

Decision of the Appeal Division

Number: 99-1254

Date: August 20, 1999

Panel: Marguerite Mousseau, Sonja Hadley, Randy Lane

Subject: Whether Psychological Condition Arose out of and in the Course of Employment

The worker is appealing Review Board findings dated May 5, 1998. He is represented by a workers' adviser. The employer is represented by legal counsel. The worker requested an oral hearing that was denied on a preliminary basis by the deputy chief appeal commissioner. The panel agrees that an oral hearing is not necessary in order to adjudicate this appeal.

The issue is whether the worker's psychological condition in September 1995 arose out of and in the course of his employment.

Background

The worker had been employed part-time by the employer as of February 1993. In mid-September, 1995 he stopped working due to acute symptoms of anxiety. These were diagnosed by Dr. A, a psychiatrist, as Post-traumatic Stress Disorder with a component of depression. The worker submitted an application for compensation stating that he was suffering stress due to sexual harassment at work. It was subsequently determined that the person harassing the worker operated in a supervisory capacity in relation to the worker. The worker and two other co-workers had been sexually harassed by the same employee for approximately one and a half years. The harassment, according to various documents on file, involved the supervising employee blowing kisses at the worker, rubbing the worker's genitals, rubbing himself against the worker, simulating ejaculation then spitting on the floor and the making of various comments of a sexual nature. The employer, on being told of the harassment, had fired the perpetrator and taken other steps to address the consequences of the harassment. The perpetrator, however, was subsequently re-hired.

The worker's claim was accepted for Post-traumatic Stress Disorder and a course of assessment and treatment was undertaken. The employer did not protest acceptance of the claim. On May 21, 1996, the employer apparently contacted the director of the department that was dealing with the worker's claim and expressed concern regarding the duration of the worker's disability. There is no documentation of this discussion on file other than the decision letter that was issued in response.

The director, following this discussion, issued a letter dated May 30, 1996. In this letter, he indicated that he had undertaken a manager's review with respect to the worker's claim (and that of a co-worker who had been similarly harassed) and he had concluded that, ". . . these claims were appropriately accepted as outlined in [the adjudicator's] original decision letters." The director went on to say that he had discussed the management of the file with the claims adjudicator and he advised the employer regarding the next steps that the Board proposed to take regarding evaluation of the worker's condition and work readiness. He also indicated that he was enclosing an appeal pamphlet.

The employer appealed this decision. The basis of their appeal, based on the Part 1 and a letter dated April 17, 1997, was the duration of disability. These documents indicate that the employer believed that the worker should be able to return to work. The remedies requested were either a declaration that wage loss benefits should cease or the referral of the worker for an independent assessment and treatment.

Although the employer was appealing the issue of the duration of benefits, the Review Board proceeded to adjudicate the question of whether the worker was entitled to compensation in the first place. The Review Board, in findings dated May 5, 1998, found that the worker had not suffered an injury arising out of his employment on the basis that:

- a) ". . . the stress and the cause(s) of the stress do not satisfy the D.S.M.-IV definition of post traumatic stress disorder";
- b) ". . . the harassment did not result from the way [the worker] performed his [work] duties . . . but as a result of emotional stress caused by alleged unwanted personal/sexual harassment";
- c) the worker's "symptoms are more likely as a result of the labour relations issue(s) caused by the employer's response to the allegations and the disciplinary action/inaction of [the worker's] supervisor"; and
- d) this situation came within the purview of Decision 102 (a decision of the former commissioners) where it had been concluded that stress over time does not constitute an injury.

The worker has appealed these findings. As a result of the approach taken by the Review Board, there is no finding with regard to the duration of benefits. The issue before the Appeal Division is the question of whether the worker was entitled to compensation for his psychological condition in September, 1995.

Preliminary Issue

The worker's representative has submitted that the May 30, 1996 decision appealed to the Review Board was ultra vires and a nullity on the basis that the decision was not authorized by any existing law or policy. In support of this position the representative states that item #108.31 of the *Rehabilitation Services and Claims Manual* (the Manual), which provided the

policy support for the manager review process, had been rescinded when the director undertook the review that he characterized as a “manager’s review.” She notes that item #108.30 of the Manual provides that a manager or director has a broad authority to “modify a decision or substitute their decision for any decision of a Board officer.” The worker’s representative submits though, that the manager, in conducting his review, did not follow “Practice Directive #5.” In her view, this directive “confirms the ability of a Manager to randomly review decisions of Board offices as part of a regular quality assurance program but *confines the actions* a Manager may take under Item 108.30 when requested to do so by an external party.” [Reproduced as written.]

The worker’s representative submits that the procedural irregularities in conducting the “manager’s review” constituted a breach of natural justice. It is submitted that such a breach results in a void or null decision; thus there was no decision to appeal to the Review Board. The representative appended an unpublished decision of the Appeal Division in support of this submission.

The employer’s representative, in a submission dated January 25, 1999, submits that there is ample authority under section 96(2) of the *Workers Compensation Act* (the Act) and item #108.30 of the Manual for undertaking the type of review that the director undertook prior to issuing the decision letter of May 30, 1996. The representative disagrees that practice directive #5 purports to restrict the discretion that is granted to the Board under section 96(2) of the Act.

As both representatives have stated, item #108.30 describes a broad management authority to conduct reviews and to make decisions subsequent to these reviews. The policy defines the scope of this authority as follows:

The right of management to change a decision on a claim file is not limited to the correction of errors, but includes a substitution of judgment decisions irrespective of whether or not there is new evidence to consider.

Section 96(2) of the Act provides the statutory underpinning for this policy. It states, in part; “. . . the board may at any time at its discretion reopen, rehear and redetermine any matter, . . . which has been dealt with by it or by an officer of the board.”

In our view, the director’s review was authorized by the legislation and consistent with the policy. With respect to the effect of practice directive #5, we do not accept the interpretation submitted by the worker’s representative. It is inconsistent with the language of the directive itself, in particular, the penultimate paragraph. It is also inconsistent with the purpose of practice directives, which is to provide an aide to the implementation of the published policies of the governors. In our view, the directive does not intend to limit the scope of the authority granted by the Act and in the published policies of the governors. We consider that the director acted within his authority under the Act and policy item #108.30 and in a manner that was consistent with practice directive #5.

With respect to the unpublished decision of the Appeal Division that was submitted by the worker's representative, that decision involved two manager's reviews. The second review was conducted without waiting for the results of a field investigation and it provided the employer the opportunity to appeal every previous decision. There were numerous irregularities with respect to the manager's review in that case and the Appeal Division panel found that these had resulted in a breach of the principles of natural justice. In our view, there were no irregularities in the conduct of the "manager's review" in the appeal before us. The manager's actions were consistent with the law and the procedures established by policy. As a result, we deny the worker's appeal on this aspect.

Submissions to the Appeal Division

The worker's representative submits that the worker has suffered a traumatically induced psychological injury within the policy at item #13.20 of the Manual. She submits that the Review Board erred in characterizing the worker's condition as "stress" based on his application for compensation. It is submitted that the preponderance of the medical evidence supports a diagnosis of Post-traumatic Stress Disorder. The representative also submits that the test for assessing trauma is a subjective one, whether one is considering a diagnosis of Post-traumatic Stress Disorder or determining the compensability of a psychological condition under the Act. The representative submits that, even if the test is objective, the harassment was of such a nature and duration that it cannot be considered as mild or non-traumatic. She relies on a medical legal opinion, dated October 28, 1998, which was prepared by Dr. A, the worker's treating psychiatrist, in support of the worker's claim.

The employer's representative submits that Dr. A's medical legal opinion is based on a misapprehension of the facts and is therefore flawed. The representative submits that Dr. A attributes the worker's condition to a number of factors, including the failure of the employer to act appropriately once the harassment was reported. It is submitted that this is incorrect and the submission sets out in detail the steps taken in response to the report of the harassment.

The representative relies on the medical legal opinions of Dr. B, psychiatrist. Dr. B provided two opinions, dated March 10, 1997 and January 22, 1999, based on a review of medical reports and other documents provided to him by the employer.

Law and Policy

The relevant provisions of the Act are as follows:

- 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.

6 (1) Where

- (a) a worker suffers from an occupational disease and is thereby disabled from earning full wages at the work at which the worker was employed or the death of a worker is caused by an occupational disease; and
- (b) the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments,

compensation is payable under this Part as if the disease were a personal injury arising out of and in the course of that employment. A health care benefit may be paid although the worker is not disabled from earning full wages at the work at which he or she was employed.

- 1 “occupational disease” means any disease mentioned in Schedule B, and any other disease which the board, by regulation of general application or by order dealing with a specific case, may designate or recognize as an occupational disease, and “disease” includes disablement resulting from exposure to contamination;

The following are the relevant passages from the Manual:

“Personal injury” includes psychological impairment as well as physical injury. A claim for traumatically induced psychological impairment could be accepted even if unaccompanied by any physical impairment. Psychological impairment has not been deemed to be an occupational disease. Conditions of this type however may be accepted if they are a sequela to an accepted personal injury or occupational disease.

[Item #13.20]

The Board does accept claims for personal injury where the injury consists of a psychological condition or the psychological condition is a consequence of a physical injury. However, the Board has not recognized any psychological or emotional conditions as occupational diseases related to employment.

[Item #32.10]

Physical and emotional exhaustion has not been recognized by the Board as an occupational disease. In a claim made for compensation for a state of physical and emotional exhaustion alleged to have been caused by the stress of work, it was concluded that there was insufficient evidence that employment, as opposed to other factors in the worker’s life, were of causative significance in producing this condition.

[Item #32.20]

Workers' Compensation Reporter Decision No. 102 (1975), 2 *Workers' Compensation Reporter* 25 ("Disablement through Exhaustion"), is the decision referred to under item #32.20. That decision involved a claim for compensation for a state of physical and emotional exhaustion alleged to have been caused by the stress of work. In that decision it was stated that a state of physical and emotional exhaustion caused by stress over time does not come within the popular understanding of the word "injury," nor is it an "injury" as that word has been construed and understood by the Board. It was also determined that the recognition of exhaustion as an industrial disease would not be practicable or sound policy. It was stated that in the public interest this administrative cost should be avoided and that rest periods of this kind should be provided for through provisions for vacations, time off for overtime worked, sick leave, or in other ways that are provided for by collective agreement, or by arrangements between employers and workers.

Decision No. 348 ("Re alcoholism"), (1982) 5 *Workers' Compensation Reporter* 127, provides a brief analysis of Decision No. 102. It states:

... Clearly, if the evidence indicates that a particular condition does result from the employment, adjudication difficulties and costs are not valid grounds for not paying compensation. However, if the difficulty in adjudication arises from the fact that there is insufficient evidence that the employment, as opposed to the other factors in the claimant's life, caused the condition, then, equally clearly, this is a reasonable ground for not recognizing the condition as an industrial disease. We consider that this was the situation in *Decision #102*.

The Appeal Division panel adjudicating this appeal disclosed an unpublished Appeal Division decision (Decision #98-1855) to the parties, notifying them that this decision would be considered in the adjudication of the current appeal. This decision discusses the law and policy applicable when a claim is made that a psychological condition is work-related. The panel, in that decision reviewed the law, policies and decisions noted above as well as a published discussion paper by a former chief appeal commissioner ("Psychological Disabilities and Workplace Stress," 10 *Workers' Compensation Reporter* 257) and a decision of the Prince Edward Island Court of Appeal (*Dowling v. Prince Edward Island Workers' Compensation Board*, (1995), 7 C.C.E.L. (2d) 157).

The panel went on to state:

The dilemma this panel faces is, therefore, as follows: the policies on psychological impairment use the terms "traumatically induced" and, in so doing, arguably set out a threshold requirement for entitlement. These terms are not defined. The policies on physical impairment use these terms as well; they use them to encompass much more than one sudden/shocking stimulus. In fact, they use them to refer to something that looks very much like a process. *Black's Law Dictionary's* definition of "trauma" is consistent with that broad usage since it refers to an experience — not just an event (or events). That broad a usage of the terms "trauma" and "traumatically induced" poses, however, problems if the intent is that the terms be used to demarcate a line between compensable and non-compensable claims.

On the one hand, the kinds of considerations underlying the *Dowling* decision would support the broadest possible interpretation of the notion of “trauma” and “traumatically induced”. To the extent that workers’ compensation legislation should be interpreted liberally so as to provide compensation for work-related injuries to as many as can reasonably be seen to fall within its purview, policies giving effect to such legislation should also be interpreted liberally. On the other hand, if the policy is lawful some meaning must be given to the terms “trauma” and “traumatically induced”. We have concluded that an interpretation of the term “trauma” under which the term would retain some meaning includes not only a situation involving one sudden/shocking stimulus but also situations involving a series of unusual incidents or an unusual pattern. By “unusual” we mean of significantly greater dimensions than the day-to-day tensions which all employees experience in their regular working day. Adoption of this criterion means that the distinction between sudden stimuli and gradual stimuli becomes somewhat irrelevant.

We are of the opinion that situations which meet the “unusualness” criterion can be characterized as “traumatic”, even where the stimuli operate gradually. We see nothing in the policies as presently formulated which precludes such an approach. At this stage we are only trying to interpret the policies in a way that gives some effect to the terms “traumatically induced” in order to determine whether the fact situation before us is encompassed by the phrase “traumatically induced”. We are not making any findings as to whether this “unusualness” test is too stringent in light of the *Act*. If the concern was that the test might be too broad in light of the *Act*, then it would be necessary to determine whether the test could be reconciled with the *Act* in order to ensure that there was entitlement under the *Act*. But since, if anything, the test may be narrowing entitlement under the *Act*, if a certain fact situation meets the test, then it will fall under the *Act*. The risk of finding entitlement where there is none under the *Act* is minimized in those circumstances.

Having concluded that psychological impairment resulting from “unusual” stimuli can be characterized as “traumatically induced” under the policies, we now have to address some other questions, namely: is the “unusualness” to be judged in some objective terms? Does the subjective reaction of a particular worker have any role to play in the determination of whether indeed the stimuli were of significantly greater dimensions than day to day work tensions? A particular stimulus could assume significant dimensions in a worker’s perception and to that extent genuinely disable him (or her).

We are of the opinion that the existence of unusual stimuli or of traumas must be objectively verifiable on the evidence. The reasoning found in several Ontario W.C.A.T.R. decisions (in particular *Decision No. 188/92* 24 W.C.A.T.R. 155 at p. 174 and *Decision No. 826/94* 36 W.C.A.T.R. 102 at 126) as well as in American jurisprudence mentioned in *Larson’s Workmen’s Compensation Law* (on pp. 7–878–890) has assisted us in formulating our thoughts on this matter.

In addition to the unusual stimuli or traumas being objectively verifiable, we also consider that the two step test offered by the W.C.A.T. at page 126 of *Decision No. 826/94* is an appropriate one to adopt:

1. Is it plausible that workers of average mental stability would have perceived the workplace circumstances or events to be as mentally stressful as the injured worker perceived them to be?
2. If so, would such average workers be at risk of suffering a disabling mental reaction to such perceptions?

In response to the disclosure, the worker's representative provided a submission in which she questioned whether it was appropriate to require some form of unusual event or trauma before accepting a psychological condition as compensable. The representative, however, submitted that the facts in this case met the two step test proposed in the unpublished decision.

The employer's representative referred to a medical opinion dated July 15, 1998, which was prepared by Dr. C, the psychologist who has been treating the worker since shortly after he stopped working. The representative noted that Dr. C had also described a number of non-work factors that were contributing to the worker's anxiety. He submitted that these factors should not be considered in determining the compensability of the claim. With respect to the disclosed decision, the representative submitted that the worker did not meet the test described in that decision.

The panel disclosed the above-noted decision because it identifies some of the issues associated with adjudicating this type of claim and suggests a possible approach, albeit with some reservations. We share those reservations in that the test adopted in the prior decision imposes a very high standard for determining that a stimulus – whether one event or a series of events – was unusual.

As noted above, the legislation does not treat physical injuries differently from psychological injuries. And, the discussion paper and the decision of the court in *Dowling* raise questions regarding the lawfulness of a policy which limits compensation for personal injury to traumatically induced psychological conditions when the legislation makes no such distinction. On the other hand, it is questionable whether one can assess the role of the employment without establishing that there has been some event or series of events in the workplace that could reasonably cause a psychological injury.

An objective assessment of the unusualness of the stimuli that is allegedly responsible for a psychological condition is comparable to the determination that there is a plausible mechanism of injury when considering a physical injury. In the case of physical injuries this involves a determination of whether there was a specific work related activity or event prior to the injury and an assessment of whether that activity could have caused the injury suffered by the worker. Similarly, in the case of a psychological injury it must be determined whether there were specific workplace events prior to the injury and whether these could have caused a psychological injury. The second part of this assessment, whether these events could have

caused a psychological injury, requires an objective assessment of the nature of the workplace events or stimuli. It is not usually sufficient to rely on the worker's belief that certain events have caused either a physical or a psychological injury. This is generally true, but where a psychological injury is concerned, an objective assessment is particularly important because of the effect that a psychological condition may have on the worker's perception of workplace events. Without some objective assessment it is difficult to distinguish cause from effect in that the events may be perceived as traumatic because the worker has a psychological condition as opposed to the worker developing a condition in response to workplace events. If one simply accepts that events were traumatic because the worker perceived them as traumatic, the nature of the workplace events becomes irrelevant. This is inconsistent with the legislation which provides that compensation is limited to those situations where the employment was a cause of an injury.

In our view, an interpretation of the term "traumatically induced" that is broad enough to include unusual stimuli occurring over a period of time in the workplace assists in reconciling the policies regarding psychological injuries with the legislation. And, an objective test for determining whether there were unusual stimuli is necessary in order to determine whether the stimuli could have causative significance in the onset of a psychological condition.

The criteria or test for determining whether a stimulus was unusual is difficult to formulate however, because it must take into account the role that perceptions can play in the development of these conditions without imposing a standard for work causation that is inconsistent with the legislation. If the test for assessing whether there were unusual stimuli is very high or difficult to meet then it may be considered unlawful because it goes beyond what is necessary to show work causation. In this regard, we consider that the two step test adopted by the Appeal Division panel in Decision #98-1855 may exceed what is required to determine the role of the employment in causing a psychological condition. As discussed above, a primary purpose in objectively assessing the nature of the workplace stressors is to address the effects that perception may play in the worker having identified these as stressful. In order to make this assessment, it should be sufficient that the workplace circumstances or events are reasonably capable of causing a psychological injury. In our view, the requirement that the average worker perceive the same degree of stress as the injured worker is somewhat unrealistic. It is also not necessary in order to achieve the objective of determining whether the injury arose out of the employment. And, because it establishes a threshold for unusualness that is unnecessarily high for achieving that purpose, it is more readily viewed as imposing the type of requirement that was deemed unlawful by the court in *Dowling*.

With regard to the second step in the proposed test, we consider the requirement that average workers be at risk of suffering a disabling reaction is too stringent. There is no such requirement in connection with other injury claims. As an example, as long as it is satisfied there is a causal link between the lifting of a box and a back injury, the Board does not require that the lifting be such that average workers would be at risk of a disabling physical reaction. We note that in item #15.10 of the Manual Board policy illustrates that even where there is a deteriorating condition a claim may be accepted where it is considered that the worker could well have survived without disability for months or years if something exceptional in the course of

his employment had not triggered a disability. In those cases the employment situation has substantial causative significance and the disability is compensable. Thus Board policy provides that the injured body part need not be completely free of defect before a claim may be accepted.

However, we accept that there may be genuine concerns raised in cases where workers who have filed claims for psychological injuries have severe pre-existing psychological problems. Yet we find that Board policy concerning pre-existing deteriorating conditions is sufficient to address concerns posed in cases where a worker has a deteriorating mental condition that has reached a critical point at which it is likely to become a manifest disability. Item #15.10 (noted above) notes that in such cases where some immediate activity might trigger a final breakdown such that if it had not been one thing it would likely have been another, a compensation claim will not be accepted as is it only chance or coincidence whether the triggering activity happened at work, at home, or elsewhere. In such cases, the disability is one that the worker would not escaped regardless of the work activity, and hence the causative significance of the work activity is so slight that the disability is treated as having resulted from the deteriorating condition.

Based on the discussion above, we propose modifications to the test adopted by the previous Appeal Division panel. We would formulate the test for determining whether a worker has suffered a psychological injury under section 5 of the Act as follows:

- Did the workplace circumstances or events involve unusual stimuli?
- Were the workplace circumstances or events reasonably capable of causing psychological injury?
- If so, were the workplace circumstances or events of causative significance with respect to the worker's psychological condition for which compensation is sought?

Compensability of the Worker's Psychological Condition

We consider that the sexual harassment experienced by the worker in the workplace constitutes unusual stimuli and meets the first part of the test set out above.

The next question is whether the sexual harassment was reasonably capable of causing a psychological injury. There is some disagreement in the medical evidence regarding the seriousness of the sexual harassment and whether it was sufficiently traumatic to meet the criteria for a diagnosis of Post-traumatic Stress Disorder. In our view, this is not determinative of whether the sexual harassment could reasonably cause psychological injury. Psychological injuries are not limited to Post-traumatic Stress Disorders. If there are workplace events that could reasonably cause depression and a worker suffers a clinical depression as a result of those a claim for psychological injury could be compensable.

In this case, Dr. D, a forensic psychologist who assessed the worker in October, 1997, concluded that the worker did not meet the diagnostic criteria for Post-traumatic Stress Disorder in that neither the incidents at work nor the worker's response met the criteria for that diagnosis. Dr. D concluded that the worker was suffering from a Major Depressive Disorder. He stated that the worker's symptoms "should be regarded as resulting from, produced, and maintained by, a basic personality conflict surrounding identity, intimacy, and sexual orientation, which has been made acute by his experiences at the workplace." In his view, this central conflict had been "activated" by the sexual harassment suffered at work.

Dr. B, a forensic psychiatrist who was consulted by the employer, provided two opinions based on a review of medical reports and other documents provided by employer. In his first report dated March 10, 1997 Dr. B indicated that the sexual harassment had been relatively mild and he questioned the severity of the symptoms reported in response to this harassment. In a subsequent report dated January 22, 1999 Dr. B clarified his earlier report by stating that his opinion regarding the mildness of the sexual harassment or assault "does not imply that they would not be harmful, cause distress, or psychiatric/psychological consequences." Dr. B however also reiterated his concerns about the severity and persistence of the worker's symptoms in response to the workplace events.

Dr. C, the worker's treating psychologist, is of the opinion that the worker suffers from Post-traumatic Stress Disorder because the harassment was sufficiently traumatic to cause the symptoms that the worker developed in response. Dr. C, in a final report dated July 15, 1998 disputed Dr. B's opinion that the sexual harassment was mild in nature. He submitted that any sexual assault or molestation presents a "threat to physical integrity." Dr. C has no doubt that the sexual harassment experienced by the worker could reasonably cause psychological injury, although he also describes a number of other factors which have contributed to the severity and duration of the symptoms.

As we interpret this medical evidence there does not seem to be any significant disagreement that the sexual harassment could lead to some form of psychological injury. The disagreement centres primarily on the assessment of the harassment and the severity of symptoms that might be expected in response to an experience of this nature. As a result, we consider that the second part of the test is met.

Finally, there is the question of whether the sexual harassment was of causative significance with respect to the worker's psychological condition for which compensation is sought. On this aspect, Dr. D, Dr. C, and Dr. A all agree that the sexual harassment was of causative significance in the development of the worker's psychological condition although they have differing views as to the significance of the role played by the employment. Dr. B does not explicitly disagree that there is a causal relationship between the harassment and the worker's psychological condition but he clearly has significant reservations that there is such a relationship because of the intense and lengthy illness that followed the incidents at work. Dr. D's analysis however suggests that the harassment triggered such a significant disorder because of underlying personality conflicts. Dr. D's report provides a thorough analysis of the likely relationship between variables such as the pre-existing personality and the sexual harassment

and the role that various factors might play. This report appears to address some of the issues raised by Dr. B and provides a sound evidentiary basis for finding that the sexual harassment was of causative significance in the onset of the worker's psychological condition.

As a result we have concluded that the worker's psychological disability in September 1995 arose out of and in the course of his employment.

Our decision concerns the initial acceptance of the claim and the initial symptoms. It does not address whether all symptoms displayed by the worker since September 1995 are compensable. Any concerns dealing with that would be the subject of a decision of the Compensation Services Division. In her October 30, 1998 submission the worker's adviser asks for resumption of wage loss to the present and into the future. That issue is not before us.

The worker's appeal is allowed.

Editor's Note: This decision has been edited for publication and for the purposes of complying with the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165.