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CASE SUMMARY: THE NOVA SCOTIA COURT OF APPEAL FOUND THE WCB'S DECISION THAT THE INJURED WORKER'S MEDICAL MARIJUANA DID NOT QUALIFY FOR MEDICAL AID UNDER ITS POLICY WAS REASONABLE, AND THAT THE POLICY ITSELF REQUIRING QUALIFYING MEDICAL AID TREATMENT TO BE CONSISTENT WITH CANADIAN HEALTHCARE STANDARDS WAS INTRA VIRES AND CONSISTENT WITH THE WORKERS COMPENSATION ACT

Administrative law – Decisions reviewed – Workers Compensation Boards – Benefits – Validity and application of policies and guidelines – Judicial review – Appeals – Compliance with legislation – Ultra vires

Skinner v. Nova Scotia (Workers' Compensation Appeals Tribunal), [2018] N.S.J. No. 74, 2018 NSCA 23, Nova Scotia Court of Appeal, March 9, 2018, D.R. Beveridge, D.P.S. Farrar and P. Bryson JJ.A.

Mr. Skinner was injured in a motor vehicle accident while in the course of his duties at work. He was authorized to use marijuana for medical purposes and requested the WCB to approve his marijuana as covered medical aid. The case manager denied his request, relying on the criteria set out in Board Policy 2.3.1R, which states, in part, that WCB will assist in providing health care where the care is appropriate for the type of compensable injury, and is consistent with standards of health care practices in Canada. The case manager determined that medical marijuana was not consistent with Canadian health care standards, and therefore it did not qualify for medical aid under the Policy. The WCB hearing officer dismissed Mr. Skinner's appeal from the case manager's decision.

The WCAT then dismissed Mr. Skinner's appeal from the hearing officer's decision. The tribunal accepted that his use of medical marijuana was causally connected to his injuries, that more conventional treatments were not as successful in lessening his pain, that marijuana can be used for medicinal purposes, and that the use of medical marijuana has been endorsed by "certain medical practitioners." However, the tribunal concluded that its prescription use "has not yet reached a standard of being a generally accepted medical practice in Canada" and was thus not consistent with Canadian health care standards, as required by the Policy.

On appeal by Mr. Skinner, the Nova Scotia Court of Appeal concluded the Policy was, in context and objective, consistent with the WCB's statutory authority, and dismissed his appeal.

This case was digested by [Kara Hill](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kara Hill at khill@harpergrey.com.