NOVA SCOTIA COURT OF APPEAL

Citation: *Skinner v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2018 NSCA 23

Date: 20180309
Docket: CA 449275
Registry: Halifax

Between:

Wayne Skinner

Appellant

v.

Workers' Compensation Appeals Tribunal, the Workers' Compensation Board of Nova Scotia, and Attorney General of Nova Scotia

Respondents

Judge:	The Honourable Justice David P.S. Farrar
Appeal Heard:	November 27, 2017, in Halifax, Nova Scotia
Subject:	**Workers' Compensation Law. Interpretation of *Workers' Compensation Act,*** S.N.S. 1994-95, c. 10. **Whether Board Policy is inconsistent with the *Act*. Medical Marijuana as Medical Aid.**
Summary:	Mr. Skinner suffered a work-related accident. He was authorized to use medical marijuana for medical purposes and requested approval from the Workers' Compensation Board for medical aid in the form of medical marijuana. His request was denied by the Board relying on Board Policy 2.3.1R which required medical aid to be consistent with standards of health care practices in Canada. The Board found that the provision of medical marijuana was not. Mr. Skinner appealed to WCAT. WCAT dismissed the appeal also relying on Policy 2.3.1R.

Mr. Skinner sought leave to appeal and was granted leave to appeal to this Court.

Issues:

(1) Is Policy 2.3.1R inconsistent with the *Workers' Compensation Act*?

(2) Did Policy 2.3.1R unlawfully fetter the discretion of the Board in considering the merits of the worker's claim to medical aid for medical marijuana?

Result:

Policy 2.3.1R is not inconsistent with the *Act*. It is, in context and objective, consistent with the WCB statutory authority.

Further, as it was found that the Policy was consistent with the *Act*, it did not unlawfully fetter the WCB's discretion.

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Workers' Compensation Appeals Tribunal, the Workers' Compensation Board of Nova Scotia, and the Attorney General of Nova Scotia

Respondents

Judges:	Beveridge, Farrar and Bryson, JJ.A.
Appeal Heard:	November 27, 2017, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Farrar, J.A.; Beveridge and Bryson, JJ.A. concurring.
Counsel:	Kenneth H. LeBlanc and Danielle St. George, for the appellant Alison Hickey, for the respondent Workers' Compensation Appeals Tribunal Roderick (Rory) H. Rogers, Q.C. and Paula Arab, Q.C., for the respondent, Workers' Compensation Board of Nova Scotia

Reasons for judgment:

Background

[1] On August 13, 2010, Mr. Skinner sustained an injury to his right hand, left shoulder and hip when he was involved in a motor vehicle accident while in the course of his duties as an elevator mechanic. He filed a claim for compensation with the Workers' Compensation Board (WCB). The WCB accepted that his injuries resulted from the accident and were compensable.

[2] In the decision dated March 14, 2013, a case manager found Mr. Skinner was entitled to:

- six percent pain-related impairment for chronic pain
- full monthly extended earnings-replacement benefit (EERB) for his earnings loss.

[3] Mr. Skinner, who is authorized to use marijuana for medical purposes, requested approval from the WCB for medical aid in the form of medical marijuana. In a decision dated June 7, 2012, the same case manager denied his request. In doing so, she relied on the criteria set out in Board Policy 2.3.1R, in particular, she found medical marijuana was inconsistent with Canadian health care standards and, therefore, was unavailable for medical aid under the Policy.

[4] Mr. Skinner appealed that decision to a WCB hearing officer.

[5] In a decision October 1, 2012, the hearing officer denied Mr. Skinner's appeal for the same reason as the case manager.

[6] On October 28, 2012, Mr. Skinner appealed the hearing officer's decision to the Workers' Compensation Appeals Tribunal (WCAT).

[7] For some reason, which remains unexplained on a review of the record, the matter did not proceed to an oral hearing before WCAT until January 18, 2016, over three years later. By that time, Mr. Skinner had obtained coverage for medical marijuana through his private insurer, Cunningham Lyndsey.

[8] At the hearing, Mr. Skinner gave evidence about how medical marijuana increases his functionality and allows him to interact with his family. He also

testified he had tried various medications in an effort to manage his pain and suffering including hydromorphine. It wasn't until he obtained coverage for medical marijuana that he improved to a point that he could function.

[9] In a decision dated January 29, 2016 (WCAT #2012-AD-650-AD), WCAT accepted that Mr. Skinner's use of medical marijuana was causally connected to his work-related injuries. It also accepted Mr. Skinner's testimony that more conventional pain-killing treatments were unsuccessful in lessening his pain.

[10] Finally, the appeal commissioner accepted that the worker's use of medical marijuana was expedient for him:

> The Worker testified that alternative, more conventional pain-killer treatments, including narcotics/opiates and muscle relaxants (Flexeril) have been tried without success in lessening his pain. He also asserts that the prolonged use of opiates poses another challenge for him, as it is contraindicated for individuals with liver disease. The Worker has hepatitis C. I accept that the Worker's use of an alternative, less mainstream form of pain relief is expedient for him.

[11] WCAT also made the following findings with respect to medical marijuana:

- the use of medical marijuana in treating a variety of health problems is being endorsed by certain medical practitioners.
- marijuana is a controlled substance which can be used for medicinal purposes.

[12] Despite these findings, the appeal commissioner concluded that its prescription use was inconsistent with Canadian health care standards:

> Cumulatively, this information leads me to the conclusion that while the use of medical marijuana is increasing in Canada, and notwithstanding any benefit derived by the Worker, it has not yet reached a standard of being a generally accepted medical practice in Canada such that its prescription or use could be considered consistent with Canadian health care standards. Rather, the evidence demonstrates that there are no Canadian health care standards in place to govern its therapeutic or medicinal use.

[13] In the end, the appeal commissioner concluded that Mr. Skinner was not entitled to medical aid for medical marijuana under the Policy.

[14] Mr. Skinner, self-represented, sought leave to appeal to this Court.

[15] By Order dated June 14, 2017, this Court granted leave to appeal. I will set out the grounds upon which leave was granted later.

[16] After leave to appeal was granted, the Workers' Advisers Program assumed representation of Mr. Skinner on this appeal.

[17] For the reasons that follow, I would dismiss the appeal without costs.

Issues

[18] Leave to appeal was granted on the following grounds:

1. Is policy 2.3.1R inconsistent with the *Workers' Compensation Act*, S.N.S. 1994-95, c. 10 as amended?
2. Did policy 2.3.1R unlawfully fetter the discretion of the Board in considering the merits of the worker's claim to medical aid for medical marijuana?

Standard of Review

Issue #1

[19] The *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, as amended, entitles the WCB to adopt policies "consistent with" the *Act* and the Regulations:

> 183(2) The Board of Directors may adopt policies consistent with this Part and the regulations to be followed in the application of this Part or the regulations.

[20] Section 183 also provides that policies adopted by the Board are expressly binding on the WCB and on WCAT, but in the case of WCAT only to the extent they are consistent with the *Act* and the Regulations:

> 183(5) Until a different policy is adopted, every policy adopted by the Board of Directors pursuant to subsection (2) is binding on the Board itself, the Chair, every officer and employee of the Board and on the Appeals Tribunal.
>
> 183(5A) Notwithstanding subsection (5), a policy adopted by the Board is only binding on the Appeals Tribunal where the policy is consistent with this Part or the regulations.

[21] In *Guy v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2008 NSCA 1, this Court determined that Board policies are more akin to subordinate

legislation than to administrative policies (¶14). In *Surette v. Nova Scotia (Workers' Compensation Board)*, 2017 NSCA 81, this Court set out the test to determine whether Board policy is consistent with the *Act* citing *The Nova Scotia Barristers' Society v. Trinity Western University*, 2016 NSCA 59 as follows:

> [48] *Katz* directs the Court to consider the scheme of the *Legal Profession Act* – i.e. its wording, context and objective and the Society's statutory mandate, interpreted purposively and broadly. *Katz* instructs that the impugned regulation benefits from a presumption of validity, and its purpose is interpreted liberally. It is *ultra vires* only if it is "irrelevant", "extraneous" or "completely unrelated" to its statutory authority. Neither the policy merits of the regulation nor the underlying "political, economic, social or partisan considerations" pertain to the inquiry.

[22] Therefore, if the effect of the policy is extraneous to the Board's statutory authority, under *Katz* it is inconsistent with the *Act*.

[23] In oral argument, Mr. LeBlanc, on behalf of Mr. Skinner, argued the test that this Court set out in *Surette* runs afoul of this Court's earlier decision in *Guy* which found the standard of review was correctness:

> [7] The consistency of the policy with *WCA* is a question of law. It does not, in my view, engage to any great extent WCAT's expertise acquired through its highly specialized functions in the workers' compensation system. Both the nature of the question and how it relates to WCAT's expertise suggest less rather than more deference to WCAT's decision. When one takes into account the other factors which must be considered under the pragmatic and functional approach to determining the standard of review, none of them favours giving WCAT deference on a question of this nature: (citations omitted).
>
> [8] Taking all of the factors into account, I agree with the respondent that the applicable standard of review here is correctness, the standard most favourable to the worker in the circumstances of this case. This means simply that the Court is entitled to substitute its own view of the law for WCAT's on this issue if persuaded that WCAT was wrong.
>
> [Emphasis added]

[24] In *Guy*, the appellant was appealing WCAT's finding that a WCB policy was valid. The Court found the standard of review of WCAT's decision was correctness. The law has evolved considerably since the *Guy* decision. In *Halifax (Regional Municipality) v. Hoelke*, 2011 NSCA 96, this Court reviewed the

authorities on the standard of review and, in particular, the decision of *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, where the Supreme Court of Canada held:

> [37] Characterizing the issue before the reviewing judge as a question of law is of no greater assistance to Alliance, since a tribunal's interpretation of its home statute, the issue here, normally attracts the standard of reasonableness (*Dunsmuir*, at para. 54), except where the question raised is constitutional, of central importance to the legal system, or where it demarcates the tribunal's authority from that of another specialized tribunal — which in this instance was clearly not the case.

[25] WCAT's determination of whether a policy is consistent with the *Act* is not of essential importance to the legal system as a whole nor is it outside WCAT's specialized area of expertise. Therefore, in light of the developments in the law since *Guy* was decided, both at the Supreme Court of Canada and by this Court, the standard of review on appeals from WCAT to this Court, is reasonableness.

[26] Furthermore, in this case, we are determining the issue of the validity of the policy in the first instance. The validity of the policy was not in issue before WCAT. Nor did it make a decision on it. If we were reviewing a decision of WCAT we would be reviewing it on the standard of reasonableness. However, since we are making a determination on whether the impugned policy is *ultra vires* the *Act*, *Katz* sets out the relevant factors to take into consideration. The policy will be *intra vires* so long as it can be interpreted in a manner that is consistent with the *Act*.

Issue #2

[27] Pursuant to s. 183 of the *Act*, policies adopted by the Board of Directors are binding on the Chair, the WCB, every officer and employee of the WCB and WCAT. Subsection 183(5A) clarifies that policies are only binding on WCAT to the extent they are consistent with Part I of the *Act* and the Regulations. As a result, if the policy is consistent with the *Act*, WCAT was bound to apply it and as a result it is lawful. In other words, if the Policy is found to be consistent with the *Act*, it would not be an unlawful fettering of the WCB's discretion.

[28] The main question in this case is whether the *Act* gives the WCB the authority to exercise its statutory discretion with respect to medical aid in the manner which it did. If it does the Policy is valid.

Analysis

Issue #1 Is policy 2.3.1R inconsistent with the *Workers' Compensation Act*, S.N.S. 1994-95, c. 10 as amended?

[29] The appellant's first argument is once it is determined the treatment is necessary or expedient, medical aid must be provided to the worker. He says the limitation contained in the Policy denies a benefit to him that he is entitled to under the *Act*. To address this argument I will start with the statutory framework of the *Act*:

Statutory Framework

[30] "Medical aid" is defined in s. 2(r) of the *Act* as follows:

> 2(r) "medical aid" includes
>
> (i) any health care service, product or device that may be authorized by the Board and is provided to a worker as a result of a compensable injury, including those forms and reports required by the Board respecting the aid or services, and
>
> (ii) reasonable expenses, authorized by the Board, incurred by a worker in order to obtain medical aid;
>
> [Emphasis added]

[31] Section 102 sets out the WCB's authority to pay medical aid to injured workers:

> *Medical aid*
>
> 102 (1) The Board may provide for any worker entitled to compensation pursuant to this Part, or any worker who would have been entitled to compensation had the worker suffered a loss of earnings equivalent to the amount determined pursuant to subsection 37(4), any medical aid the Board considers necessary or expedient as a result of the injury.
>
> (2) The medical aid provided pursuant to subsection (1) shall be (a) furnished or arranged for by the Board as it may direct or approve; (b) subject to the supervision and control of the Board; and (c) paid for out of the Accident Fund.
>
> (3) The Board may include the costs of providing medical aid in any amount charged to the employer or to the employer's class or subclass.
>
> [Emphasis added]

[32] Section 104 provides the provision of medical aid falls within the exclusive jurisdiction of the WCB:

> *Exclusive jurisdiction of Board*
>
> 104 All questions as to the necessity, character and sufficiency of any medical aid furnished shall be determined by the Board.

[33] As described above, any policies adopted by the Board of Directors in accordance with s.183 are binding on decision-makers under the *Act* so long as they are consistent with it.

Policy Framework

[34] The WCB has adopted several policies pursuant to s.183 that govern the provision of medical aid. Policy 2.3.5 outlines general principles, including the WCB's responsibility to determine the character/type of medical aid. Policy 2.3.4R puts parameters and guidelines around the provision of prescription drugs. Policy 2.3.1R, concerns the provision of health care services, generally, and provides as follows:

> 1. The WCB will assist in providing health care (services and treatments) by WCB-approved service providers to injured workers. Assistance is provided where the health care is:
>
> (a) appropriate for the type of compensable injury, and
>
> (b) consistent with standards of health care practices in Canada.
>
> 2. The WCB uses the following information to determine the most appropriate, effective and efficient health care for its clients:
>
> a) recommendations from WCB-approved health care providers;
>
> b) up-to-date scientific evidence about effective health care;
>
> c) evidence-based guidelines developed by professional health organizations across Canada and the United States; and
>
> d) standards developed by the WCB to ensure quality health care.
>
> 3. The WCB may obtain additional information and opinions, as needed, to determine the appropriateness of any type of health care.
>
> 4. The WCB will not pay for health care that is not considered appropriate as set out in this policy.
>
> [Emphasis added]

[35] Sections 102 and 104 provide the WCB with an extremely broad discretion in the provision of medical aid to an injured worker.

[36] The absence of mandatory language in s.102 means that the WCB is not restricted to considering necessity and/or expedience when determining entitlement to specific medical aid.

[37] Furthermore, by virtue of s.104, the WCB is responsible for determining the necessity, character and sufficiency of the medical aid sought. The Legislature has granted the WCB the authority to determine the need for medical aid, the type of medical aid to be provided, and the extent to which medical aid is required.

[38] As a result, a worker is not entitled to be provided with a particular form of medical aid. Sections 102 and 104 are clear and unequivocal; the WCB may provide medical aid services that are necessary or expedient as a result of the injury. In exercising its discretion, the WCB has passed a policy requiring that the specific course of treatment sought by an injured worker be "consistent with standards of health care practices in Canada".

[39] In *Guy*, the Court was considering a similarly worded s. 112 of the *Act* which provided:

> [15] … The Board may make any expenditures and take any measures that, in the Board's opinion, will (a) aid injured workers in returning to work; and (b) reduce the effects of the worker's injuries….

[40] In that case, the WCB accepted the worker for vocational rehabilitation in the form of an educational program in Halifax. The worker was required to move to Halifax to pursue his course of study. The WCB provided him with a living allowance of $750 a month, the maximum amount provided for in the WCB's policy. The worker found that the amount was insufficient and requested an increase. The WCB refused because he was already receiving the maximum amount allowed under the policy.

[41] The Court recognized the difference between the mandatory provisions of the *Act* and those which confer discretion on the WCB to provide certain benefits, concluding that the discretion was not to award particular benefits in a specific case, but rather to spend money for broadly stated purposes:

> [17] In this respect, s. 112 is distinct from other provisions of the *WCA* which confer entitlement to certain sorts of benefits and set out in detail how they

> are to be determined. Examples of this sort of provision may be found in the sections of *WCA* dealing with permanent impairment benefits (ss. 34 - 36) and earnings replacement benefits (ss. 37 - 48). In both cases, the statute confers entitlement to the benefit ("the Board shall pay to the worker a permanent-impairment benefit": s. 34(1); "an earnings-replacement benefit is payable to the worker": s. 37(1)) and sets out in some detail how the amount of the benefit is to be calculated. Unlike these provisions, s. 112 does not establish a particular benefit to which a worker is or may be entitled or how its amount is to be determined. Rather, the section confers a discretion on the WCB to make expenditures for the broadly-stated objectives set out in the section. Thus, the discretion conferred on WCB by s. 112 is not to award particular benefits in a specific case, but rather a discretion to spend money for broadly stated purposes.

[42] The reasoning in *Guy* is equally applicable to the circumstances of this case.

[43] *Guy* also recognized, as did *Boyle v. Workers' Compensation Board (Nova Scotia)*, 2004 NSCA 88, that this interpretation of the *Act* is not only consistent with the plain and ordinary reading of the *Act* but with the overall scheme and purpose of the *Act*. The WCB has been given broad powers to manage the Accident Fund and to adopt policies which flesh out the provision of statutory benefits provided under the *Act*. In *Boyle*, Fichaud, J.A. put it thusly:

> [47] Section 183, quoted earlier, permits the Board of Directors to adopt "policies", not inconsistent with the *Act*, which flesh out the statutory benefits. The Board of Directors has adopted many policies which add specifics to the statutory benefits.
>
> …
>
> [54] Because the WCB has a duty to maintain the Fund's ability to satisfy benefits, the *Act* gives the WCB leverage over the expansion and refinement of benefits formulae beyond those specified in the *Act*. If a Hearing Officer or the WCAT could award compensation based simply on common law principles, as might be applied by a court in a civil action, it could be exceedingly difficult to rate the risk, calculate the assessments, and predictably maintain the Fund's solvency. Because the *Act* directs that the Fund be solvent, the *Act* controls the benefits payable from the Fund.

[44] This Court addressed the scheme of the *Act* at length in *Boyle*, where it was recognized that the provision of secure and efficient no-fault compensation to workers is connected to and dependent upon the Board's responsibility to maintain the Accident Fund. Thus, while compensation of injured workers is an animating principle of the *Act*, it also provides that the WCB is free to set reasonable limits.

[45] The *Act* allows for the provision of medical aid when the WCB finds it to be necessary or expedient, but does not require it. The WCB has the ability to structure its discretion through binding policy. Therefore, there is no inconsistency between ss.102 and 104 and the Policy's requirement that medical aid be "consistent with standards of health care practices in Canada."

Consistency with the Act - s. 186

[46] The appellant's second argument is that by evaluating whether the proposed medical aid is "consistent with standards of healthcare practices in Canada," the Policy runs afoul of s.186 of the *Act* because it leaves no room for consideration of the special or unusual features of the appellant's case. Section 186 provides:

> Basis for decisions of Board
>
> 186 The decisions, orders and rulings of the Board shall always be based upon the real merits and justice of the case and in accordance with this Act, the regulations and the policies of the Board.

[Emphasis added]

[47] Section186 does not transform the permissive language of s.102 into a mandatory direction that all necessary or expedient medical treatments are to be provided to injured workers. Rather, s.186 simply requires the WCB to base its decisions "upon the real merits and justice of the case and in accordance with this Act, the regulations and the policies of the Board." [Emphasis added]

[48] Furthermore, albeit without specific reference to s.186, the thrust of the appellant's argument on this point was rejected by this Court in *Guy*.

[49] It was Mr. Guy's position that the *Act* required the broad discretion found in s. 112 to be exercised on a case-by-case basis, unfettered by binding policies which impose a cap on reimbursement for living expenses.

[50] This Court found that it could not accept Mr. Guy's position. Cromwell, J.A. concluded that, because the *Act* authorizes the Board to make binding policies, the Legislature intended the WCB to be able to fetter its decision-making discretion in some respects by making policies to be applied in all cases:

> [22] First, as noted, the *WCA* expressly gives the WCB authority to make policies which are binding and therefore have the force of law. This authority to make binding policies in itself shows that the legislature intended the WCB to

> have the ability to fetter its own decision-making discretion in some respects by making policies to be applied in all cases. I agree with the submission by the WCB that it has a broad mandate to adopt policies that contain limiting provisions provided that they are not inconsistent with the *WCA*.

[51] He further held that the WCB has a broad mandate to adopt policies that contain limiting provisions, in part because such policies "are intended to provide the WCB with a means to bring clarity, predictability, consistency and a measure of financial control over the process of awarding benefits" provided that they are not inconsistent with the *Act* (¶18).

[52] Further, the Policy, here, does not preclude a case by case assessment. As the WCB points out in its factum, the policy does not pre-determine the outcome of medical aid determination when medical marijuana is under consideration. In three decisions, which post-date the decision in this case, WCAT found that the worker was entitled to medical marijuana as medical aid:

- WCAT Decision 2016-364-AD and 2016-56-AD dated August 17, 2017;
- WCAT Decision 2013-358-AD dated April 27, 2016; and
- WCAT Decision 2015-238-AD dated July 11, 2017.

[53] In all three of these decisions, the appeal commissioners, based on the evidence before them found that the prescribed medical marijuana in relation to the workers' compensable injury was consistent with standards of health care practice in Canada.

[54] Mr. LeBlanc also argued before us that the inconsistencies between those decisions and this case renders the decision here legally unreasonable. Leaving aside that this was not a ground of appeal for which leave was granted; there is nothing that prevents WCAT from applying the policy having particular regard to the facts of any case. I agree with the comments of the Alberta Court of Appeal in *Thompson Brothers (Construction) Ltd. v. Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2012 ABCA 78 where the Court said:

> [39] <u>There is, however, no rule of law that an administrative tribunal can never change its policies, nor change its interpretation of a particular policy, nor change the way that the policy will be applied to particular fact situations</u>. Section 17(4) of the *Act* provides that the Board is not bound by previous decisions. The existence of allegedly conflicting decisions by a tribunal on a particular subject

> does not itself warrant judicial intervention, unless the particular decision under review is unreasonable: *Ellis-Don Ltd. v. Ontario (Labour Relations Board*), 2001 SCC 4 at para. 28, [2001] 1 SCR 221.
>
> [Emphasis added]

[55] The three decisions which have reached a different conclusion than the decision under appeal, do not render WCAT's decision unreasonable in its conclusions or in its assessment of the available evidence in this case.

[56] Finally, I am mindful of the limited right of appeal to this Court. Section 256 of the *Act* only allows for an appeal to this Court on a question of law or jurisdiction, not on a question of fact:

> 256 (1) Any participant in a final order, ruling or decision of the Appeals Tribunal may appeal to the Nova Scotia Court of Appeal on any question as to the jurisdiction of the Appeals Tribunal or on any question of law but on no question of fact.

[57] Whether, on the evidence before the appeal commissioner, she was satisfied that the provision of medical marijuana is consistent with "standards of health care practices in Canada" is a question of fact, or at best a question of mixed law and fact, for which no appeal lies to this Court. While I may disagree with the decision of the appeal commissioner in this particular case, it is not open for me to interfere.

[58] For these reasons, I am satisfied that the policy is, in context and objective, consistent with the WCB's statutory authority.

Issue Two: Does the Policy Unlawfully Fetter Board Discretion

[59] As noted in *Guy, supra,* binding policies will, by their very nature, fetter discretion to some extent, but such a result will be lawful so long as the policy itself is valid. The Supreme Court of Canada has also noted this fact in *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36:

> 35 In oral argument, counsel for Bell stated repeatedly that the guideline power "fetters" the Tribunal in its application of the *Act*. This assumes that the sole mandate of the Tribunal is to apply the *Act*, and not also to apply any other forms of law that the legislature has deemed relevant - such as guidelines. This assumption is mistaken. If the guidelines issued by the Commission are a form of law, then the Tribunal is bound to apply them, and it is no more accurate to say that they "fetter" the Tribunal than it is to suggest that the common law "fetters"

> ordinary courts because it prevents them from deciding the cases before them in any way they please.

[60] In this case, the appellant's claim was denied on the basis that, while expedient and causally connected to the injury, his request for medical marijuana did not satisfy the standards of health care practices component of the Policy. As I have found that the Policy is consistent with the *Act*, it does not unlawfully fetter the WCB's discretion.

Conclusion

[61] I would dismiss the appeal without costs.

Farrar, J.A.

Concurred in:

Beveridge, J.A.

Bryson, J.A.