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Mental stress, workers compensation and equality: Plesner v British Columbia Hydro and Power Authority

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This note discusses the decision of the British Columbia Court of Appeal that restrictions on the right of a person affected by mental stress to recover compensation under the British Columbia workers compensation code were in breach of the equality provisions (s. 15) of the Canadian Charter of Rights. Although (because of the specific facts of the case) the result of the judgement was only that certain provisions of the relevant Policy (13.30) of the Workers Compensation Board were 'read down',[2] the implications of the decision cast doubt on the wider restrictions on compensation for mental stress which remain in force in British Columbia and may also have implications for other Canadian jurisdictions with similar restrictions. This note also discusses the broader implications of this and other recent decisions as regard the operation of workers compensation codes in the context of the guarantee of equal protection set out in the Charter and the interpretation of the of s. 15 in the light of the Canadian Supreme Court's new approach (not very clearly) set out in *Kapp*.[3]

The law

The British Columbia Workers Compensation Act[4] provides that

> s. 5(1) Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

However, as a result of an amendment introduced in 2002, different rules apply to persons affected by 'mental stress'. The Act now provides that

> 5.1(1) Subject to subsection (2), a worker is entitled to compensation for mental stress that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental stress
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> (a) is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment,
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> (b) is diagnosed by a physician or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and
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> (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

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[1] 2009 BCCA 188.

[2] The WCB did not appeal the decision and has subsequently promulgated new Policy: see Resolution of the Board of Directors, 2009/07/14-06.

[3] *R. v. Kapp*, 2008 SCC 41.

[4] RSBC 1996 c. 492.

The policy reasons for this amendment were described by Prowse J as 'largely cost-driven' and, contrary to the recommendation of a number of studies, specifically excluded 'chronic stress' claims.[5]

The Workers Compensation Board (WCB) adopted Policy Item 13.30 to give guidance as to the meaning of the terms 'acute' and 'traumatic'. Relevant sections of the Policy are cited below.

The facts

Mr. Plesner suffered post traumatic stress disorder (PTSD) as a result of the rupture of a natural gas pipeline at his workplace (the British Columbia Hydro and Power Authority) in January 2003. However, the WCB and, on appeal, the Workers Compensation Appeal Tribunal found that this was non-compensable as it was not a reaction to a sudden and unexpected traumatic event. The Tribunal accepted that Mr. Plesner's PTSD was 'acute' within the meaning of the Act. Therefore, no issue concerning 'chronic stress' per se arose in this case. In relation to a 'traumatic' event Policy 13.30 provided that

> For the purposes of this policy, a 'traumatic' event is a severely emotionally disturbing event. It may include the following:
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> a horrific accident;
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> an armed robbery;
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> a hostage taking;
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> an actual or threatened physical violence;
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> an actual or threatened sexual assault; and,
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> a death threat.
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> In most cases, the worker must have suffered or witnessed the traumatic event first hand.
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> In all cases, the traumatic event must be:
>
> clearly and objectively identifiable; and
>
> sudden and unexpected in the course of the worker's employment.
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> This means that the event can be established by the Board through information or knowledge of the event provided by co-workers, supervisory staff, or others, and is generally accepted as being traumatic.

The WCAT found that the accident leading to Mr. Plesner's PTSD was not 'traumatic'. It accepted the decision of the WCB review officer that the event had not been 'horrific' and also ruled that it had not been generally accepted as traumatic by other workers.

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[5] *Plesner* at 109. The issue of 'chronic stress' had been discussed by the Royal Commission on Workers' Compensation in British Columbia, *For the Common Good*, (Victoria, B.C.: Queen's Printer, 1999), and A. Winter, *Core Services Review of the Workers' Compensation Board* (B.C. Ministry of Skills Development and Labour, 2002).

This decision was challenged by way of judicial review and the BC supreme court sent the matter back to the Tribunal for further investigation on the basis that its reasons were 'internally inconsistent'.[6] The court did not, therefore, find it necessary to deal with the argument which had been advanced that restrictions on compensation for mental stress were in breach of the Charter.[7] Mr. Plesner appealed to the Court of Appeal. By the time the appeal was heard, the parties were agreed that the findings of the WCAT were not inconsistent as the law stood and the issue before the Court was whether the law and Policy were consistent with the Charter.[8]

The Court of Appeal decision

The judgement of the majority was given by Prowse J (with whom Frankel J agreed). She concluded that

> the requirement of a 'traumatic event' in s. 5.1(1)(a) of the *Act*, when read together with Policy 13.30, breaches s. 15(1) of the *Charter* by discriminating against Mr. Plesner, and other workers like him who suffer from purely mental work-related injuries, on the basis of mental disability.[9]

She pointed out that

> Workers with purely mental injuries are forced to meet a significantly higher threshold for compensation which is not required of those who suffer work-related injuries that are purely physical, or who suffer mental injuries which are linked to physical work-related injuries.[10]

In analysing the alleged discrimination, Prowse J set out the standard *Law* framework. This sets out three steps in considering s. 15 challenges:

> First, does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics? If so, there is differential treatment for the purpose of s. 15(1). Second, was the claimant subject to differential treatment on the basis of one or more of the enumerated and analogous grounds? And third, does the differential treatment discriminate in a substantive

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[6] On the basis that the WCAT had found that he suffered from post traumatic stress disorder but that the event given rise to the PTSD was not 'traumatic'.

[7] It had not been possible to advance these arguments before the WCAT because as a result of s. 245.1 of the Workers Compensation *Act* and s. 44(1) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, the WCAT does not have jurisdiction over constitutional questions.

[8] The case raised a number of procedural issues including the fact that the Court has to consider an issue which had not been considered by lower courts and tribunals. In addition, the employer was not represented before the Court of Appeal and the WCAT also appealed against the supreme court's decision. See the judgement of Ryan J in *Plesner* at 34-41.

[9] At 96.

[10] Ibid.

sense, bringing into play the purpose of s. 15(1) of the *Charter* in remedying such ills as prejudice, stereotyping, and historical disadvantage?[11]

While, as Prowse J noted, *Kapp* had referred to some difficulties in applying the *Law* guidelines, there was nothing in that decision which indicated that the *Law* test should no longer be applied.

The majority's analysis was heavily influenced by the *Martin* case in which the Supreme Court of Canada ruled that the exclusion of compensation for chronic pain from the general Nova Scotia worker's compensation scheme was in breach of s. 15 of *the Charter*.[12] Prowse J turned first to whether there had been differential treatment and the question of the appropriate comparator. The WCB had argued that the appropriate comparator was persons who suffered purely mental stress but who were able to satisfy the description of a 'traumatic event'. Prowse J rejected this arguing that this group was also disadvantaged in that they have to satisfy the higher requirement of proving that the injury arose from a traumatic event and preferred Mr. Plesner's chosen group viz. workers who suffer physical injuries arising out of and in the course of their employment, whether or not those physical injuries are accompanied by mental stress injuries.[13] Having established the comparator group, Prowse J agreed that Mr Plesner was subjected to differential treatment based on mental disability.[14]

The majority rejected the argument of the Attorney General that the provisions did not draw a distinction based on personal characteristics (i.e. mental disability) but rather set out an 'objective test for causation' to address the evidential difficulty in proving purely mental injuries.[15] The Attorney General argued that it was the nature of the *event* rather than the nature of the *injury* which was distinguished by s. 5.1(1)(a). Prowse J concluded that this argument simply sidestepped the purpose of the equality analysis which was to establish whether that in setting tests for causation the legislature and policymakers had discriminated contrary to the Charter. In contrast, Ryan J's dissenting opinion turned on her acceptance of the Attorney General's argument.[16] However, despite a very lengthy judgement, Ryan J gives little (if any) argument in support of this conclusion[17] and, with respect, it is difficult to see that this approach is sustainable in the light of the Supreme

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[11] *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497, at 39. In *R. v. Kapp*, 2008 SCC 41, 2008 SCC 41 (CanLII) at 17 the Supreme of Canada Court recently outlined a two stage test: (1) Does the law create a distinction based on an enumerated or analogous ground? (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping? - but stated that it saw the test as, in substance, the same as that in *Law*.

[12] *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, 2003 SCC 54 (CanLII) (hereafter *Martin*). See *Plesner* at 132, 134-40, 151 and 153.

[13] At 120-21.

[14] All parties were agreed that the legislation drew a formal distinction between the claimant and others (per Ryan J at 69).The Attorney General has argued that 'mental stress' was not tantamount to mental disability under the Charter. Prowse J was satisfied (at 126) that , while not all stress is disabling, Mr. Plesner was disabled by mental stress

[15] At 122-23.

[16] At 85.

[17] One might assume that she has accepted the arguments of the Attorney General (at 76-84).

Court of Canada's decision in *Martin*.[18] The Attorney attempted to distinguish *Martin* on the basis that chronic pain was *entirely* excluded from the general compensation scheme. However, in *Martin*, the Supreme Court ruled that discrimination *amongst* persons with disabilities also amounted to discrimination on the basis of disability as an enumerated ground and it is difficult to see how treating persons with mental stress differently from those with physical injuries does not also discriminate amongst persons with disabilities.[19]

The Court then turned to the key question of whether this differential treatment amounted to substantive discrimination. In doing so, Prowse J had regard to the contextual factors in *Law*.[20] She was satisfied that person suffering from mental disability were subject to pre-existing disadvantage, stereotyping, prejudice, and vulnerability.[21] Second, she found that there was a lack of correspondence between differential treatment and the needs of people like Mr. Plesner in that the requirement of a 'traumatic event' took 'precedence over a case specific assessment of whether an individual's purely mental injury is genuine and "work-related" and ignore[d] the particular needs of workers who suffer such injuries'.[22] Thirdly, there was no identifiable ameliorative purpose of the provisions (other than general cost saving which was not, ruled Prowse J, the type of purpose contemplated by *Law*).[23] Finally, the loss suffered by Mr. Plesner was not purely economic in that he also lost access to retraining and rehabilitation programs and related benefits.[24]

Unsurprisingly, given the facts, Prowse J found that this discrimination was not saved by s. 1 of the Charter.[25] Indeed counsel for the Attorney General accepted that she would be hard-pressed to pursue a s. 1 argument while counsel for the WCB did not seek to rely on s 1. Prowse J concluded that no basis in the record to decide that 'the financial considerations and/or the causative problems posed by mental stress claims provide a pressing and

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[18] *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504.

[19] *Martin* at 76-81. And it is worth noting that a WCAT expressed the opinion that it would be seldom, if ever, that a person suffering mental health injuries would be able to meet the criteria established under the BC laws and policy: WCAT-2006-04666 quoted in *Plesner* at 142.

[20] These are (i) pre-existing disadvantage, stereotyping, prejudice, or vulnerability experienced by the individual or group at issue; (ii) the correspondence, or lack thereof, between the ground or grounds on which the claim is based and the actual need, capacity, or circumstances of the claimant; (iii) the ameliorative purpose or effects of the impugned law upon a more disadvantaged person or group in society; and (iv) the nature and scope of the interest affected by the impugned law.

[21] At 130-35. In contrast, an appeals resolution officer of the Ontario Workplace Safety and Insurance Board had concluded that differential treatment of persons affected by chronic stress did not 'reflect or reinforce existing inaccurate understandings of the merits, capabilities and worth of a particular person or group within Canadian society': Decision Number: 20090002, 2009 CanLII 50544 (ON W.S.I.B.) (see below fn 32). However, this conclusion was arrived at largely on the basis that the officer had – in contrast to the *Plesner* majority and arguably incorrectly – selected the comparator group as 'workers who had suffered from acute traumatic mental stress'. This approach is arguably incorrect as this group also have to satisfy the addition requirements not applied to those with physical injuries (see Prowse J rejecting a similar argument in *Plesner* at 121).

[22] At 137.

[23] At 138.

[24] At 139.

[25] At 146-62.

substantial basis for overriding the s. 15(1) right'.[26] If she had found there to be a pressing and substantial objective, she would have found that the means chosen were not rational as there was little evidence that mental stress claims which were not chronic amounted to a substantial claim on the compensation fund. Nor would the provisions satisfy the minimal impairment and proportionality requirements of the s.1 test.[27]

Prowse J found, given the specific facts of the case, that it was only the descriptor of 'traumatic event' in s. 5.1(1)(a) as qualified by Policy 13.30 which gave rise to substantive discrimination. Therefore, the remedy granted was the rather narrow one of striking down the provisions of the Policy which defined 'traumatic event'. The WCB has subsequently promulgated a new Policy which defines a 'traumatic' event as an 'emotionally shocking event.'[28] However, it is perhaps surprising that the Court did not find that restriction on compensation to events arising from a 'traumatic event' in the Act itself was in breach of the Charter given that whether or not Mr. Plesner's injury had arisen from such an event was clearly still in issue.[29]

Broader implications

Workers compensation and equality

Cases such as *Martin* and *Plesner* have highlighted the issues facing those operating workers compensation legislation in a jurisdiction with strong equality laws. Historically, policy makers have tended to make somewhat arbitrary and ad hoc adjustments to workers compensation laws to address what have been seen as particular issues. In many jurisdictions – and this is a tendency by no means confined to Canada – one can find what appear to be somewhat anomalous and/or inconsistent provisions whereby different types of injury are treated in different ways. *Martin* and *Plesner* show that, while differential treatment is not in itself discriminatory, policy makers need to have greater regard for equality provisions in this context. The recent decision of the Nova Scotia Court of Appeal in *Downey* (in which the Court upheld a limit on the amount of compensation granted to person suffering from chronic stress) is, even if correctly decided,[30] not really an exception

[26] At 153. Noting that the extreme financial circumstances shown in *Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66, [2004] 3 S.C.R. 381 did not arise here.

[27] At 156.

[28] See Resolution of the Board of Directors, 2009/07/14-06.

[29] However, the WCAT has accepted that the new Policy significantly 'lowered the bar' with respect to what is considered to be a traumatic event. See WCAT- 2010-00555 for a recent case where an incident where a bus driver was spat on by a known intravenous drug user was, following *Plesner*, accepted as a traumatic event. See also WCAT-2009-02469 and WCAT-2009-03270. But see WCAT-2009-03060 in which a 'comment' passed by a foreman was not a 'traumatic event'.

[30] *Downey v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2008 NSCA 65. For a critical review of the approach in *Downey* see: M. Cousins. 2009. 'Chronic pain, impairment, workers compensation and equality: *Downey v Nova Scotia (Workers Compensation Appeals Tribunal)*' at: http://works.bepress.com/mel_cousins/9.

to that rule in that – as a legislative response to the *Martin* decision - the legislature already had had regard to the equality issues involved.[31]

In the case of limitations on mental stress, as we have seen, the *Plesner* case did not affect the broader limitations on compensation for chronic stress nor the fact that compensation must arise from a traumatic event (albeit that the definition of such an event has been considerably revised). In addition, similar exclusionary provisions can be found in workers' compensation legislation in a number of Canadian jurisdictions including Manitoba, Newfoundland, Nova Scotia, Ontario and Prince Edward Island.[32] The logic of the Court of Appeal decision would certainly appear to apply to the requirement that the injury arise from a 'sudden and unexpected traumatic event'. The main purpose of the requirement would appear to be evidential in that it makes it easier to prove that a particular injury was indeed work-related. However, where a worker can show that a particular injury is work-related although not arising from such an event, it may be difficult to justify this restriction given the lack of correspondence between the rule and the person's needs and circumstances.

The issue of confining compensation to 'acute' stress (and thereby excluding chronic stress) may raise more complex issues and as Prowse J points out,[33] it would appear that the main financial benefits of s. 5.1(1)(a) were expected to arise from the exclusion of chronic stress claims. 'Chronic stress' may be defined as 'a psychological impairment or condition caused by mental stressors acting over time.'[34] Obviously insofar as such injuries are not work-related, they should not be compensated under a worker's compensation code. However, the difficulty arises in showing the extent to which such injuries 'over time' arise from work and/or arise from (or are contributed to) by non-work related issues.

In his review of the workers' compensation scheme, Alan Winter considered in detail the arguments for and against compensating for chronic stress under the workers compensation scheme.[35] As summarised by Ryan J, the arguments for included:[36]

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[31] See also the interesting decision of the Ontario Workplace Safety and Insurance Board: Decision Number: 20090003, 2009 CanLII 50546 (ON W.S.I.B.).

[32] In the case of Ontario, the restrictions were upheld by the Workplace Safety and Insurance Board: Decision Number: 20090002, 2009 CanLII 50544 (ON W.S.I.B.) which ruled that s.13(4) and (5) of the Workplace Safety and Insurance Act (WSIA) and the Workplace Safety and Insurance Board (WSIB) policy on Traumatic Mental Stress did not violate either s. 15(1) of the Charter or s.1 of the Ontario Human Rights Code. These provide that a worker is entitled to benefits for mental stress that is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of his or her employment, but not for stress caused by employer decisions or actions relating to the worker's employment, including a decision to change the work to be performed, working conditions or disciplinary actions including termination. However, this decision (correctly at the time) relies heavily on the concept of 'human dignity' in concluding that the provision did not breach the Charter – a view which would now have to be reconsidered in the light of *Kapp*.

[33] At 149.

[34] See Policy 13.30.

[35] It should be noted that for the purposes of his report, Commissioner Winter used the term 'chronic stress' as referring to claims for psychological impairment caused by mental stimuli acting over time, and *not* to impairments caused by a traumatic event, such as posttraumatic stress disorder.

[36] *Plesner* at 57.

1. Chronic stress arises from a myriad of interacting factors some of which may be related to employment but many of which may arise from the worker's private life. Since stress is omnipresent in everyone's life, it is difficult to understand why workers should be compensated for it under the workers' compensation scheme.

2. Many *bona fide* employment-related decisions are likely to cause a significant stress reaction in particular workers.

3. Chronic stress claims are very subjective to each particular worker. The highly subjective nature of stress claims is different from physical claims and may lead to issues of exaggeration.

4. Including such claims will make the system much more litigious.

5. The concern that acceptance of chronic stress will produce a significant increase in chronic stress claims. This, in turn, may create substantial cost implications to the system.

Commissioner Winter also outlined the reasons for the inclusion of chronic stress claims (again, as summarized, by Ryan J) these are:[37]

1. A fundamental purpose of the system is to compensate all 'truly work-caused' claims, so where chronic stress can be proven to be 'truly work-caused' it should be compensated.

2. Several Canadian jurisdictions have excluded stress claims except for claims arising from an acute reaction to a traumatic event but concerns have been raised in those jurisdictions about how that is accomplished.

3. A possible concern that if such claims are not allowed they may become actionable in certain circumstances.

4. A concern that such an exclusion would offend the *Charter*.

The Commissioner concluded that legislation should specifically indicate the conditions that must be met for a worker to receive compensation for chronic stress and that compensation should be based on an objective assessment of verifiable and excessive stressors that are not related solely to generic work processes. He further recommended that workplace-related stressors should represent more than 50 percent of causal significance leading to psychological impairment.

In principle, it should be acceptable to impose an additional burden (such as the evidential requirements set out in s. 5.1(1)(b) of the BC Workers Compensation Act) on persons suffering from chronic stress where this relates to the particular nature of the injury.[38] However, where a requirement treats persons differently (either by denying a benefit or imposing an additional burden) without any relevant reason or in a disproportionate

[37] At 58.

[38] Thus in the USA case of *Sakotas v Workers Comp. Appeals Bd.* 80 Cal. App. 4th 262 (Cal App, 2000) the court upheld a requirement that an employee show that 'actual events of employment' were the predominant cause of a psychiatric injury. Similarly in *Tomsha v. City of Colorado Springs*, 856 P.2d 13, 14 (Colo. App. 1992) the court upheld a requirement that a psychic injury claim be supported by the evidence of a physician or psychologist.

manner it would seem likely that it would be inconsistent with the Charter.[39] Arguably, the total exclusion of such claims falls within the latter area but it is, of course, difficult to come to a final conclusion without the benefit of detailed argument on the point.

How is the equality provision to be applied?

The case also raises the broader issue of how the Charter provisions on equality are now to be applied. The *Law* test was applied in a standard manner by the Canadian courts for a number of years. There were, of course, some serious criticisms on this approach and, in particular, the emphasis on human dignity to be found in *Law*. These were addressed by the Supreme Court in *Kapp*. However, while the Supreme Court's willingness to respond to academic criticism is very welcome, *Kapp* was a somewhat odd context for this response as the facts of the case did not allow the Court to give a clear indication of how its new analysis differed from *Law*. In particular, the *Kapp* court referred to the four contextual factors without indicating that these should no longer be used. However, subsequently in *Ermineskin* and *A.C. v. Manitoba*, the Court has simply stated that there are two questions involved in determining whether there is discrimination contrary to s.15: (1) Does the law create a distinction based on an enumerated or analogous ground? and (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?[40] In neither case did the Court refer to *Law* at all as regard equality analysis and some commentators have argued that 'that the *Law* framework for analyzing an equality challenge should no longer be used'.[41] However, the Court itself has not explicitly stated this but nor has it given much (if any) clear guidance as to how to apply the 'new' approach. As a result, the initial post-*Kapp* cases concerning social benefits – such as *Downey*, *Harris*[42] and *Plesner* – have continued to apply *Law* while making reference to *Kapp*.[43] Unfortunately the Supreme Court refused leave to appeal in the two unsuccessful cases (*Downey* and *Harris*) while the outcome in *Plesner* has, as we have seen, been accepted. Therefore, this critical issue remains to be clarified and one must await further case law to establish whether the *Law* factors should continue to be applied and, if so, in what precise manner.[44]

This series of cases does, however, highlight the relative strength of the Canadian equality provisions. In contrast, many US states exclude (in whole or in part) so-called

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[39] As in *Martin*. See, for example, the USA case of in *Esser v. Industrial Claim Appeals Office of the State of Colorado* 8 P.3d 1218 (Colo. App., 2000) where the court struck down a requirement that in a mental injury claim oral medical evidence was required (whereas for other injuries written evidence was acceptable) on the basis that there was no legitimate purpose for this additional requirement.

[40] *Ermineskin Indian Band and Nation v. Canada*, 21 2009 SCC 9 at 188, and *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at 109.

[41] J. Watson Hamilton and J. Koshan, 'The End of Law: A New Framework for Analyzing Section 15(1) Charter Challenges' at http://ablawg.ca/2009/02/20/the-end-of-law-a-new-framework-for-analyzing-section-151-charter-challenges/

[42] *Harris v. Canada (Human Resources and Skills Development),* 2009 FCA 22.

[43] See also *Ontario Disability Support Program v. Tranchemontagne*, 2009 CanLII 18295 (ON S.C.D.C.) although this case concerns the Ontario Human Rights Code rather than the Charter. The *Law* analysis has also been applied in a host of non-social security cases.

[44] See the discussion as to the current state of the law in *Morrow v. Zhang*, 2009 ABCA 215 (CanLII), 2009 ABCA at 52-53

'mental/mental' injuries (i.e. a psychological injury resulting from psychological causes) from compensation or provide for specific additional restrictions in relation to compensation for such injuries. These exclusions and restrictions has consistently been upheld by State courts under both Federal and State constitutional challenges on equal protection grounds.[45]

[45]See *Tomsha v. City of Colorado Springs,* 856 P.2d 13, 14 (Colo. Ct. App. 1992); *Hansen v. Workers' Compensation Appeals Board*, 23 Cal. Rptr. 2d 30, (Cal. Ct. App. 1993); *Stratemeyer v Maco Workers Comp. Trust* 259 Mont 147 *cert. denied* , 510 U.S. 1011 (1993) (Mont., 1993); *Williams v. State Department of Revenue* , 895 P.2d 99, (Alaska 1995); *Frantz v. Campbell County Memorial. Hosp*., 932 P.2d 750 (Wyo. 1997) *; Berninger v. Workers' Compensation Appeal Board (East Hempfield Township),* 761 A.2d 21 (Pa. Cmwlth. 2000); *Luttrell v. Clearwater County Sheriff's Office*, 140 Idaho 581, 97 P.3d 448 (Id., 2004); *McCrone v Bank One Corp* 107 Ohio St. 3d 272 (Ohio, 2005). See generally N. Riley, 'Mental-Mental claims: Placing limitations on recovery under workers' compensation for day-to-day frustration', (2000) 65 *Mo. L. Rev.* 1023 and R.M. Janutis 'The new industrial accident crisis: compensating workers for injuries in the office' (2008) 42 *Loyola of Los Angeles Law Rev*., 25.