

CANADA / JUDGMENT

Kostiuk v. Workers' Compensation Appeal Tribunal

2019 BCSC 1461

COURT

Supreme Court of British Columbia

DECIDED

29 August 2019

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2019 BCSC 1461 Kostiuk v. Workers' Compensation Appeal Tribunal IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Kostiuk v. Workers' Compensation Appeal Tribunal, 2019 BCSC 1461 Date: 20190829 Docket: S174469 Registry: Victoria Between: Kevin Kostiuk Petitioner And Workers' Compensation Appeal Tribunal Respondent Before: The Honourable Madam Justice MacNaughton Supplementary Reasons for Judgment to Kostiuk v. Workers' Compensation Appeal Tribunal, 2019 BCSC 363, Docket No. VI S174469 Supplementary Reasons for Judgment No one appearing for the Petitioner Counsel for the Respondent: M. Bennett Place and Date of Hearing: Victoria, B.C. August 21, 2019 Place and Date of Original Reasons for Judgment: Victoria, B.C. March 15, 2019 Place and Date of Supplementary Reasons for Judgment: Victoria, B.C., August 29, 2019

Introduction

- [1] The Workers' Compensation Appeal Tribunal ("WCAT") applied to reopen my decision found at Kostiuk v. Workers' Compensation Appeal Tribunal, 2019 BCSC 363 (the "Reasons"). Mr. Kostiuk's counsel did not appear as, in his view, the matters raised by WCAT are moot as, in my order, I remitted Mr. Kostiuk's matter to WCAT for reconsideration. Supplementary Reasons
- [2] WCAT requested that the proceeding before me be reopened to consider the question of the application of s. 5(5) of the Workers Compensation Act, RSBC 1996 c. 492 [Act].
- [3] The court's order has not been entered. As a result, the court has a broad discretion to reopen a matter and reconsider its decision. In *Sew Cozzi Ventures Inc. v. Apex Outdoor Innovations Corp.*, 2017 BCSC 1500, the court set out the well-settled principles to be applied in applications for reconsideration.
- [4] Although the discretion to reopen is unfettered, it must be exercised sparingly to prevent a miscarriage of justice.

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- [5] In the circumstances of this case, I am satisfied that WCAT's application is not brought as an alternative to appeal, or motivated by tactical considerations. Rather, it submits that my obiter references to s. 5(5) of the Act, which it does not believe applies in the circumstances of Mr. Kostiuk's case, have created confusion and uncertainty as to the scope of the matter that was remitted back to it.
- [6] In the Reasons, I did not direct WCAT as to what it was to consider when I remitted the matter back. However, for the purposes of clarification, WCAT is not required to consider or apply s. 5(5) of the Act. "MacNaughton, J."
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