

The Administrative Labour Tribunal rejects a worker's claim for a workplace injury in a remote work setting

April 19, 2023

On March 2, 2023, the Tribunal in [Allard and Promutuel Horizon Ouest, 2023 OCTAT 1027](#) rendered a decision that sets a new favourable precedent for employers in terms of workplace injury (that is, employment injury).

Context

With the increase of remote work in all workplaces in recent years, the Administrative Labour Tribunal (the Tribunal) has had to rule on a number of claims relating to accidents occurring at home during a work break.

A worker who is injured at home during a break while working remotely may benefit from the compensation regime provided for in the Act respecting industrial accidents and occupational diseases (the AIAOD) for an injury arising “in the course of work,” just as if they were performing their work in the office, if they meet the usual criteria established by law.

A review of recent case law developments¹ illustrates that it is difficult, in the context of telework, to distinguish between activities that fall within the private domain and those that fall within the professional domain. Until recently, the Tribunal has tended to view the “professional” domain as prevailing in a remote work context.

However, in [Allard and Promutuel Horizon Ouest](#), the Tribunal rejected a claim for an accident which took place on the courtyard steps of a worker's residence in a remote work context, because the fall occurred within the worker's “personal” domain of activities.

The decision

In this case, the worker was teleworking from the basement of her home. During her lunch break, she fell down the stairs outside of her residence leading to the yard,

resulting in a sprained and fractured right ankle. The Tribunal had to rule on the eligibility of her claim for an employment injury.

In its ruling, the Tribunal discusses the [Air Canada and Gentile-Patti](#) case, cited by the worker. It specifies that the precedent should not be applied because, unlike this other case where the fall had occurred moments after the worker had disconnected from her shift to start her lunch break, here the worker fell in the middle of her lunch break after she had finished eating and set out to enjoy the remainder of her break in the comfort of her own yard. The evidence also established that her lunch break was unpaid and that the employer did not require the worker to remain available. In fact, the worker was **disconnected from the employer's network during her break, so there was no subordinate relationship.**

In addition, the Tribunal paid particular attention to the activity performed at the time of the fall, namely that the worker was injured while trying to pick up her personal cell phone that had fallen down the stairs, a phone that was not used in the performance of her job duties.

Finally, the Tribunal noted that the fall occurred on the courtyard steps of a worker's residence and not the interior staircase leading to the basement office where she worked.

The Tribunal concluded on these grounds that the fall occurred in the course of the **worker's personal activities and thus did not occur** in the course of work. The worker's claim for an employment injury was therefore denied as she did not meet the legal requirements for an industrial accident.

Contact us

If you have any questions about this article or wish to discuss any other legal concerns related to occupational health and safety, we invite you to contact any lawyer from our [Labour & Employment Group](#).

¹[Air Canada et Gentile-Patti](#), 2021 QCTAT 5829; [Laverdière et Ministère des Forêts, de la Faune et des Parcs \(Opérations régionales\)](#), 2021 QCTAT 5644

By

[Stéphanie Desjardins](#)

Expertise

[Labour & Employment](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.