WorkplaceNL

Health | Safety | Compensation

Third Party Determination

November 4, 2019

Curtis Dawe
Attn: Peter N. Browne
11th Floor, Fortis Building
P.O. Box 337
139 Water Street
St. John's, NL A1C 5J9

Dear Mr. Browne:

[redacted]

In accordance with **section 46** of the **Workplace Health, Safety and Compensation Act (the Act)**, I have reviewed the submission of [redacted] (the Defendant) as to whether an action by [redacted] (the Plaintiff) against the Defendant is prohibited by **section 44** of **the Act**.

Workplace Health, Safety and Compensation Commission (WorkplaceNL) has been afforded the legislative authority to determine whether an action is statute barred. In the case of Warford v. Weir's Construction Limited, 2012 NLCA 79, the Supreme Court of Newfoundland and Labrador Court of Appeal states at paragraphs 14-16:

> [14] Section 3 of the *Act* continues the Commission under its current name. Subsection 4(1) confers on the Cabinet authority to "appoint a board of directors of the commission who shall be responsible for the administration of this Act." Subsection 5(1) provides that "[t]he board of directors shall establish policies and programs consistent with this *Act* and regulations...".
>
> [15] Section 7 reads in part:
>
> (1) The board of directors shall appoint as employees of the commission, and prescribe the duties of, those persons that the board of directors considers necessary for carrying out this Act.
> ...
> (3) The board of directors may delegate the powers of the administration to those of the employees of the commission that it thinks advisable.
> (emphasis added.)

> [16] Thus the Commission is guided by its board of directors, which establishes policies under the *Act* and delegates authority to specific employees to give effect to the legislation and the policies pursuant to it.

The Court confirmed WorkplaceNL's authority to make determinations under **section 46** of **the Act.** Justice Rowe wrote at paragraphs 39 and 40:

> [39] It is abundantly clear from the scheme of the legislation that s. 46 is intended to confer on the Commission the authority to determine whether or not actions are prohibited by the *Act*. The interpretation of s. 46 to exclude from its scope subrogated actions is an interpretation which is inconsistent with a purposive approach to statutory interpretation. See *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21 and *Archean Resources Ltd. v. Newfoundland (Minister of Finance)*, 2002 NFCA 43, 215 Nfld. & P.E.I.R. 124, at paras. 17-23 and 27.
>
> [40] Repeatedly, the Supreme Court of Canada has clearly stated that decisions as to whether an action is prohibited under workers compensation legislation are within the exclusive jurisdiction of the Commission. This Court in its 2003 decision in this case made clear that the Supreme Court of Canada's jurisprudence applies to this province's legislation. Furthermore, in its 2003 decision, this Court expressly stated that such decisions are taken pursuant to s. 46 of the *Act*. (See above paragraphs 17, 18 and 30.)

Background Information

In November 2013, the Plaintiff fell while putting up Christmas lights at his home. On January 31, 2014, the Plaintiff's family doctor referred the Plaintiff to the Defendant for a consult regarding findings of weak eversion of the right foot. The Defendant assessed the Plaintiff on March 11, 2014, at the outpatient neurology clinic in [redacted] The Defendant noted medical findings in the right leg and foot and diagnosed the Plaintiff with right deep peroneal neuropathy secondary to trauma. The Defendant prescribed the Plaintiff a dorsi strap for his right foot.

On April 9, 2014, the Plaintiff underwent nerve conduction studies performed by the Defendant following which the Plaintiff was diagnosed with Neurapraxia.

On July 7, 2014, the Plaintiff, fell in the course of his employment while working as an office manager with [redacted]. The Plaintiff applied for compensation benefits from WorkplaceNL. In an Internal Review Decision dated March 10, 2015, the Plaintiff's claim was accepted for compensation benefits by WorkplaceNL as an aggravation of the right upper extremity and neck issues.

The Plaintiff was assessed by the Defendant on July 25, 2014, at the [redacted] outpatient neurology clinic. Following a physical assessment, the Defendant noted weakness in the Plaintiff's triceps muscles and ulnar innervated muscles. The Defendant diagnosed the Plaintiff with low brachial plexopathy resulting from the July 7, 2014, fall or the use of crutches. The Defendant referred the Plaintiff for physiotherapy treatment at that time.

The Statement of Claim alleges that the Plaintiff was referred to [redacted], a licenced medical practitioner practicing and being a specialist in neurology in [redacted], Newfoundland and Labrador, due to ongoing issues in the right arm, hand and the right leg. On or about September 15, 2014, [redacted] saw the Plaintiff and arranged an urgent MRI of the cervical spine. The MRI showed cervical cord impingement at the C5-6 level with significant cord edema. [redacted] sent an urgent referral to a neurosurgeon. The Plaintiff underwent a C5-6 anterior decompression and fusion with discectomy on or about October 27, 2015.

On October 31, 2014, WorkplaceNL's case manager rendered a decision advising that the compensable fall contributed to a disc herniation resulting in the Plaintiff's symptoms in the right arm (reference: Internal Review Decision, March 10, 2015, Submission of [redacted] Tab 5). The Plaintiff was also diagnosed with a non-compensable diagnosis of Degenerative Disc Disease of the cervical spine (neck) which was aggravated by the work injury. Therefore, the Plaintiff's claim was accepted as an aggravation of pre-existing condition.

On March 10, 2015, WorkplaceNL rendered a final decision following an objection to the claim by [redacted]. In the decision, the internal review specialist confirmed the case manager's decision to accept the Plaintiff's claim for right upper extremity and cervical spine difficulties as an aggravation of a pre-existing condition as a result of a work related injury on July 7, 2014. The internal review specialist concluded that the case manager's decision was made in accordance with Legislation and Policy.

On February 12, 2016, a Statement of Claim was filed by Erika Breen Hearn of the law firm Easton Hillier Lawrence Innes on behalf of the Plaintiff against both the Defendant and [redacted] (the Second Defendant) for damages resulting from alleged negligence. At paragraph 11, the Plaintiff claimed:

> 11. The Plaintiff repeats the foregoing paragraphs of the within Statement of Claim and states that the injury which he has suffered as a result of the delay in the proper diagnosis of the C5-C6 cervical cord impingement with significant cord edema resulted solely from the negligence of the First Defendant for which the Second Defendant is vicariously liable, when the First Defendant failed to properly diagnose the Plaintiff and failed in his duty to care which he owed to the Plaintiff. ...

On May 26, 2017, a Notice of Discontinuance for the action against the Second Defendant was filed with the Supreme Court of Newfoundland and Labrador Trial Division at [redacted] Newfoundland and Labrador.

On March 20, 2018, Peter Browne, Solicitor for the Defendant, filed a Submission to WorkplaceNL on behalf of the Defendant. In the Submission, Mr. Browne plead that the action of the Plaintiff against the Defendant is statute barred by the operation of **the Act** pursuant to **section 44** of **the Act** in that:

(a) The Plaintiff was a worker under **the Act** at the time the injuries were sustained;

(b) The Defendant was a registered employer under **the Act** at the time of the alleged negligence;

(c) The Plaintiff's injuries arose out of and in the course of his employment;

(d) The negligence alleged in the Action is a reasonable and foreseeable consequence of the injuries such that any losses flowing from the negligence constitute injuries that arose out of and in the course of the Plaintiff's employment;

(e) The Defendant was compensated for the injuries by WorkplaceNL, with the claim effective as of July 8, 2014; and

(f) Pursuant to **section 44** of **the Act**, the Plaintiff has no right of action against the Defendant.

The following correspondence ensued:

- April 9, 2018 – A correspondence to Peter Browne from the internal review specialist acknowledging the request for determination under **section 46** of **the Act.** The internal review specialist requested additional submissions be submitted for consideration. The April 9, 2018, letter and a copy of the Defendant's submission was copied to all parties.
- April 16, 2018 – A correspondence to WorkplaceNL from Peter Browne stating that the Defendant does not plan on making a further submission unless there is a response from the Plaintiff's legal counsel.
- April 27, 2018 – Correspondence from Erika Breen Hearn to the concerned parties advising that there has been a breakdown in the Solicitor/Client relationship and the Plaintiff was seeking new legal counsel.
- May 2, 2018 – E-mail correspondence from the Plaintiff to WorkplaceNL requesting a time extension for his submission until he was able to secure new counsel.
- May 3, 2018 – Correspondence from the internal review specialist to the Plaintiff's law firm requesting that once new counsel has been obtained,

WorkplaceNL is to be advised so the appropriate timelines can be provided to the other parties.

- September 11, 2018 – E-mail correspondence from the Plaintiff to the internal review specialist indicating that **the Act** is not allowed to interfere with his rights.
- September 18, 2018 – The internal review specialist responses to the Plaintiff via e-mail and acknowledges the Plaintiff's September 11, 2018, correspondence.
- September 19, 2018 – The internal review specialist wrote to the Plaintiff and noted that on September 10, 2018, his authorized representative, [redacted] advised that the Plaintiff was in the process of obtaining new legal counsel. The internal review specialist noted that the Plaintiff can file a submission on his own behalf if he does not obtain legal representation. The internal review specialist requested the Plaintiff's submission be filed by December 31, 2018.
- September 24, 2018 – The Plaintiff advised the internal review specialist that he does not acknowledge WorkplaceNL as a governing power and will only provide submissions to the Supreme Court of Newfoundland and Labrador.
- March 22, 2019 – The Manager of Internal Review wrote to the Plaintiff regarding WorkplaceNL's exclusive jurisdiction to make determinations under **section 46** of **the Act**.
- May 21, 2019 – Peter Browne requested WorkplaceNL provide him the status of the determination as to whether the action is statute barred.
- May 22, 2019 – The internal review specialist wrote to the Plaintiff and noted that he was asked to file his submission by December31, 2018; however, to date a submission has not been received. The Plaintiff was advised that should a submission not be received by August 31, 2019, the review will proceed, and a determination will be made under **section 46** of **the Act**.

To date, a submission from the Plaintiff has not been received by WorkplaceNL. As a reasonable timeframe has been provided for the Plaintiff to provide a submission, the Defendant's request for a determination in relation to the matter will proceed without a submission from the Plaintiff.

Legislation and Policy

Section 2(1) of **the Act** states:

In this Act

(j) "employer" means an employer to whom this Act applies and who is engaged in, about or in connection with an industry in the province and includes

> (i) a person having in his or her service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in a work in or about an industry within the scope of this Act,

(ii) the principal, contractor and subcontractor referred to in section 120,

(iii) in respect of an industry referred to in subparagraph (i) a receiver, liquidator, executor, administrator and a person appointed by a court or a judge who has authority to carry on an industry,

(iv) a municipality,

(v) the Crown in right of Canada where it may in its capacity of employer submit to the operation of this Act,

(vi) the Crown and a permanent board or commission of the Crown where the province may in its capacity of employer submit itself or a board or commission to the operation of this Act, and

vii) in respect to the industry of fishing, whaling or sealing, the managing owner or person operating a boat, vessel or ship employed or intended to be employed in the industry;

(o) "injury" means

(i)an injury as a result of a chance event occasioned by a physical or natural cause,

(ii) an injury as a result of a wilful and intentional act, not being the act of the worker,

(iii) disablement,

(iv) industrial disease, or

(v) death as a result of an injury

arising out of and in the course of employment and includes a recurrence of an injury and an aggravation of a pre-existing condition but does not include stress other than stress that is a reaction to a traumatic event or events;

(z) "worker" means a worker to whom this Act applies and who is 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, and includes

(i) in respect of the industry of fishing, whaling or sealing, a person who becomes a member of the crew of a boat, vessel or ship under an agreement to prosecute a fishing, whaling or sealing voyage in the capacity of a person receiving a share of the voyage or is described in the Shipping Articles as a person receiving a share of the voyage or agrees to accept in payment for his or her services a

share or portion of the proceeds or profits of the venture, with or without other remuneration, or is employed on a boat, vessel or ship provided by the employer,

(ii) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment,

(iii) a part-time or casual worker, and

(iv) an executive officer, manager or director of an employer.

Section 19 of **the Act** states:

(1) The commission has exclusive jurisdiction to examine, hear and determine matters and questions arising under this Act and a matter or thing in respect of which a power, authority or distinction is conferred upon the commission, and the commission has exclusive jurisdiction to determine

(a) whether an injury has arisen out of and in the course of an employment within the scope of this Act;

(4) The decisions of the commission shall be upon the real merits and justice of the case and it is not bound to follow strict legal precedent.

Section 44 of **the Act** states:

(1) The right to compensation provided by this Act is instead of rights and rights of action, statutory or otherwise, to which a worker or his or her dependents are entitled against an employer or a worker because of an injury in respect of which compensation is payable or which arises in the course of the worker's employment.

(2) A worker, his or her personal representative, his or her dependents or the employer of the worker has no right of action in respect of an injury against an employer or against a worker of that employer unless the injury occurred otherwise than in the conduct of the operations usual in or incidental to the industry carried on by the employer.

(3) An action does not lie for the recovery of compensation under this Act and claims for compensation shall be determined by the commission.

Section 46 of **the Act** states:

Where an action in respect of an injury is brought against an employer or a worker by a worker or his or her dependent, the commission has jurisdiction upon the application of

a party to the action to adjudicate and determine whether the action is prohibited by this Act.

Policy EN-19, Arising out of and in the Course of Employment, of the **Client Services Policy Manual** states:

Policy Statement

Entitlement to compensation is based on two fundamental statutory requirements:

> 1. the worker meets the definition of "*worker*" under subsection 2(z) of the Act; and
> 2, the injury as defined under subsection 2(o) is one arising out of and in the course of employment.

This policy focuses on the established principles that have evolved to define "arising out of and in the course of employment" within the compensation system. It also provides established guidelines on the extent and/or limitations of coverage in varying circumstance0

General

Arising out of and in the course of employment

Section 43 of the Act states:

(1) Compensation under this Act is payable

> (a) to a worker who suffers personal injury arising out of and in the course of employment, unless the injury is attributable solely to the serious and wilful misconduct of the worker; and
>
> (b) to the dependents of a worker who dies as a result of such an injury.

The term "arising out of and in the course of employment" means the injury is caused by some hazard which results from the nature, conditions or obligations of the employment and the injury happens at a time and place, and in circumstances consistent with and reasonably essential to the employment. *Arising out of* refers to what caused the injury; *in the course of* refers to the time and place of the injury and its connection to the employment.

10. *Injury During Compensable Treatment or Return to Work Programming*

Where a worker is undergoing compensable treatment for an injury, any further disablement or subsequent injury resulting from that treatment is compensable.

Where a worker is involved in a WorkplaceNL-sponsored return to work program or training program, any injury that arises out of the return to work or training program is compensable. In any case, the injury must be shown to arise out of and in the course of the return to work program or the training program.

Position of the Plaintiff

A reasonable timeframe was provided to the Plaintiff to provide a submission. No submission was received.

Position of the Defendant

The Defendant is requesting that pursuant to the authority given under **section 46** of **the Act**, WorkplaceNL determine that the action of the Plaintiff against the Defendant is statute-barred.

The Defendant submits that at all material times the Plaintiff constituted a "worker" under **the Act**. The Defendant references the Statement of Claim at paragraph 6 where the Plaintiff claims in part:

6. On or about July 7, 2014, the Plaintiff fell on his right side while getting up from a seating position at work.

The Defendant puts forth that the Plaintiff's injuries are compensable under **the Act** as they arose out of and in the course of employment. To support this position, the Defendant referenced the determination of WorkplaceNL dated July 22, 2014, accepting the Plaintiff's claim for compensation for injuries sustained on July 7, 2014. The Defendant notes that the Plaintiff's employer objected to the decision to accept the claim for injuries arising out of and in the course of employment. However, the Defendant submits that on March 10, 2015, Fran Pitcher, Internal Review Specialist, accepted the injuries to the upper extremity and cervical spine sustained by the Plaintiff on July 7, 2014, as an aggravation of a pre-existing condition in the right upper extremity and neck that arose out of and in the course of his employment.

According to the Defendant's submission, the Defendant was a fee-for-service physician with privileges at the Hospital and was duly qualified and licensed to practice medicine in the Province of Newfoundland and Labrador. Furthermore, at all times material, the Defendant was the sole director and principal of [redacted] and is registered with WorkplaceNL as an employer under Employer Number [redacted] Therefore, the Defendant is registered as an "employer" under **the Act**.

It is maintained by the Defendant that the consequences of medical treatment of a workplace injury are compensable under **the Act**. This is the case even in the event that the consequences arise from negligent treatment. The Defendant submits that had the Plaintiff not sustained the injuries at work he would not have required the further treatment he received. Therefore, the Defendant argues that this forms a causal

relationship between the work injury and the alleged negligent treatment rendering any injuries and losses that result from the treatment an injury which arose out of and in the course of the Plaintiff's employment.

Reasoning and Analysis

I have reviewed the Statement of Claim and the argument put forth by Peter Browne, solicitor for the Defendant. **Section 44 (1)** of **the Act** provides statutory bar to claims made by a worker or a worker's dependent against an employer or a worker for an injury that arises out of and in the course of a worker's employment. In this case, my task is to determine whether the action of the Plaintiff brought against the Defendant is barred by the provisions of **the Act.** It is noted that the Plaintiff reports non-compensable injuries in or around November 2013 when hanging Christmas lights. These injuries and treatment for said injuries are not the focus of my determination. Rather, the scope of this decision is regarding the treatment on or after the fall of July 7, 2014. In making my determination there are number of questions that must be considered:

1) Was the Plaintiff a "worker" within the meaning of **the Act**?

I confirm from a review of the facts that the Plaintiff was employed by [redacted] and working in his capacity as an office manager on July 7, 2014. Therefore, I find that the Plaintiff was a worker under **section 2(z)** of **the Act.**

2) Was the Defendant an "employer" under **the Act**?

I confirm that the Defendant is a registered employer with WorkplaceNL who has been registered since May 6, 2008. Thereby, the Defendant meets the legislative definition of "employer" under **section 2(j)** of **the Act.**

3) Did the Plaintiff injuries arise out of and in the course of employment?

This is the main focus of my decision and the issue which must be determined.

In this case, the Plaintiff alleges that he has suffered injuries as a result of alleged negligent treatment resulting in a delay in the proper diagnosis of the C5-6 cervical cord impingement with significant cord edema.

A review of the facts of the case at hand confirm that the Plaintiff was referred to the defendant for consult on or about January 31, 2014, by his treating physician following a fall while putting up Christmas lights at his home in or around November 2013. The Statement of Claim states that the referral was for a consult regarding findings in the right foot which were affecting the Plaintiff's mobility.

The Defendant assessed the Plaintiff on or about March 11, 2014 and noted weakness of dorsiflexion and evertor of the Plaintiff's right foot. The Defendant provided a diagnosis of right deep peroneal neuropathy secondary to trauma. On April 9, 2014, the Plaintiff underwent nerve conduction studies conducted by the Defendant and was diagnosed with Neurapraxia.

It is noted that the Plaintiff's claim for compensation was accepted by WorkplaceNL for an aggravation of right upper extremity and neck issues on July 7, 2014. At the time, he was working in the capacity of his employment as an office manager with [redacted] when he fell.

Subsequently, the Plaintiff was assessed by the Defendant on July 25, 2014. At that time, the Defendant noted weakness in the triceps muscles and ulnar innervated muscles. The Defendant attributed this to the use of crutches following the July 7, 2014, fall at his workplace.

It is noted in the evidence that on September 15, 2014, the Plaintiff was assessed by a second specialist in neurology who ordered an urgent MRI of the cervical spine. The MRI identified cervical cord impingement at the C5-6 level with significant cord edema. On October 25, 2014, the Plaintiff underwent surgical repair at the C5-6 level with [redacted], Neurosurgeon.

Case Law

Re Kovach, 2000 SCC 3

Ms. Kovach (the complainant) obtained a certificate from the Worker's Compensation Board stating that the injury she sustained from an operation performed by her physician arose out of and in the course of her employment. The Board found that the physician was a worker and was engaged in his employment when he operated on the complainant. As a result, the Board held that the complainant's action for negligence against the physician was barred. The complainant appealed the Board's decision to the British Columbia Court of Appeal and the certificate was quashed.

The physician appealed the decision to the Supreme Court of Canada. The appeal was unanimously allowed based on the reason of the dissenting judge in the court of appeal.

The court stated that if Ms. Kovach had not been injured at work she would not have been treated by the doctor. That fact forms a causal link connecting the employment injury to the related treatment.

The court stated that the Board was not bound to apply common law principles of causation and what works for a tort based system may be unsuitable for a no fault scheme. It all depends on the policy goals of the system. The Board may decide that in order to encourage workers to undergo treatment for their industrial injuries it must cover mistakes made during treatment. It may decide that it is unfair to deny coverage

in such circumstances or inconsistent with a broadly inclusive policy of worker protection.

Analysis

The Kovach case is consistent with **Policy EN-19**, paragraph 10. In the Kovach case, the court found that an action against a treating doctor is barred when there is a causal link between the work injury and the related treatment.

Lindsay v. Saskatchewan (Worker's Compensation Board), 1997 CarswellSask 670(QB)

Mr. Lindsay incurred injuries to his lungs in a mining accident which arose out of and in the course of his employment for which he received compensation benefits. Following his injury, Mr. Lindsay underwent treatment including a biopsy. During the procedure, the doctor accidently severed Mr. Lindsay's nerves. Subsequently, Mr. Lindsay brought an action against the district health board and two doctors. The Worker's Compensation Board in Saskatchewan noted that the doctors were employers under the Act and actions in common law for negligence against an employer for injury were barred by section 180 of the Worker's Compensation Act, 1979 S.S. 1979, c. W-17.1. As such, the Board determined that the action against the doctors was dismissed.

Mr. Lindsay appealed the decision to the Saskatchewan Queen's Bench. The Court confirmed the Board's decision that there was a causal relationship between the work injury and the need for the medical treatment. Therefore, the Court determined that the injury sustained during the biopsy "arose out of and in the course of" Mr. Lindsay's employment and; therefore, is statute-barred. This decision was affirmed by the Supreme Court of Canada.

Analysis

This case is relevant to the case at hand in that the decision of the court is consistent with **Policy EN-19** Paragraph 10.

Keddy v. New Brunswick (Workplace Health, Safety and Compensation Commission) 2002 (NBCA)

Ms. Keddy was at work when she cut off part of her finger with saw. The surgeon amputated the tip of her finger. She attended the hospital for pain treatment. She alleged that the nurse had administered an injection near the sciatic nerve, causing more pain. Ms. Keddy brought an action against the nurse and hospital. The nurse applied for a determination as to whether Ms. Keddy's action was barred under s. 11 (1) of the Worker's Compensation Act. The Tribunal held that the injection resulted from Ms. Keddy's work-related injury in that the injury and treatment were connected because without the injury, Ms. Keddy would not have needed treatment. Ms. Keddy appealed. The appeal was dismissed. It was determined that workers injured while

receiving treatment for work related injuries are acting within the course of their employment at the time of suffering the subsequent injury.

The court held that a sufficient causal connection between the initial and subsequent injury exists in that the latter is a necessary incident of the former. They stated that this conclusion is consistent with the objective of the no-fault compensation scheme.

Analysis

The principles in this case are consistent with **Policy EN-19**, paragraph 10 as described above.

Conclusion

The Statement of Claim, which is the subject of this application, alleges that the Plaintiff has suffered injuries as a result of treatment by the Defendant. In determining whether the Plaintiff's injuries arose out of and in the course of employment, essentially the issue is whether any injury resulting from the treatment of the Plaintiff by the Defendant on or after the July 7, 2014, work injury arose out of and in the course of employment.

The Act affords WorkplaceNL with exclusive jurisdiction to determine whether an injury has arisen out of and in the course of employment. **Policy EN-19** provides guidance to decision-makers when determining whether an injury has arisen out of and in the course of employment. The term arising out of and in the course of employment means the injury is caused by some hazard resulting from the nature, conditions or obligations of the employment and happens at a time and place and in circumstances consistent with and reasonably essential to the employment. Arising out of refers to what caused the injury and in the course of refers to the time and place of the injury and its connection to the employment.

Policy EN-19 provides a number of indicators which can be used as a guide in determining whether an injury has arisen out of and in the course of employment. With respect to injury during compensable treatment or subsequent injuries as a result of a work injury, **Policy EN-19** notes:

> **10.** ***Injury During Compensable Treatment or Return to Work Programming***
>
> Where a worker is undergoing compensable treatment for an injury, any further disablement or subsequent injury resulting from that treatment is compensable.
>
> Where a worker is involved in a WorkplaceNL-sponsored return to work program or training program, any injury that arises out of the return to work or training program is compensable. In any case, the injury must be shown

to arise out of and in the course of the return to work program or the training program.

It is noted that the Plaintiff was treated by the Defendant for upper extremity symptoms following the July 7, 2014, work related fall. Through policy, WorkplaceNL has extended coverage to situations where a worker is further disabled and/or a subsequent injury occurs while undergoing treatment for the compensable work-related injury. The Plaintiff was injured at work and was required to seek out and cooperate in medical treatment and assessment as stipulated in **section 54.1 (b)** of **the Act**.

My role is to determine whether the claim of the Plaintiff is barred by **section 44** of **the Act**. The difficulty in this case is that the Plaintiff's claim against the Defendant relates to treatment that he received both before and after the work injury.

WorkplaceNL has accepted the Plaintiff's claim for compensation for an aggravation for the right upper extremity and neck issues arising from the July 7, 2014 workplace fall. Any claim for injuries resulting from treatment for the aggravation of the right upper extremity and neck issues is compensable since it arises out of and in the course of employment.

Section 44 of **the Act** bars an action by the worker for an injury in respect of which compensation is payable or which arises in the course of a worker's employment.

Determination

It is my determination that the action brought against the Defendant for injuries resulting from medical treatment and/or assessment on or after July 7, 2014 for the aggravation of the right upper extremity and neck issues is statute barred under **the Act**. Attached is the certificate which may be filed with the court.

Sincerely,

Shaunna Ryan
Internal Review Specialist

SR:kao

c: Paula Fudge, Internal Review Clerk
[redacted]