

Judicial Review Guide

This Guide provides general information about judicial reviews of WCAT decisions. It does not explain the law or provide legal advice. For further assistance, please consult a lawyer. If you do not have a lawyer, see page 15 of this Guide.

WHAT IS A JUDICIAL REVIEW?

If you are someone affected by a WCAT decision, you have the right to ask the Supreme Court of British Columbia to set aside that decision through a judicial review. The court only rules on the question of whether we made a jurisdictional error. The judge will not rehear your appeal.

This *Judicial Review Guide* provides you, as the petitioner, with information about how a judicial review proceeds. If you are a respondent, this guide will also be helpful to you. You'll find more detailed information on the Supreme Court of British Columbia's website at www.courts.gov.bc.ca under the **Self-Represented Litigants** tab.

WHAT IS A JURISDICTIONAL ERROR?

A jurisdictional error occurs if we did something we had no power to do, or if we did not do something that we were required to do.

A jurisdictional error occurs if a vice chair's decision was patently unreasonable. This means that the mistake must be so large and so obvious that no reasonable decision-maker should have ever made it. It is not enough that a different vice chair might have decided the

appeal differently. For example, to be patently unreasonable, the original vice chair must have based the decision on no evidence at all, or overlooked critical evidence, or not explained why they accepted certain evidence and not contradictory evidence, or the decision must not be capable of being rationally supported.

A jurisdictional error also occurs if we did not act fairly. For example, a jurisdictional error would occur if we did not give you an opportunity to make a submission, or did not send you new evidence we obtained, or did not consider information you submitted by the deadline we gave you. To qualify for a judicial review because of this kind of jurisdictional error, you must show that we did not act fairly in all the circumstances.

WHO ARE THE PARTIES TO A JUDICIAL REVIEW?

Petitioner

You are the petitioner if you apply for a judicial review.

Respondent(s)

WCAT is a respondent in a judicial review. All other parties who participated in your appeal are also respondents. This may be your accident employer if you are a worker, or the worker if you are an employer. It may also be the Workers' Compensation Board (WorkSafeBC) if you are challenging their policy.

CAN I APPLY TO YOU FOR A RECONSIDERATION BEFORE, OR AT THE SAME TIME, AS I APPLY FOR A JUDICIAL REVIEW?

Yes. If you are asking a court to review a decision because WCAT made a jurisdictional error, you can apply for a reconsideration and a judicial review at the same time.

But, if you are asking a court to review a decision because you have new evidence, you **must** apply for a reconsideration on statutory grounds before you apply for a judicial review. Otherwise, WCAT will object to your judicial review and the court may refuse to hear you. Statutory grounds means you are presenting new evidence not previously available.

For information about applying for a reconsideration of a WCAT decision, please read our *Post Decision Guide* on our website at www.wcat.bc.ca under the **Research Library** tab.

HOW DO I APPLY FOR JUDICIAL REVIEW?

You need to perform two tasks when applying for a judicial review. First, file a petition and affidavit(s) with the Supreme Court of British Columbia. Second, serve these documents on WCAT, the Attorney General of British Columbia, and the other respondents.

1. *File the documents*

A petition is a document that states the specific legal errors in our decision that you want the court to correct. In your petition, identify the

order (remedy) you want from the court, present a summary of the evidence (facts) that you will present at the hearing, cite any law and policy that supports your request, and set out any affidavit(s) or other documents that you will be relying on.

In the affidavit(s), set out the relevant facts of your case, explain what happened at your WCAT appeal, and state what legal errors you believe we made.

After preparing your petition and affidavit(s), take them to the Supreme Court registry for filing. There is a fee for this. Make copies of your filed petition and affidavit(s) for yourself and every respondent. (See *Who are the parties to a judicial review?* on page 2 of this Guide.) The court registry will keep the originals and give the copies back to you with the registry stamp on them.

You will find detailed instructions on how to begin a judicial review application and the necessary forms on the Supreme Court of British Columbia's website at www.courts.gov.bc.ca under the **Self-Represented Litigants** tab.

2. *Serve the documents*

After you have filed your petition and affidavit(s) in the court registry, you have to serve filed copies of the petition and affidavit(s) on WCAT, the Attorney General of British Columbia, and the other respondents.

Serving a document means delivering a document in a particular way. You can serve WCAT by couriering a filed copy to us (see

Who do I contact at WCAT regarding judicial review matters? on page 14 of this Guide) or by leaving a filed copy with our receptionist.

For important information about how to serve your documents, please see the Supreme Court of British Columbia's website at www.courts.gov.bc.ca under the **Self-Represented Litigants** tab.

WHAT HAPPENS IF I DON'T SERVE THE ATTORNEY GENERAL, THE ACCIDENT EMPLOYER, THE WORKER, OR WORKSAFEBC?

If you don't serve the Attorney General with your petition, you risk having the court refuse to proceed with your judicial review or having your judgment set aside if the Attorney General later determines that there was a public interest at stake in your judicial review application. If it is not apparent from your petition, we may ask you if you have served the Attorney General.

If you don't serve WorkSafeBC, the accident employer, or the worker, the court may give you time to serve them. This may mean that your judicial review hearing will have to be rescheduled. Alternatively, the court may not grant any of your requests (remedies) that may directly affect them. The court may also dismiss your petition.

If we receive a petition which requests remedies that may affect a party that has not been named in the petition, we may provide them with a courtesy copy of the petition.

IS THERE A TIME LIMIT FOR FILING A JUDICIAL REVIEW APPLICATION?

You have **60 days** from the date we issued our decision to file an application for judicial review in court. Sometimes the court will grant an extension of time, but there is no guarantee that it will. The judge will consider the amount of time that has passed and the reason for missing the deadline when deciding whether to grant an extension.

Some lawyers have told us that they have filed applications for judicial review just to meet this deadline. Often they also ask us to reconsider our decision at the same time. If you are filing your judicial review application to meet the deadline, but do not know when or if you will proceed with it, please let us know.

You can obtain more information about reconsideration of WCAT decisions in our *Post Decision Guide* on our website at www.wcat.bc.ca under the **Research Library** tab.

WHAT SHOULD I DO IF I AM A RESPONDENT?

File and serve two copies of a response on the petitioner and one copy to every other party within 21 days from the date you are served with the filed petition (if you live and were served within Canada).

The response tells the petitioner and other parties how you intend to respond to the petition. The response sets out a summary of the factual and legal reasons for opposing the order the petitioner is seeking, and lists the

affidavit(s) and documents that will be relied on.

Include any affidavit(s) you are relying on with your response.

For detailed instructions on how to respond, please refer to the Supreme Court of British Columbia's website at www.courts.gov.bc.ca under the **Self-Represented Litigants** tab.

WHAT DOCUMENTS WILL WCAT PROVIDE TO A PETITIONER?

If you serve us with a judicial review petition, we will deliver two copies of our response to you within 21 days from the date we are served with the filed petition.

WHAT IS THE RECORD?

The record includes the WorkSafeBC file, all WCAT correspondence, any written submissions from the parties to the appeal, the oral hearing recording, our procedural decisions granting extensions of time, adjournments, etc., and our decision on the appeal. The *Judicial Review Procedure Act* contains a technical definition of the record.

WILL WCAT TRANSCRIBE THE RECORDING OF AN ORAL HEARING?

We are not required to transcribe (prepare a printed version of) the oral hearing recording. However, you can request a copy of the recording from WorkSafeBC. You can have the oral hearing recording transcribed at your expense. We will be pleased to review the

transcription against the recording and agree if it is accurate.

If we choose to transcribe all or part of an oral hearing recording, we will provide it to all parties for review before it is included in the record.

WHERE IS THE RECORD KEPT?

WorkSafeBC files are often very large and are kept electronically. Physical evidence such as videotapes of work processes or original photographs are kept separately. Completed WCAT files, including the oral hearing recordings, are also stored on WorkSafeBC's electronic file. The original documents are destroyed.

WHEN WILL WCAT DELIVER THE TRIBUNAL RECORD TO THE PETITIONER?

The petitioner is normally responsible for providing the record. However, we follow a different process which avoids unnecessary duplication and also makes it easier for all parties and for the judge.

After the petitioner contacts us about setting a date for the judicial review hearing, we obtain the relevant file from WorkSafeBC. We then prepare a certified record along with a table of contents listing the relevant documents in the record.

We will circulate a draft copy of the table of contents to all parties for their review. As parties have a right to full disclosure of their files, they should be able to determine from the

table of contents whether the record contains everything that will be relevant for the court.

If you identify something you believe should or should not be part of the record, please write to our legal counsel as soon as possible. While we make every effort to agree on the contents of the record, we have the right to provide as complete a record as we consider necessary.

Once parties have provided their views on the content of the record, and have confirmed that the matter will be proceeding to a hearing, we will number the pages, update the table of contents, and bind the record. If you do not provide feedback within a reasonable period of time, we will treat the version in the draft table of contents as the certified record.

HOW MANY COPIES OF THE RECORD DO I GET?

We will deliver two bound copies of the certified record to you as the petitioner. One copy is for your use and the other is for the petition record. We will deliver one copy to each of the respondents.

WHO OBTAINS A HEARING DATE?

As the petitioner, you are responsible for obtaining a hearing date from the Supreme Court of British Columbia. Judicial review hearings usually take at least one day, often longer. Please consult with us and the other respondents first so a mutually convenient date can be chosen.

File and deliver a notice of the hearing to us and the other respondents at least seven days before the hearing date.

For details on this process and information on how to schedule a hearing, you may refer to the Supreme Court of British Columbia's website under the ***Self-Represented Litigants*** tab.

HOW DOES THIS MATERIAL GET BEFORE A JUDGE?

As the petitioner, you assemble a petition record from all of the documents that have been exchanged by the parties. You need to file the petition record in court, along with extra copies of some of the documents, no later than 4 p.m. on the day that is one full day before the date set for the hearing.

You are also responsible for preparing an index of the petition record and providing it to all respondents, including us, by no later than 4 p.m. on the day that is one full day before the date set for the hearing.

You will find a complete list of what must be included in the petition record and what you must file in court to set the matter for hearing on the Supreme Court of British Columbia's website at www.courts.gov.bc.ca under the ***Self-Represented Litigants*** tab.

WHEN DO I GO TO COURT?

A judge will hear your application in chambers. The term chambers is used to describe a type of hearing that is different from a full trial,

because evidence is usually presented in the form of written affidavit(s) rather than through witnesses.

The notice of hearing document that you prepared will tell you where and when the hearing will take place.

Typically, the courthouse opens at 9:00 a.m. and chambers hearings begin at 9:45 a.m. Your petition for judicial review may not be the only matter scheduled before the judge that day. You may have to wait for your turn, or the petition may be assigned to another judge in another court room. The court clerk will tell you what to do and where to go.

Sometimes the court will be overbooked and your petition may be bumped. You can then arrange for another hearing date. As all parties are likely to be present at that time, try to obtain agreement on a mutually convenient date. The court clerk and the court registry staff will tell you what to do. The court will give the petition record back to you. You will need to bring it to court on the next date of the hearing.

WHEN DO I GET A CHANCE TO SPEAK?

As the petitioner, you speak first. Address the judge as My Lord or My Lady. Address opposing parties as Mr. or Ms. Explain your case and answer any questions the judge may ask.

DOES WCAT GET TO SAY ANYTHING?

Yes. However, our participation is limited to addressing the statutory framework in the *Workers Compensation Act*, any issues

of jurisdiction, the standard of review (see *Standard of Review* on page 13 of this Guide), and the documents included in the record.

We may show how the record supports our decision that is the subject of your judicial review, or address issues of jurisdiction.

DO THE OTHER RESPONDENTS GET TO SAY ANYTHING?

Yes. If there are other respondents participating, they will also have an opportunity to argue why your petition should not be granted. Typically, the other respondents will be permitted greater scope in their argument than us. For example, they will be permitted to argue that our decision is correct.

DOES WORKSAFEBC GET TO SAY ANYTHING?

Yes. If WorkSafeBC was served or the court allows them to participate, they may address issues that affect their interests, such as challenges to the lawfulness of a WorkSafeBC policy.

DO I GET TO SAY ANYTHING MORE?

Yes. As the petitioner, you usually have the final word. This is known as the reply. You have an opportunity to disagree with anything new that we or any other party said which you did not have a chance to address in your initial presentation. Follow the judge's directions if you have any questions regarding the scope of your right of reply.

STANDARD OF REVIEW

A judge considers very limited factors in deciding whether to review our decision. These factors differ according to the kind of error found:

- If we have made an error of fact or law, or improperly exercised our discretion, the judge will allow a judicial review only if our decision was “patently unreasonable.”
- If we have made an error of procedural fairness, the judge will allow a judicial review only if we did not act fairly in all the circumstances.
- If we made any other type of error, a judge will allow a judicial review only if our decision was not correct.

You will find a full description of the different standards of review for different kinds of errors in section 58 of the *Administrative Tribunals Act*. If you are not sure what standard of review applies in your case, it is a good idea to consult a lawyer.

WHAT HAPPENS AFTER THE HEARING IS OVER?

The judge may make a decision at the end of the hearing or give the parties a written decision later.

If you are successful, you must prepare an order that accurately describes the decision of the court. The order is first sent to all of the parties to ensure that it is accurate. It is then signed by all the parties and sent to the judge for approval. If your application is not successful, we or another respondent will

prepare the order. You can appeal the decision to the BC Court of Appeal within 30 days.

For more details you may wish to contact the Supreme Court of British Columbia registry or refer to their website at www.courts.gov.bc.ca under the **Self-Represented Litigants** tab.

WHO DO I CONTACT AT WCAT REGARDING JUDICIAL REVIEW MATTERS?

When writing to WCAT about a judicial review, please address your envelope like this:

Workers' Compensation Appeal Tribunal
150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Attention: Tribunal Counsel Office

WHERE CAN I GET LEGAL ADVICE?

Here are some legal advice services:

Canadian Bar Association, BC Branch

The Lawyer Referral Service can give you the name of a lawyer who you can call for a half-hour appointment for a set fee. Call 604 687-3221 or 1 800 663-1919.

Community Legal Assistance Society

The Community Legal Assistance Society provides legal services to financially qualified people. Call 604 685-3425 or 1 888 685-6222.

Salvation Army BC Pro Bono Program

The Salvation Army operates clinics throughout British Columbia where lawyers provide free legal assistance in all areas of the law to people who cannot afford a lawyer and do not qualify for legal aid. Lawyers do not represent clients in court, but do provide ongoing legal advice and help clients prepare for court. Call 604 694-6647.

Access ProBono

At clinics throughout British Columbia, lawyers provide free legal assistance in all areas of the law to people who cannot afford a lawyer. Lawyers do not represent clients in court, but do provide ongoing legal advice and help clients prepare for court. Call 604 878-7400 or 1 877 762-6664.

Supreme Court of British Columbia

If you don't have a lawyer representing you, the Supreme Court Self-Help Information Centre can help you get the information you need to prepare your case. At the centre you can learn about the court system and court procedures and locate and fill out the relevant court forms. The centre provides in person assistance only at:

274 – 800 Hornby Street
Vancouver, BC V6Z 2C5

You can also find self-help resources online at www.supremecourtselfhelp.bc.ca.

WCAT INFORMATION GUIDES

*Appealing a Review Division Decision -
Worker's Guide**

*Appealing a Review Division Decision -
Employer's Guide**

*Respondent's Guide**

*Oral Hearing Guide**

*Written Submission Guide**

*Medical Evidence Guide**

*Post Decision Guide**

Judicial Review Guide

*Legal Action Guide
(Section 257 Certificate)*

Direct Appeal Guide for Workers

Direct Appeal Guide for Employers

* These Guides are also available on our website in Punjabi, Chinese (Traditional) and Chinese (Simplified)

WCAT CONTACT INFORMATION

Website: www.wcat.bc.ca

Telephone: 604 664-7800

Fax: 604 664-7898

Toll Free within BC: 1 800 663-2782

Mailing Address:

Workers' Compensation Appeal Tribunal
150 - 4600 Jacombs Road
Richmond, BC V6V 3B1