

# Browne v. Workers' Compensation Appeal Tribunal

## Decision Summary

Court	B.C. Court of Appeal
Citation	2013 BCCA 487
Result	Appeal Dismissed
Judges	Madam Justice Newbury Madam Justice Neilson Mr. Justice Willcock
Date of Judgment	November 8, 2013
WCAT Decision Reviewed	WCAT-2010-02714 through WCAT-2010-02721 and WCAT-2010-02723 through WCAT-2010-02733

### **Keywords**

*Appeal – Judicial review – Standard of review – Patently unreasonable – Section 257 certificates – Section 257 of the Workers Compensation Act – Item #21.00 (C3-18.00) of the Rehabilitation Services and Claims Manual, Volume II*

### **Summary:**

After working a shift at a farm managed by her grandfather, Adrianna Browne left from the farm in a truck with 14 passengers who had also been working at the farm. Soon after leaving, the vehicle was crashed. The passengers each sued Ms. Browne for damages in negligence. Ms. Browne applied to the Workers' Compensation Appeal Tribunal (WCAT) under section 257 of the *Workers Compensation Act* to certify that she and the 14 passengers were each a worker in the course of her or his employment at the time of the crash. WCAT determined that each of the passengers was a worker injured in the course of her or his employment, but also determined that Adrianna Browne, although a worker, was not in the course of her employment when driving the truck. Instead, WCAT determined that she was doing a favour for her grandfather by driving the other workers back to town.

In coming to its decision, WCAT cited item #21.00 ("Personal Acts") of the *Rehabilitation Services and Claims Manual, Volume II*. Ms. Browne argued that no reasonable interpretation of policy item #21.00 permitted WCAT to factor in a person's subjective motivation for doing something. Instead, she said the only reasonable interpretation of the policy item, when read as a whole with the examples imbedded in the policy, required the adjudicator to look only at the nature of the person's actions – specifically,

to ask whether the person was engaged in some productive activity in furtherance of the business.

Both the chambers judge and the Court of Appeal refused to accept this argument. Both courts observed that WCAT had made note of several factors in support of the conclusion that the defendant's actions were personal, rather than in the course of employment. The Court of Appeal noted that policy item #21.00 specifically recognizes that weighing the employment features against the personal features can never be devoid of intuitive judgment. In light of this portion of the policy, it could not be said that WCAT's interpretation was patently unreasonable.

In addressing Ms. Browne's arguments, the Court also confirmed that, with the exception of precedent panel decisions, WCAT is not bound by its own decisions in unrelated appeals.