WCAT Workers' Compensation Appeal Tribunal

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WCAT Decision Numbers: **WCAT-2011-02342 / WCAT-2011-02343**
WCAT Decision Date: **September 21, 2011**

Panel: Andrew Waldichuk, Vice Chair

WCAT Reference Numbers: **100952-A & 102465-A**

Section 257 Determination
In the Supreme Court of British Columbia

New Westminster Registry No. M126943
Jaskiranjit Kaur Sohal v. Kenneth Selwyn Rangel

New Westminster Registry No. M126944
Jaskiranjit Kaur Sohal v. Insurance Corporation of British Columbia

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Applicant: Jaskiranjit Kaur Sohal
(the "plaintiff")

Respondent: Kenneth Selwyn Rangel
(the "defendant")

Interested Party: Vancouver Coastal Health Authority

Representatives:

For Applicant: Khushpal S. Taunk
SOVEREIGN LAW GROUP

For Respondent: Karen M. Anderson
CAVE & COMPANY

For Interested Party: Nick Gallagher
PACIFIC RISK MANAGEMENT CORP.

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Introduction

[1] On August 5, 2008, the plaintiff, Jaskiranjit Kaur Sohal, was involved in a motor vehicle accident at or near the intersection of Steveston Highway and No. 2 Road in the City of Richmond when the vehicle she was driving was struck from behind by another vehicle owned and driven by the defendant, Kenneth Selwyn Rangel.

[2] 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 where an action is commenced based on a disability caused by occupational disease, a personal injury or death and to certify those determinations to the court.

[3] Mr. Taunk, counsel for the plaintiff, initiated this application by letter of April 29, 2010. The plaintiff seeks determinations regarding her status and that of the defendant at the time of the August 5, 2008 accident. In the application form that the applicant completed for WCAT on April 29, 2010, a separate certificate for the related Part VII action was requested.

[4] The plaintiff commenced a claim with the Workers' Compensation Board, operating as WorkSafeBC (Board), on a provisional basis. Certain documents from the plaintiff's claim file have been disclosed to the parties. Item #18.1 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP) provides that WCAT will consider all of the evidence and argument afresh in a section 257 application, regardless of a prior decision by a Board officer.

[5] The plaintiff's putative employer, Vancouver Coastal Health Authority (VCHA), and the defendant's putative employer, IBM Canada Ltd. (IBM), were invited to participate in this application as interested parties. Only VCHA expressed its desire to do so.

[6] The plaintiff and the defendant were examined for discovery on February 25, 2011. Copies of the discovery transcripts have been provided to WCAT. A trial date has not been set in the legal action.

[7] Submissions were requested and received from Mr. Taunk, Ms. Anderson, who is counsel for the defendant, and VCHA's representative. The defendant objects to the nature of the rebuttal submissions from VCHA on the basis that they "exceed the scope of reply or rebuttal submissions and amount to an inappropriate re-arguing of the case by a second representative." I agree with the defendant that VCHA has essentially put forth the same argument in both of its submissions, such that its rebuttal submissions are not limited to a response to those of the applicant. As a result, I have only considered the initial submissions from VCHA.

[8] An oral hearing has not been requested. I find that this application involves questions of law and policy which can be properly considered on the basis of the available evidence and written submissions, without the need for an oral hearing. Furthermore, I am satisfied that any issues of credibility and any factual issues in dispute can be addressed on the basis of the available evidence and written submissions.

Issue(s)

[9] Determinations are requested with respect to the status of the plaintiff and the defendant at the time of the August 5, 2008 accident.

Jurisdiction

[10] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). Pursuant to section 250(1) of the Act, WCAT is not bound by legal precedent. WCAT must make its decision based on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board, that is applicable (section 250(2)). Section 254 of the Act gives WCAT exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the

effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

Status of the Plaintiff, Jaskiranjit Kaur Sohal

[11] It appears that the following facts, which are mentioned in the plaintiff's affidavit of April 15, 2011, are not in dispute. The plaintiff is a home support worker who provides health care to individuals in their homes or in care facilities. She is employed by VCHA and earns approximately $19.72 per hour. Her job involves travelling from client to client throughout her workday. She is paid on an hourly basis for the time that she spends with clients. She is not paid for travel time, but she is paid for her mileage when driving between clients' homes. Prior to the accident, she had assisted her first client of the day, who resided on 4th Avenue in Richmond, from 7:00 a.m. to 8:30 a.m.

[12] The plaintiff provided an unsigned statement to the Insurance Corporation of British Columbia (ICBC) over the telephone on August 5, 2008. It indicates that the accident happened that day at approximately 8:45 a.m. The plaintiff also reportedly told the ICBC adjuster that she was "travelling from one client to another" [quote reproduced as written, except for removal of capitalization] and on Steveston Highway, proceeding eastbound, at the time of the accident. According to the plaintiff's statement, when her vehicle was struck, it was stopped in a line-up for roadwork that was being done.

[13] The plaintiff's family physician, Dr. Choo, wrote in an August 5, 2008 medical report for the Board that the plaintiff had been rear-ended "while driving from 1 client to another."

[14] On August 8, 2008, the plaintiff reportedly informed a client services representative at the Board that she was on her way to get some breakfast during the one-hour break that she had after her session with the first client ended at 8:30 a.m. and before the appointment at her next client's home at 9:30 a.m.

[15] The plaintiff's teleclaim application form for workers' compensation benefits, which was completed on August 13, 2008, mentions that the plaintiff was driving to get some tea when she was rear-ended during the one-hour break that she had between clients.

[16] An August 25, 2008 entry in an incident reporting form from VCHA describes the plaintiff as having left the client's home on 4th Avenue in Richmond and being due at another client's home on Jones Road in Richmond at 9:30 a.m. It also indicates that the plaintiff went for a coffee while in between the clients' homes. That information is consistent with information that the employer provided to the Board on August 25, 2008 regarding the plaintiff's activities at the time of the accident.

[17] On October 24, 2008, the plaintiff reportedly informed an entitlement officer at the Board that she had one hour off, without pay, after visiting the first client's home, which was located at 4th Avenue and Steveston Highway in Richmond. Furthermore, she said that she drove east along Steveston Highway and was planning to turn left onto No. 2 Road so she could have coffee at the mall located at No. 2 Road and Blundell Road. The entitlement officer also recorded that the plaintiff was planning to proceed to the next client's home, which was located on Jones Road.

[18] In an October 24, 2008 claim log entry, an entitlement officer at the Board considered the plaintiff to be a travelling employee, based on the available evidence. Furthermore, having reviewed the addresses of the plaintiff's clients and the location of the shopping mall, the entitlement officer determined that the plaintiff had not made a significant deviation from her route by going to the mall for coffee.

[19] The plaintiff wrote in a signed statement of April 29, 2010 that she had just finished with a client and was on her one-hour break when the accident happened. She stated that she was driving to the McDonald's Restaurant near the intersection of No. 2 Road and Blundell Road at the time of the accident. Consistent with her statement to ICBC, she mentioned that the accident occurred while she was bringing her vehicle to a stop because of roadwork that was being done on the Steveston Highway as she approached the intersection at No. 2 Road.

[20] The plaintiff provided the following evidence during her examination for discovery on February 25, 2011. Her workday generally lasted from 7:00 a.m. to 5:00 p.m. (Q 78). She had no set times for breaks (Q 79). She went home for lunch during her "free time" when a client was not scheduled (Q 86 to 88). At the time of the accident, she was paid hourly for the time that she spent with clients (Q 89 to 92).

[21] The plaintiff was planning to go home when the accident occurred because she had one hour off (Q 131). She wanted to spend some time with her children, and it only took 15 minutes to get to her home (Q 135). Her home was on East 49th Avenue in Vancouver (Q 136). She was planning to drive from Steveston Highway to the McDonald's restaurant drive-through located at the corner of No. 2 Road and Blundell Road to get some coffee before proceeding home by taking No. 2 Road and Russ Baker Way (Q 156 to 158). She had been to that McDonald's before during her workdays (Q 171 to 172). It took five to ten minutes to travel from her home to the appointment on Jones Road in Richmond (Q 137).

[22] The plaintiff was in shock when she saw Dr. Choo after the accident (Q 200). She denied telling Dr. Choo that she was rear-ended while driving from one client to another (Q 201). She did not think that she told him that (Q 202). In addition, the plaintiff did not remember telling her employer that she was driving in between clients when the accident happened (Q 259). Nor did she remember commencing her Board claim by way of teleclaim (Q 231). However, she recalled telephoning the Board at some point after the accident and making a report about it (Q 232). She recalled saying that she was going to get a coffee from McDonald's (Q 234).

[23] An employee schedule report, which is attached as exhibit B to the plaintiff's affidavit of April 15, 2011, confirms that the plaintiff was scheduled to visit her client on 4th Avenue on August 5, 2008 from 7:00 a.m. to 8:30 a.m. It was her first client of the day. Her second client visit to a residence on Regent Street in Richmond was scheduled from 8:30 a.m. to 9:30 a.m., but there is a line drawn through that appointment. The client on Jones Road was scheduled to be seen from 9:30 a.m. to 11:00 a.m.

[24] According to the plaintiff's affidavit, her second appointment for August 5, 2008 had been cancelled, which meant that she had an hour off between seeing her first and second clients that day. She further deposed that she was not proceeding to her next client's home at the time of the accident; rather, it was her intention to buy a cup of coffee at McDonald's, return home, and then proceed to her next appointment. The plaintiff added that the information found in Dr. Choo's August 5, 2008 medical report did not come from her. Moreover, it is the plaintiff's evidence that her supervisor "prepared and typed" the teleclaim application form for the Board. The plaintiff does not recall providing any information with respect to it.

[25] The plaintiff also stated in her affidavit that the client whose appointment was cancelled on August 5, 2008 resided close to her first client. If she had seen the client whose appointment was cancelled, she would have travelled to the next client on Jones Road by taking Steveston Highway, No. 3 Road, Williams Road, and Garden City Road. She claimed that Garden City Road went "straight close" to that client's home, and there was less traffic on that route than the Blundell Road route. To go home between appointments, if time allowed, the plaintiff usually took No. 2 Road and Russ Baker Way.

[26] Section 1 of the Act provides the following definition:

> **"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;

[27] Policy item #14.00, which is found in Chapter 3 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II)[1], provides a non-exhaustive list of factors that can be considered when deciding whether an injury arose out of and in the course of employment. This includes, for instance, whether the worker's injury occurred on the employer's premises, while in the process of doing something for the benefit of the employer, or while drawing pay. It explains that no single factor can be regarded as conclusive when deciding whether an injury arose out of and in the course of employment.

[28] In addition, excerpts from the policy in the RSCM II include:

> **#18.00 Travelling To and From Work**
>
> The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.
>
> *#18.22 Payment of Travel Time and/or Expenses by Employer*
>
> The payment of wages or travelling allowances etc. may in some circumstances be a factor to be considered, but it usually will not be a significant factor, nor is it ever the sole criteria [*sic*] in determining the acceptability of a claim.

[1] The board of directors of the Board has approved a revised Chapter 3 to the RSCM II, but those new policies only apply to injuries or accidents occurring on or after July 1, 2010. This decision applies the policies in effect at the time of the accident.

#18.32 Irregular Starting Points

There are a number of different situations that have to be considered under this heading. One is where the worker is injured in the course of a journey between home and a normal or regular operating base. That situation is substantially similar to the case of a worker travelling between home and a fixed place of employment and an injury occurring in the course of that journey would not be covered.

Another situation is where there is an injury occurring in the course of a journey between what might be called two working points. That is, where the worker terminates productive activity at one point and then has to travel to commence productive activity at another point. If that occurs in the course of a working day, then the travel is one of the requirements of the job. It is one of the functions that the worker has to perform as part of the employment whether or not the worker is paid for it. Where the worker terminates productive activity at one point and is required to commence productive activity at another point, travel between those points is part of the employment and is in the course of employment as long as the worker is travelling reasonably directly and is not making major deviations for personal reasons.

…

Where a worker has a regular or usual place of employment and is assigned temporarily to work at a place other than the regular place of employment, the worker is covered for compensation while travelling to and from that temporary place, and this is so whether the worker goes there from the regular place of employment or goes there directly from home. The same rule applies, for example, to a delivery person who goes direct from home to make deliveries.

[emphasis added]

#18.33 Deviations From Route

Where an employee is instructed by the employer to perform some activity related to work while on the way to or from the normal place of work, this does not necessarily provide coverage for the whole journey. Generally speaking, it will only provide coverage to the extent that the employee has, because of these instructions, to do something which would not normally

be done while travelling to or from work or go somewhere where the employee would not normally go. This is particularly so when the instructions only require a minor diversion from what is essentially a normal journey to work.

…

Where a worker is covered while travelling to a place of work, that worker must proceed with reasonable expedition and without substantial deviation from the most convenient route. Otherwise the worker may be regarded as no longer in the course of employment.

#18.40 Travelling Employees

Employees whose job involves travelling on a particular occasion or generally are covered while travelling. Where they do not travel to their employer's premises before beginning the travelling required by their work, they are covered from the moment they leave their residence. However, they will not be covered if they first travel to their employer's premises even though their vehicle has been provided by their employer and/or they need that vehicle to do the travelling required by their work.

#18.42 Trips Having Business and Non-Business Purpose

Whatever other requirements there may be for accepting a claim for an injury occurring on a trip made for business and non-business purposes, **one essential is that the injury occur at a time when the claimant is or is substantially on the route which leads to the place where the business purpose is to be carried out. No compensation is payable where the injury occurs while the claimant is making a significant deviation from that route for non-business purposes.**

[emphasis added]

[29] As I understand the plaintiff's submission, she maintains that the information she provided to the Board should be excluded as evidence on the basis that it is hearsay. Furthermore, she does not rely on her August 5, 2008 statement to ICBC because it is unsigned. As for the plaintiff's appointment with Dr. Choo, she submits that he misinterpreted what she told him, namely, that she would have seen another client if the accident had not happened. In short, the plaintiff takes the position that, by planning to

go home prior to the accident, she had embarked on a distinct departure from her route to the client who resided on Jones Road. Lastly, according to the plaintiff, any inferences that may be drawn from *Google Maps* as to whether or not she had sufficient time between appointments to complete her intended journey, while spending time with her children at home, should be discounted owing to the inaccuracy of the information about distances and travel times provided by *Google Maps*.

[30] The defendant cites *WCAT-2006-02659*[2], which is a compensation decision designated by WCAT to be noteworthy, to support his position that the plaintiff was a travelling worker at the time of the accident. The panel in *WCAT-2006-02659* dealt with a community health care worker who provided health care to clients in their homes, and reasoned that there seemed to be a sound rationale for extending the policy on travelling workers to those situations where travel is "an integral or essential aspect" of a worker's employment.

[31] In addition, using the applicable maps from *Google Maps*, the defendant submits that the plaintiff's travel to the McDonald's restaurant at the corner of No. 2 Road and Blundell road did not amount to a significant deviation from any of the several alternative direct routes between the residence of the client on 4th Avenue and that of the client on Jones Road. Accordingly, the defendants submit that the plaintiff was in the course of her employment at the time of the accident.

[32] The defendant further submits that the plaintiff's assertion that she was going to proceed to her home after picking up a coffee at McDonald's is a "recent fabrication." He maintains that the preponderance of the evidence establishes that the plaintiff was going to proceed directly to the Jones Road address upon leaving McDonald's. According to the defendant, the information that the plaintiff provided to ICBC, including a May 26, 2011 affidavit from the adjuster who took the plaintiff's statement, along with the information from VCHA, Dr. Choo and the plaintiff's Board claim file supports that version of events.

[33] That said, using information obtained from *Google Maps*, the defendant submits that there would not have been enough time for the plaintiff to travel home in slow moving traffic, pick up coffee at McDonald's on the way, visit with her children and then arrive at her 9:30 a.m. appointment. Furthermore, the defendant claims it is illogical that the plaintiff would have taken the time to purchase a cup of coffee if she was only going to have a few minutes at home with her children; rather, one would think that she would have proceeded directly home to maximize the time she spent with her children. After

[2] WCAT decisions are available at www.wcat.bc.ca

noting the "unconvincing denials" that the plaintiff made in her affidavit and during her examination for discovery in regard to what she reportedly told VCHA, Dr. Choo, ICBC and the Board, the defendant submits that the plaintiff's evidence about her intention to drive home between appointments is not credible and therefore fails to rebut the presumption in section 5(4) of the Act.

[34] VCHA takes the position that the plaintiff was a worker in the course of her employment at the time of the accident.

[35] Based on the plaintiff's employment relationship with VCHA, I find that she was a worker within the meaning of Part 1 of the Act when the accident occurred. The contentious issue in this application is whether the plaintiff's injuries in the August 5, 2008 accident arose out of and in the course of her employment.

[36] The question of whether or not the plaintiff was intending to drive home to visit her children at the time of the accident is, for reasons set out below, likely a moot point when it comes to deciding if she was in the course of her employment at the time of the accident. It is, however, a factual issue in dispute that I consider necessary to address.

[37] At the outset, though the plaintiff did not sign her August 5, 2008 statement to ICBC, which was provided over the telephone, I give weight to it because of the May 26, 2011 affidavit from the ICBC adjuster who obtained the statement. His affidavit explains the process that he likely used when speaking to the plaintiff over the telephone for the purposes of obtaining her statement. Furthermore, while the information found in the Board's claim log entries is hearsay, it is open to WCAT to consider that type of evidence (see item #11.2 of WCAT's *Manual of Rules of Practice and Procedure*). Moreover, I give weight to the evidence in the Board claim log entries because it is consistent with what the plaintiff reportedly told ICBC and her employer about her activities at the time of the accident. As well, neither the plaintiff's evidence about her still being in shock when she saw Dr. Choo following the accident nor her argument that he misinterpreted what she said to him persuades me that I should totally disregard Dr. Choo's notation regarding the plaintiff's activities at the time of the accident. Dr. Choo's August 5, 2008 report was completed contemporaneously with the accident and is therefore worthy of some weight.

[38] In addition, all indications on the plaintiff's teleclaim application for workers' compensation benefits, such as the declaration and acknowledgment at the end of the form, suggest that it was completed with the plaintiff's input. Yet, like most of the other evidence before me, it does not mention that she was travelling home at the time of the

accident; it simply states that she had a one-hour break between clients and was driving to get some tea.

[39] The defendant cites *Faryna v. Chorny*, [1952] 2 D.L.R. 354, where the British Columbia Court of Appeal had this to say about credibility:

> …the real test of the truth of the story of a witness…must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[40] Having considered the evidence, I do not accept the plaintiff's evidence that she was proceeding home to spend time with her children, after stopping to purchase coffee at McDonald's, when the accident happened. Given the evidence that the plaintiff was in slow moving traffic on Steveston Highway moments before the accident, coupled with the estimated time that it would have taken her to travel from No. 2 Road and Steveston Highway to her home and then to the Jones Road address (37 minutes, according to *Google Maps*), it makes little sense to me that she would have planned to go home within her one hour of free time between appointments.

[41] As the defendant submits, the time estimate of 37 minutes does not account for the time that the plaintiff would have spent purchasing coffee. It is also significant that the plaintiff had not even reached the intersection of No. 2 Road and Steveston Highway (the start of the 37-minute time estimate) when the accident happened at 8:45 a.m. With only 45 minutes remaining before her next appointment, it is unreasonable to think, in my view, that she had enough time to purchase coffee, drive home, visit with her children, and be at her next appointment on time.

[42] It is also telling, in my view, that the plaintiff first described her intention of proceeding home during her one-hour break between clients while testifying during her examination for discovery in late February 2011, more than two and one-half years after the accident. Her argument that no one had previously questioned her with sufficient detail to elicit that information is deserving of little weight, in my view. It would have been just as easy for the plaintiff to tell ICBC, VCHA or Dr. Choo that she was travelling home at the time of the accident rather than from one client to another.

[43] I find on the weight of the evidence that the plaintiff was likely proceeding to the McDonald's restaurant near the corner of No. 2 Road and Blundell Road when the accident happened, with the intention of proceeding to client's residence on Jones Road afterwards.

[44] Owing to the plaintiff's need to travel throughout her workday as a home support worker, I adopt the panel's reasoning in *WCAT-2006-02659* and find that the plaintiff was a travelling worker at the time of the accident, as contemplated by policy item #18.40 of the RSCM II.

[45] The defendant cites *WCAT-2008-00544* and *WCAT-2009-01803*, the latter of which was a section 257 determination, in support of his argument that the plaintiff had not embarked on a significant deviation for personal reasons from her route to the next client. The plaintiff, on the other hand, submits that those decisions should be distinguished from this matter on the basis that they do not reflect her circumstances at the time of the accident. I note that *WCAT-2008-00544*, unlike the matter before me, involved an individual whose vehicle was struck after she stopped to purchase coffee. In *WCAT-2009-01803,* the plaintiff was involved in a motor vehicle accident while planning to stop for lunch on the route that took her to her next client. Given my finding that the plaintiff was on likely on her way to McDonald's before proceeding to her next appointment when the accident happened, I find some guidance in these decisions.

[46] The defendant submits that there are a number of alternative direct routes that the plaintiff could have taken from the client's residence on 4th Avenue to the Jones Road address. I consider that to be an accurate statement, based on my review of the *Google Maps* that were provided for the relevant part of Richmond. One route, as the defendant points out, involves proceeding east on Steveston Highway, north on No. 2 Road, and then east on Blundell Road, before reaching Garden City Road, which provides access to the Jones Road address. The plaintiff acknowledged the Blundell Road route in her April 15, 2011 affidavit, but she outlined a route – albeit from the residence of the client on Regent Street – which involved Steveston Highway, No. 3 Road, Williams Road and Garden City Road.

[47] Since both of these routes involve major thoroughfares that run parallel to one another, I am of the view that the plaintiff would have remained on a direct route between the 4th Avenue address and the Jones Road address without having made a substantial deviation for personal reasons if she had turned onto No. 2 Road from Steveston Highway with the intention of stopping at the McDonald's restaurant located near the intersection at No. 2 Road and Blundell Road. But that is not what happened. As the evidence shows, the accident occurred while the plaintiff was on Steveston Highway, west of No. 2 Road and No. 3 Road, which meant that she still had the option of taking either of the direct routes to the Jones Road address. In other words, regardless of where the plaintiff was planning to go at the time of the accident, the fact that it occurred while she was still on Steveston Highway is compelling evidence that she had not deviated from the direct route that took her to her next client.

Therefore, I find that the plaintiff, as a travelling worker, was in the course of her employment when the accident happened.

[48] Section 5(4) of the Act establishes a presumption where a worker sustains an injury as a result of an accident. If the accident occurred in the course of employment, it is presumed that it arose out of the employment unless the contrary is shown and *vice versa.*

[49] The plaintiff's injuries were caused by the motor vehicle accident. I find that her injuries occurred while she was in the course of her employment. A rebuttable presumption arises that her injuries arose out of her employment. I find that this presumption is not rebutted by the evidence in this case. Accordingly, I find that the plaintiff's injuries arose out of and in the course of her employment within the scope of Part 1 of the Act.

Status of the Defendant, Kenneth Selwyn Rangel

[50] The defendant provided a statement to ICBC on August 11, 2008. He described himself as a being a full-time computer consultant for IBM during the past two and one-half years. Furthermore, he claimed that he worked in various provinces and occasionally in the United States. He worked on his laptop at home, and was a salaried employee. As an outside consultant, he rarely needed to drive to his local IBM office when he was in town. It was something he did perhaps four to five times a year. According to the defendant's statement, he was on his way to the IBM office when the accident happened.

[51] The defendant testified as follows during his examination for discovery on February 25, 2011. He was only working for IBM at the time of the accident (Q 52). On the day of the accident, he had departed from his home and was travelling to the IBM office located on Pender Street in Vancouver (Q 26 to 28). He had to attend a meeting at the office, which was scheduled for approximately 9:00 a.m. (Q 80 to 82). He could not recall if he was meeting anyone; it could have been any number of people who were in the office, such as his manager or an account representative (Q 182 to 183). His typical work hours were from 9:00 a.m. to 6:00 p.m. He usually travelled to his clients' sites; travelling to the IBM office occurred, at most, five times a year (Q 97).

[52] Between May and September 2008, the defendant was working for a client called Nature's Path Organic Foods (Nature's Path), which was located in Richmond (Q 106 to 107). Working as a consultant, his job was to help Nature's Path customize the software that it had purchased from IBM. He likely went to the premises of Nature's Path more than three to four times a week, perhaps close to five times a week (Q 123).

He worked typical company hours – 9:00 a.m. to 6:00 p.m. – while working there (Q 124).

[53] IBM paid for the defendant's travel time when he was working outside the limits of Vancouver (Q 142 to 143). His typical route when going to downtown Vancouver involved driving down Steveston Highway, turning left onto No. 2 Road, driving along Russ Baker Way, and onto Granville Street, which got him close enough to West Pender Street (Q 150 to 153).

[54] When working for Nature's Path, the defendant worked at their office and at home, if he needed to do so (Q 164). The work that he did at home for Nature's Path was the same as what he did for them while in the office, except that it was done off-hours, such as on the weekend or at 8:00 in the evening (Q 165).

[55] The plaintiff provided a copy of IBM's March 25, 2008 offer of employment to the defendant, which he accepted on March 27, 2008. As well, she relies on an April 5, 2011 letter from IBM. It advises that the defendant was not travelling on company business when the accident occurred on August 5, 2008; rather, he was driving to his work location to start his workday.

[56] The defendant provided a May 29, 2011 affidavit, where he stated that IBM had classified him as "mobile employee." Occasionally he worked for IBM clients from his home office, and at other times he spent a number of weeks or months working at the offices of a client. He added that he frequently travelled to other provinces and occasionally to the United States to work at clients' offices. It is his evidence that he did not regularly work at the IBM office in Vancouver or at any other IBM office. Besides attending the IBM office in Vancouver four or five times a year for a meeting, he worked at home or at the premises of IBM clients. The defendant also indicated that he was not paid for travel or mileage while working within the Greater Vancouver area. However, when his work required him to travel outside the Greater Vancouver area, he was paid for mileage and other travelling expenses, such as meals and lodging.

[57] The defendant further stated in his affidavit that he was scheduled to work at Nature's Path on the day of the accident, but he had to go to the IBM office first. It was his recollection that he had a meeting that morning; however, as he acknowledged in his affidavit, he may have been going to the office for another reason. A review of his records did not confirm the purpose of his attendance at the IBM office, but it is his evidence that he would have proceeded to the offices of Nature's Path after completing his work task downtown. He had no recollection of having a discussion with the plaintiff at the scene of the accident about whether or not he was working at the time of the

accident. The defendant concluded his affidavit by stating that he did not commence a Board or ICBC claim for injuries arising from the accident, or intend to do so, and had no personal interest in this application.

[58] The plaintiff submits that the defendant, by travelling to the IBM office in downtown Vancouver, was in the course of a routine commute to work when the accident happened, which means that he was not in the course of his employment. In the alternative, the plaintiff, after noting the time of the accident, argues that the defendant would have had insufficient time to reach the downtown office by 9:00 a.m. (*Google Maps*, as provided by the plaintiff, suggests a travel time of 38 minutes from the defendant's home to the IBM office by taking Granville Street) so he must have been travelling to the offices of Nature's Path. The plaintiff further argues that the defendant has not established that he was scheduled to attend a meeting on the day of the accident. His evidence, the plaintiff submits, is weakened by IBM's letter of April 5, 2011. Assuming the defendant was driving to the offices of Nature's Path, the plaintiff maintains that he was commuting to his regular place of employment and therefore not in the course of his employment.

[59] The defendant argues that Nature's Path had become his regular or usual place of employment, as contemplated by policy item #18.32 of the RSCM II. According to the defendant, if that were the case, then his travel to the IBM office in downtown Vancouver on the day of the accident was a temporary assignment, with travel to that location attracting Board coverage. Furthermore, the defendant submits that the comments in the April 5, 2011 letter from IBM about whether or not he was working at the time of the accident were "purely gratuitous." As the defendant points out, there is no evidence that the letter was based on an understanding of the facts or workers' compensation law in British Columbia. Without knowing the foundation of the comments in the April 5, 2011 letter, since IBM chose not to participate in this application, the defendant argues that no weight should be given to the "off-the-cuff opinion" regarding his status at the time of the accident.

[60] Like the plaintiff, VCHA submits the defendant must have been travelling to the offices of Nature's Path at the time of the accident because there was insufficient time for him to be at a 9:00 a.m. meeting at the IBM office. It maintains that the April 5, 2011 letter from IBM seems to refute the defendant's claim that he was driving to the IBM office prior to the accident. Based on its reading of that letter, VCHA submits that IBM was not expecting the defendant to arrive at their downtown office on the morning of the accident.

[61] After noting that the accident occurred at a location that the defendant likely would have passed through whether he was going to the IBM office or to the offices of Nature's Path, VCHA also points to the defendant's difficulty in recalling why he had to attend the IBM office. It suggests that he should have been able to remember his reason for attending there, given that he went to the IBM office only four or five times a year. Moreover, VCHA submits that the defendant would have known that he was going to be late for his meeting on the day of the accident, something that would cause him to remember the nature of his meeting.

[62] According to VCHA, it appears that there is no evidence to substantiate the defendant's position that he was driving to his employer's downtown office when the accident happened. Whether the defendant was driving to his regular work location in Richmond or proceeding to a "rare and special meeting" at IBM's office in Vancouver, VCHA maintains that he was on his regular commute to work and therefore was not in the course of his employment at the time of the accident.

[63] I find that the defendant was a worker within the meaning of Part 1 of the Act at the time of the accident, since his evidence on discovery and the March 25, 2008 offer of employment from IBM, which he accepted days later, establishes an employment relationship.

[64] Starting with his August 11, 2008 statement to ICBC, the defendant's evidence has been consistent with respect to the purpose of his journey on the day of the accident. I accept that the defendant was driving to the IBM office in downtown Vancouver at the time of the accident. Though it appears that he would have been late for a 9:00 a.m. meeting, since he was still on Steveston Highway, west of No. 2 Road, at 8:45 a.m., I give weight to his evidence that he had to be at the IBM office for some work-related reason. As for the April 5, 2011 letter from IBM, I find that the use of the term "work location" can be interpreted in two ways: the defendant was driving either to the IBM office or to the offices of Nature's Path. Since the letter is unclear and I have no way of knowing if it was based on a review of any records or other documentation that may identify the defendant's work activities on the day of the accident, I give little weight to it.

[65] I have considered the defendant's evidence that he had been working solely for Nature's Path between May and September 2008, which involved attending its offices up to five times a week and putting in his workday there to assist with the implementation of new software. He submits on the basis of this evidence that his regular or usual place of employment at the time of the accident was at the offices of Nature's Path.

[66] In addition, the defendant cites a number of decisions from WCAT and the former Appeal Division which provide guidance on the application of policy item #18.32 of the RSCM II in this matter. I do not consider it necessary to summarize all of them. Of note, however, is *Appeal Division Decision #97-0191* ("Travel to regular starting point," 15 *Workers' Compensation Reporter* 145), where the panel found that a defendant's travel to the same client on "a regular basis at the same time each day for seven months" meant that the client's home could be viewed as a regular place of employment.

[67] The evidence suggests that the defendant had likely been working at the offices of Nature's Path for approximately three months when the accident happened. The fact that Nature's Path was the defendant's sole client, coupled with the amount of time he spent working there over the three months, suggests that he had a well-established pattern of working at the offices of Nature's Path prior to the accident. As such, I appreciate the defendant's argument that the offices of Nature's Path, for all intents and purposes, had become his regular or usual place of employment by the time of the accident so as to bring into play the final paragraph in policy item #18.32 of the RSCM II. However, I do not view the defendant's attendance at the IBM office on the day of the accident as falling squarely within the final paragraph of policy item #18.32 of the RSCM II. In other words, given the defendant's evidence that he went to the IBM office for meetings four or five times a year, I find that his connection with the IBM office had a sense of permanency, making it difficult to conclude that any work he did there should be viewed as a temporary assignment.

[68] As well, I recognize that there are a number of other ways to address the defendant's status. For instance, in line with my reasoning above, one could argue that the IBM office in downtown Vancouver was the defendant's normal place of employment, with his work at the offices of Nature's Path being a temporary assignment. If this were the case, my finding that the defendant was driving to the IBM office at the time of the accident means that he was in the course of his commute to work and therefore not covered for worker's compensation purposes, according to policy item #18.00 of the RSCM II. However, any analysis in this regard is weakened by the fact that the defendant spent little time working at the IBM office in downtown Vancouver.

[69] I have also considered the defendant's evidence that he had a home office, which raises the question of whether he was travelling between two working points when the accident happened. According to policy item #18.32 of the RSCM II, if this were the case, then the defendant would have been in the course of his employment, provided that he was travelling reasonably directly to the IBM offices in downtown Vancouver and not making any major deviations for personal reasons. However, I find that there is no

compelling evidence that the defendant had engaged in productive activity at his home office before embarking on his journey to downtown Vancouver.

[70] In addition, I have considered whether the defendant's status is best addressed using the Board's policy on travelling employees, as found in policy item #18.40 of the RSCM II. It is the defendant's evidence that IBM had classified him as a "mobile employee," as mentioned in his affidavit of May 29, 2011. He also deposed that he frequently travelled to other provinces and occasionally to the United States to work for clients. I accept this evidence, which is consistent with the indication in his August 11, 2008 statement to ICBC that he worked in other provinces and occasionally in the United States, along with his affidavit evidence about working outside the Greater Vancouver area, for which he was paid mileage and other travelling expenses.

[71] Again, I find guidance in the panel's reasoning in *WCAT-2006-02659*. I find that travel was an integral or essential aspect of the defendant's employment because of the nature of his job as a computer consultant for IBM. I give weight not only to IBM's classification of the defendant as a "mobile employee," but also to the defendant's evidence that his job required him to frequently travel to other provinces and occasionally to the United States. His evidence about working on his laptop computer, not regularly working out of an IBM office, and usually having to travel to his clients' sites suggests that he did not have a normal place of employment. The weight of the evidence suggests that the defendant's home, if anything, had become the hub of the travelling that he did for IBM. I accept that the defendant was expected to travel to the offices of Nature's Path on the day of the accident, as he had seemingly done for the past few months; it just so happened that his day began with a journey from his home to the IBM office in downtown Vancouver.

[72] Though it may be debatable whether the IBM office was the defendant's regular or usual place of employment, owing to the time that he spent working at home and in the offices of his various clients, there is no way of avoiding the fact that he was travelling to his employer's premises when the accident occurred. According to policy item #18.40 of the RSCM II, the defendant, as a travelling employee, would not have been covered for workers' compensation purposes while driving from his home in Richmond to the IBM office in downtown Vancouver. As a result, I find that any action or conduct of the defendant, which caused the alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the Act.

Conclusion

[73] I find that at the time of the August 5, 2008 accident:

(a) the plaintiff, Jaskiranjit Kaur Sohal, was a worker within the meaning of Part 1 of the Act;

(b) the injuries suffered by the plaintiff, Jaskiranjit Kaur Sohal, arose out of and in the course of her employment within the scope of Part 1 of the Act;

(c) the defendant, Kenneth Selwyn Rangel, was a worker within the meaning of Part 1 of the Act; and,

(d) any action or conduct of the defendant, Kenneth Selwyn Rangel, which caused the alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the Act.

Andrew Waldichuk
Vice Chair

AW:gw

NO. M126943
NEW WESTMINSTER 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:

JASKIRANJIT KAUR SOHAL

PLAINTIFF

AND:

KENNETH SELWYN RANGEL

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the plaintiff, JASKIRANJIT KAUR SOHAL, 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, August 5, 2008:

1. The Plaintiff, JASKIRANJIT KAUR SOHAL, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, JASKIRANJIT KAUR SOHAL, arose out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, KENNETH SELWYN RANGEL, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, KENNETH SELWYN RANGEL, which caused the alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this day of September, 2011.

_____
Andrew Waldichuk
VICE CHAIR

NO. M126943
NEW WESTMINSTER 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:

JASKIRANJIT KAUR SOHAL

PLAINTIFF

AND:

KENNETH SELWYN RANGEL

DEFENDANT

SECTION 257 CERTIFICATE

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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:

JASKIRANJIT KAUR SOHAL

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the plaintiff, JASKIRANJIT KAUR SOHAL, 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, August 5, 2008:

1. The Plaintiff, JASKIRANJIT KAUR SOHAL, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, JASKIRANJIT KAUR SOHAL, arose out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this day of September, 2011.

_____
Andrew Waldichuk
VICE CHAIR

NO. M126944
NEW WESTMINSTER 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:

JASKIRANJIT KAUR SOHAL

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

SECTION 257 CERTIFICATE

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