

## Case In Point

# Appellate Court Upholds GSB Decision that Appropriate Jurisdiction to Adjudicate Mental Stress Claim is under WSIA

**Date:** March 1, 2019

The Divisional Court has upheld a decision of the Grievance Settlement Board (Board) that found that it did not have jurisdiction to award damages as a remedy for grievances alleging workplace bullying and harassment as the alleged injuries would be compensable under the *Workplace Safety and Insurance, 1997* (WSIA).

In [Ontario Public Service Employees Union v. The Crown in Right of Ontario](#), the grievor was a Probation and Parole Officer who alleged she was subjected to workplace harassment and bullying by co-workers. She also claimed that the employer failed to provide her with a workplace environment free from harassment as required by the Collective Agreement and the *Occupational Health and Safety Act*. There were no allegations of discrimination based on a protected ground under the *Human Rights Code*. The remedies sought included general damages for pain, loss of dignity and humiliation as well as a direction that the employer take immediate steps to correct the issues in the workplace.

The Board upheld the employer's preliminary objection that it had no jurisdiction to award the compensatory damages sought, relying in part on the analysis in [Ontario Public Service Employees Union v. The Crown in Right of Ontario \(Ministry of Community Safety and Correctional Services\) \(Monk\)](#). The Court of Appeal in that decision stated that if an injury or illness of the sort alleged by the grievor would have been compensable under the WSIA or its predecessor legislation, the Board "could not award damages under the collective agreement for compensable injuries" to which that legislation would have applied.

The Board rejected the Union's argument that *Monk* was inapplicable because there was no allegation of illness or disease in this case. It found that the grievor's allegation that she sought medical attention, required prescription medication, and suffered 'significant mental, emotional and physical distress' was sufficient to constitute a viable claim under the WSIA. The Board also relied on two Workplace Safety and Insurance Appeals Tribunal (WSIAT) decisions that concluded sections of the WSIA that limited entitlement for benefits for mental stress were unconstitutional. [It should be noted that the Board's decision was rendered prior to the January 1, 2018 changes to the WSIA allowing entitlement to benefits for chronic mental stress.]

The Divisional Court affirmed the reasonableness of the Board's decision on the basis it properly applied the principles from *Monk* and was consistent with previous decisions of the Board.

The Court noted that other relief may still be available, such as a declaration, a direction, or compensation for damage to property and stated that following the successful preliminary objection the Board indicated the matter was to continue as scheduled.

The position of the WSIAT on the issue of chronic mental stress and the subsequent changes to the WSIA are critical factors for employers to keep in mind when responding to mental stress allegations outside the workers' compensation forums. Even where a claim under the WSIA has not yet been filed, an adjudicator may decline jurisdiction to deal with compensatory damages if the allegations, if proven, could lead to compensation under the WSIA

[Sean Reginio](#) is a 2018-2019 articling student with Hicks Morley.