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CASE SUMMARY: WORKPLACE SAFETY AND INSURANCE APPEAL TRIBUNALS' INTERPRETATION OF REVIEW AND RECALCULATION PROVISION IMPOSING A CAP ON SUPPLEMENT DUE IS REASONABLE

Administrative law – Decisions of administrative tribunals – Workers Compensation Boards – Workers compensation – Benefits – Statutory provisions; Judicial review – Compliance with legislation – Standard of review – Reasonableness

Martin v. Ontario (Workplace Safety and Insurance Appeals Tribunal)

This case centres on a judicial review application based on the interpretation of s.147(13) of the *Workers Compensation Act*, R.S.O. 1990, c. W.11 (the "*Act*").

[2016] O.J. No. 6159

2016 ONSC 7364

Ontario Superior Court of Justice – Divisional Court

November 25, 2016

J.A. Thorburn, W.U. Tausendfreund and R.J. Harper JJ.

The two applicants, Sandra Martin and Robert Slack, sustained separate workplace injuries. As such, the Tribunal found that they were both entitled to a financial supplement under the *Act*. The amount of the supplements for each applicant was calculated in accordance with ss. 147(4), 147(10) and capped pursuant to s. 147(8) of the *Act*.

Subsequently, a review and recalculation of the supplements was made as required by s. 147(13) of the *Act*. In calculating same, the Workplace Safety and Insurance Appeals Tribunal ("WSIAT") imposed a cap on the supplements pursuant to s. 147(8).

Notably, the words in s. 147(13) refer to ss. (9) and (10) but not to the cap on the supplement in ss. (8).

In this matter, the Applicants argued that the Tribunal's review and recalculation of the supplement should not contain a cap as s. 147(13) contains no such limitation and any such limitation is contrary to the intention of the legislators and the plain meaning of the legislative provision.

The WSIAT argued that the limit was clearly envisaged by the legislators and is consistent with the wording of the *Act* and of s.147 as a whole. Moreover, the WSIAT argued that since there is a cap on the initial supplement payable, there must also be a cap on any supplement payable upon review and calculation.

The parties agreed that the standard of review of the WSIAT decision is reasonableness.

The Court found that the intention of the legislators was that there be a cap on the supplement. This conclusion was based on, *inter alia*, a review of Operational Policy number 18-07-10 which, according to s. 126 of the *Workplace Safety and Insurance Act*, 1997, c. 16, must be applied when the Appeals Tribunal makes a decision. The said Operational Policy provides that:

"The sum of the supplement, the permanent disability benefit, and 90% of the worker's net average earnings after the injury, cannot exceed 90% of the worker's escalated pre-injury net average earnings".

The Court also found that the meaning of s. 147(13) should be considered in the context of s. 147 of the *Act* as a whole. The Court found that given that the initial assessment provides for a cap on the amount of supplement, and the review and recalculation provision refers to a review of a "supplement given under subsection (4)", that this suggests the intention was that any review of the initial decision would be subject to the same limitations as the initial assessment (including the cap on the amount of supplement).

Therefore, although the Court acknowledged that s. 147(8) is not specifically referred to in s. 147(13), it was nonetheless reasonable for the Tribunals to conclude there was a cap on the amount of the supplement payable to the Applicants as s. 147(13) is merely a review and recalculation of the more comprehensive original determination which imposes a cap. The Court therefore dismissed the application.

This case was digested by Lindsay R. Johnston of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at ljohnston@harpergrey.com or review her biography at http://www.harpergrey.com.