiff moved in between the man and the hole, the man told the plaintiff that he would push the plaintiff into the hole. The man then pushed at the plaintiff and kicked him, and the plaintiff pushed back and "kicked at him." The man then kicked the plaintiff into the hole and walked away.

[91] While, by Ms. Pearce's account, the plaintiff pushed and kicked back at Mr. Effa, he did not initiate the physical altercation. He appears to have responded spontaneously to Mr. Effa's spontaneous and unprovoked assault on him, and I do not consider the plaintiff's response, as described by Ms. Pearce, to have been disproportionately aggressive.

[92] I am unable to conclude that the plaintiff's actions in engaging, first verbally and then physically, with Mr. Effa amounted to a substantial deviation from the course of the plaintiff's employment.

[93] I find that any injuries suffered by the plaintiff as a result of the assault and the fall into the trench arose out of and in the course of his employment.

Status of the defendant, Campbell Construction Ltd.

[94] It is not disputed that Campbell was an employer engaged in an industry within the meaning of Part 1 of the Act at the time of the incident.

[95] Victoria has not addressed the issue of Campbell's actions or conduct.

[96] Campbell asserts that any of its action or conduct, or action or conduct of its employees, which allegedly caused or contributed to the plaintiff's injuries, arose out of and in the course of the employment. Campbell states that it was acting as general contractor for the construction project and that its employees were involved in the construction of the building. While Campbell denies liability (which is not an issue before me), it submits that the plaintiff's claim against Campbell arises out of the employment activities of Campbell's employees at the construction site.

[97] The submissions on behalf of the plaintiff do not address the status of Campbell or Campbell's actions or conduct.

[98] Likewise, Themis does not address the status of Campbell or Campbell's action or conduct.

[99] Based on the evidence provided by the Board and by Campbell, and Campbell's uncontradicted submissions, I find that at the time of the incident Campbell was an employer in industry within Part 1 of the Act, and that any action or conduct of Campbell Construction Ltd., or of its employees or agents, which caused the alleged breach of duty of care, arose out of and in the course of the employment within the scope of Part 1 of the Act;

Status of the defendant, 838 Broughton Holdings Ltd.

[100] Counsel for the defendants Campbell and Broughton did not address in any detail the status of Broughton at the time of the incident. In addressing the status of Campbell, counsel included Broughton in the assertion that any action or conduct caused the alleged breach of duty of care of their operations/employment. However, counsel has not provided or referred to evidence that shows that Broughton was an employer. Such evidence might include information to the effect that Broughton employed workers, whether on the construction project in question or elsewhere. This evidence has not been provided. Moreover, the Board has advised that Broughton was not registered with the Board as an employer (although non-registration in itself is not determinative).

[101] I find that sufficient information has not been provided to enable me to determine the status of 838 Broughton Holdings Ltd. at the time of the incident, and, accordingly, I am not certifying as to its status. If a certification of the status of 838 Broughton Holdings Ltd. is required, a supplemental determination may be requested.

Status of the defendant, The Corporation of the City of Victoria

[102] It is not disputed that Victoria was an employer at the time of the incident and that its employees undertook work on the trench and the coverings that were placed over it.

[103] I find that, at the time of the incident, Victoria was an employer and that any action or conduct of Victoria, or its employees or agents, that caused or contributed to the alleged breach of duty of care arose out of and in the course of the employment.

Status of the plaintiff's employer, Themis Security Services Ltd.

[104] A determination of the status of Themis was also requested. In determining the status of the plaintiff, I found that Themis was the plaintiff's employer at the time of the incident. However, as Themis is not a party to the civil action, it does not appear necessary for the purposes of sections 10(1) and 257 of the Act to certify as to the status of Themis. If certification of Themis' status is required, a supplemental determination may be requested.

Conclusion

[105] I find that at the time the cause of action arose on September 2, 2016:

(a) the plaintiff, Richard Thompson, was a worker within the meaning of Part 1 of the Act;

(b) any injuries suffered by the plaintiff, Richard Thompson, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(c) the defendant, Campbell Construction Ltd., was an employer engaged in an industry within the meaning of Part 1 of the Act;

(d) any action or conduct of the defendant, Campbell Construction Ltd., or its servants or agents, which caused the alleged duty of care, arose out of and in the course of the employment within the scope of Part 1 of the Act;

(e) the defendant, The Corporation of the City of Victoria, was an employer in an industry within the meaning of Part 1 of the Act; and,

(f) any action or conduct of the defendant, The Corporation of the City of Victoria, or its servants or agents, which caused the alleged breach of duty of care, arose out of and in the course of the employment within the scope of Part 1 of the Act.

Guy Riecken
Vice Chair

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NO. 165050
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

RICHARD THOMPSON

PLAINTIFF

AND:

MYRON EFFA, CAMPBELL CONSTRUCTION LTD.,
838 BROUGHTON HOLDINGS LTD. and
THE CORPORATION OF THE CITY OF VICTORIA

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Defendants, CAMPBELL CONSTRUCTION LTD. and 838 BROUGHTON HOLDINGS LTD., in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, September 2, 2016:

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

2. Any injuries suffered by the Plaintiff, RICHARD THOMPSON, arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

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

4. Any action or conduct of the Defendant, CAMPBELL CONSTRUCTION LTD., or its servants or agents, which caused any alleged breach of duty of care, arose out of and in the course of the employment within the scope of Part 1 of the *Workers Compensation Act.*

5. The Defendant, THE CORPORATION OF THE CITY OF VICTORIA, was an employer in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Defendant, THE CORPORATION OF THE CITY OF VICTORIA, or its servants or agents, which caused any alleged breach of duty of care, arose out of and in the course of the employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this 3rd day of January, 2019

Guy Riecken
VICE CHAIR

NO. 165050
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

RICHARD THOMPSON

PLAINTIFF

AND:

MYRON EFFA, CAMPBELL CONSTRUCTION LTD., 838 BROUGHTON HOLDINGS LTD. and
THE CORPORATION OF THE CITY OF VICTORIA

DEFENDANTS

SECTION 257 CERTIFICATE

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