
# Are You Working When Driving Home? Court Says 'Yes'

By Jesse Stanich, Student-At-Law

In the B.C. Court of Appeal case *Dhillon v. Workers' Compensation Appeal Tribunal*, 2022 BCCA 251, the Court dismissed the appeal of Dhillon, and upheld the decision of the Worker's Compensation Appeal Tribunal ("WCAT").

Dhillon's Action was barred by application of section 10 of the B.C. *Workers Compensation Act*, which generally bars actions which arise during the "course of employment." Similar provisions exist in other jurisdictions. The appeal contained some information regarding the standard of review appropriate, but the intriguing portion of the appeal concerns the parameters of what the term "in the course of employment" means.

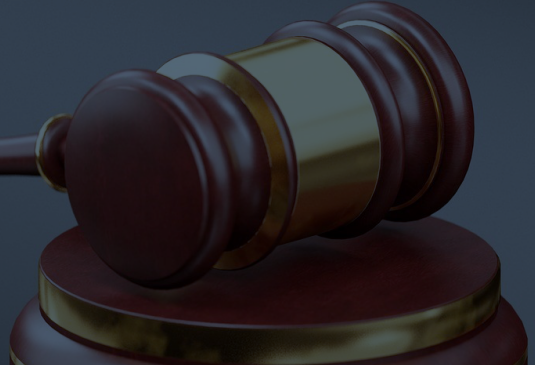
Interestingly, the B.C. Supreme Court ruled both drivers were in the course of employment, even though Dhillon was on her way home from her employment duties, and there was little direct evidence of the truck driver's employment status at the time. The line of reasoning in this decision may have connotations for various jurisdictions where other workers compensation acts bar actions which arise out of employment.

**Relevant Facts and Background**

In July of 2015, Dhillon was driving home after tending to her last client of the day. She was hit by a tow truck allegedly speeding in the opposite direction, which crossed the centre line. She received extensive injuries from the crash, and brought an action to address her personal injuries. The truck driver plead guilty to driving without due care and attention.

The truck driver's employment status was also in question; they were allegedly driving a company truck in the course of employment, but there was little evidence confirming his employment status that day.

Dhillon was a personal care worker employed by Fraser Health Authority and often travelled in her own vehicle between job sites. She traveled up to four times a day to different clients. Her counsel argued she submitted she was "free to travel where she wished", since she was finished with her last client for that day. Defence counsel argued she was a "travelling employee", and therefore barred from bringing the action.



The WCAT examined the following relevant policies to make the determination:

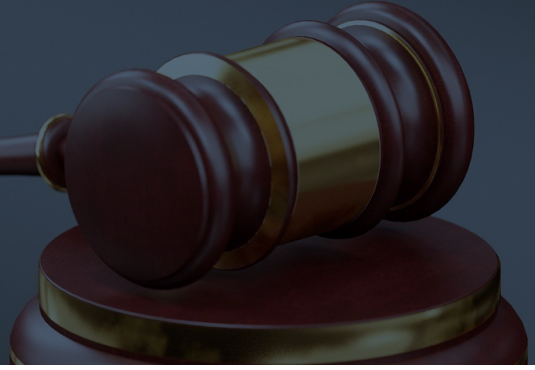
Policy 14 which was the principal policy governing the assessment of whether an injury or death arose "out of and in the course of employment", and therefore made compensable. Two components played to this determination:

1. causation ("arising out of the employment"); and
2. connection ("in the course of the employment"). The policy recognized "employment is a broader concept than work and includes more than just productive work activity."

Policy 19 which expanded upon Policy 14 by adding factors specific to work related travel. These factors are to be considered in addition to the nine listed in Policy 14. It stated that generally speaking, injuries which occur during "the course of travel from the worker's home to the normal place of employment are not compensable.

The court of appeal confirmed the analysis of two interacting polices which defined the "course of employment." The Court also analyzed the following passages within these polices when determining an "Employment Connection":

- "a worker" terminates productive activity at one work location and travels to another one to commence productive activity there for the same employer. This is regardless of whether the worker was paid a salary or other consideration for the travel;
- "a worker" travels from home to a temporary place of work without first traveling to the normal, regular or fixed place of employment. Again, the employment connection begins when the worker commences travel on the public roadway.
- An employment connection generally exists throughout the travel undertaken by the travelling employees, provided they travel reasonably directly and do not make major deviations for personal reasons. This is so regardless of whether public or private transportation is used;
- Examples of travelling employees include, but are not limited to, taxi drivers, emergency response personnel, transport-industry driver, cable installers, home care workers, many sales representatives, and person attending off-site business meetings.



**Upholding the Workers' Compensation Appeal Tribunal's Decision**

Ultimately, the Worker's Compensation Appeal Tribunal determined Dhillon was "in the course of employment". While policy 14 was not enough to trigger the determination, consideration of policy 19 ultimately made the determination for Dhillon.

Dhillon was "in the course of employment" when she was struck by the tow truck driver, who was also "in the course of employment":

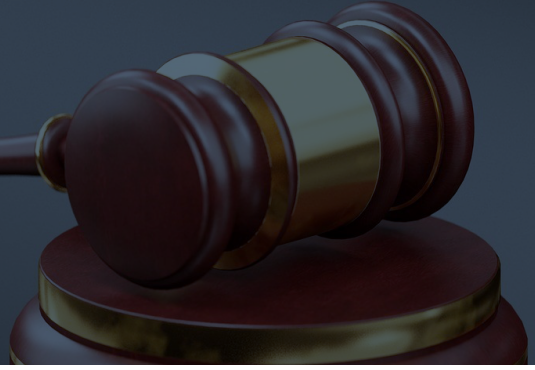
- An "employment connection" exists as long as the employee does not make any major deviations to their travel, meaning it extends travel between clients and home;
- The phrase "from the time the worker commences travel on the public roadway" must be read in conjunction with the context of an "employment connection";
- Policy 19 does not expressly state where the coverage ended, and therefore it was not unreasonable for the policy to extend to the course of driving home;

The Truck Driver was also "in the course of employment" when they struck Dhillon:

- The truck driver was using a company truck which, was not permitted for personal use;
- While there was little evidence of employment on that specific day, this could be explained by supervisor absences;
    - WCAT is able to draw inferences despite lack of direct evidence on employment for that specific date.

**Main Takeaways**

1. The Court accepted the use of a policy specific approach to analysis;
2. The Court expanded the meaning of "the course of employment" to include workers who are driving home;
3. The court accepted WCAT's use of similar tribunal decisions, even though they are not bound by them;
4. The court accepted the use of inferences by WCAT to draw connections to employment, even where direct evidence was lacking.



While the statues and policies examined used B.C. statues and employment policies, the reasoning was applied in a general manner, and could apply to decisions such as *Harjot Manak v Kamaldeep Sidhu et al.,* ABQB [2021], where Manak's claim was summarily dismissed against Maxim Transportation. In this case, the court looked to the specific provisions in a "Vehicle Lease and Service Agreement" to determine the applicability of "the course of employment". Ultimately, both parties accepted section 23 of the *Workers Compensation Act* applied and therefore the analysis did not matter, but it is possible the court could have come to a different conclusion in light of this case. The court of Queen's Bench in Alberta looked to factors such as:

- Cochrane Transport exerting control over scheduling;
- Cochrane transport having direct supervisory control over Manak's work;

**Conclusion**

Overall, *Dhillon v Workers' Compensation Appeal Tribunal* expands the meaning of the term "in the course of employment" by extending the coverage under the B.C. *Workers Compensation Act* to driving home after employment duties are finished. Considering the employment policy focused decision, the reasoning could extend to Alberta's legislation, since courts have used specific employment polices to determine "course of employment" for section 23(1) of the *Workers' Compensation Act* in Alberta.

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Nabeel has obtained successful results at the Alberta Court of Appeal, Alberta Court of Queen's Bench, Alberta Provincial Court, British Columbia Supreme Court, British Columbia Provincial Court, Federal Court, Tax Court of Canada, and the Federal Umpire. Nabeel, who was named Lawyer to Watch in the 2018 and 2021 Lexpert Directory, joined the firm in 2013. His primary area of practice is Insurance Defence Litigation.

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