

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Re A1901320 2022 CanLII 83181 (BC WCAT)

British Columbia Workers' Compensation Appeal Tribunal, Guy Riecken, 23 August 2022

Whether an injured ski patroller was a volunteer or worker for the purposes of worker's compensation.

Key words: Volunteer, Canada, British Columbia, Ski Patrol, Workers Compensation, Consideration, Worker

1. Canadian Ski Patrol (CSP) is a federal non-profit organization established in 1941 which is registered as a charitable organization. CSP members provide ski patrol services at numerous ski resorts and ski facilities in Canada.
2. Members pay CSP approximately \$250 in annual membership fees and receive first aid training.
3. Kevin Gourlay (Gourlay) was a CSP member and was a volunteer ski patroller at Crystal Mountain, British Columbia. Crystal Mountain is a for-profit commercial ski resort.
4. Ski patrollers at Crystal Mountain were provided with a volunteer handbook and company policies and guidelines (the handbook). The handbook set out rules and policies which ski patrollers were expected to follow. They had also to agree to a minimum number of shifts during the season.
5. Apart from the head ski patroller, ski patrollers were not paid a salary or wage, but received benefits such as free season ski passes at Crystal Mountain, free or discounted passes that they could use at other ski resorts, and discounts at some local shops.
6. Gourlay claimed that the only benefit he received from Crystal Mountain for the season was a season ski pass.
7. Gourlay was working as a ski patroller at Crystal Mountain when there was an accident on a chairlift. A chair fell and he was injured.
8. Under section 311 (previously section 257) of the [Workers Compensation Act](#) (the Act), where an action is commenced based on a disability caused by occupational disease, a personal injury, or death, a party or the court may make an application to the Workers' Compensation Appeal Tribunal (WCAT) to make determinations and to certify those determinations to the court (CTC application).

9. The issue before the Tribunal was whether Gourlay was a worker or a volunteer.
10. The term volunteer is not defined in either the Act or in Board policy.
11. CSP argued that while Gourlay was performing ski patrol services for Crystal Mountain, he received day-to-day direction from Crystal Mountain and was required to follow Crystal Mountain's rules, policies, and procedures.
12. The Tribunal found that there was an agreement between Gourlay and Crystal Mountain, but this was not determinative of the issue as many nonprofit organisations require volunteers to agree to certain standards.
13. A key factor was whether there was consideration for the agreement.
14. While the value of the ski pass was not substantial or adequate consideration and did not amount to a consideration for services rendered, it was in effect an honorarium.
15. However, the tribunal found that (at [114]):

The fact that the pass provided to the plaintiff covered the whole ski season, and allowed for unlimited use on the days when the plaintiff was not providing ski patrol services, draws me to the conclusion that it amounted to substantial compensation for his services.

16. And at [119] that:

Crystal Mountain was, in effect, augmenting its workforce during the skiing season with CSP ski patrollers and that, without the CSP ski patrollers, Crystal Mountain would have to hire other qualified service providers if it wanted to maintain equivalent levels of service to its customers.

17. And at [123] that:

...the plaintiff's provision of ski patrol services was part of the business organization of Crystal Mountain and that the operational routines of the relationship between the plaintiff and Crystal Mountain were more consistent with employment than with volunteering.

18. The Tribunal found that Gourlay was a worker for the purposes of the compensation provisions of the Act.

19. Further, Gourlay's injuries arose out of and in the course of his employment with Crystal Mountain.

IMPLICATIONS



[Gourlay v. Crystal Mountain Resorts Ltd.](#), 2020 BCCA 191 was an appeal by the plaintiff ski patroller in a personal injury action arising from a chairlift incident, from an order permitting the defendant ski resort to amend its response to the civil claim to plead the action was barred by the Workers Compensation Act. As a result of that amendment the trial was adjourned to await a determination by the Workers' Compensation Appeal Tribunal as to whether the plaintiff's injuries arose out of and in the course of his employment.

In Australia, [Guilbert v Glenworth Valley Horse Riding Pty Ltd](#) [2020] NSWCCPD 10 was an appeal in a worker's compensation case, which involved the definition of a volunteer and a worker. The Commissioner found that horse rides and lessons comprised part of the usual activities of a volunteer and not a consideration to form a binding contract of employment. The Deputy President made a useful summary of the legal principles in this area (at [64]-[70]), including cases such as [Teen Ranch Pty Ltd v Brown](#) (1995) 11 NSWCCR 197, [Rogers v Booth](#) [1937] 2 All ER 761, [Ermogenous v Greek Orthodox Community of SA Inc](#) [2002] HCA 8; 209 CLR 95 and [Birkett v Tubbo Estate Co Pty Ltd](#) (1997) 14 NSWCCR 369. Parts of the volunteer agreement are included in the judgement.

VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/bc/bcwcac/doc/2022/2022canlii83181/2022canlii83181.html>

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