

## BUTTAR V. WORKERS' COMPENSATION APPEAL TRIBUNAL

### Decision Summary

Court	B.C. Supreme Court
Citation	2009 BCSC 1228
Result	Judicial Review Dismissed
Judge	Madam Justice Ker
Date of Judgment	September 8, 2009
WCAT Decision(s) Reviewed	WCAT-2008-00792

#### **Keywords:**

*Judicial review – Standard of review – Patent unreasonableness – Section 257 certification – Arising in the course of employment – Determining extent of employers' premises – Section 5(4) presumption – Lunch Break – Special Hazard – Standard of Proof*

The Respondent Galleto was struck and seriously injured by a taxi cab driven by the Petitioner Buttar and owned by the Petitioner Black Top Cabs Ltd. Mr. Galleto was employed by the Marriott Hotel (Hotel). The accident occurred when he was leaving the hotel area for an unpaid lunch break. Mr. Galleto was crossing the breezeway area adjacent to the Hotel, when the Petitioner Buttar reversed his taxi cab from the hotel lobby entrance, hitting Mr. Galleto with the open door of the taxi.

Mr. Galleto commenced a tort action against the Petitioners, and in response the Petitioners pleaded the defence of section 10 of the *Workers Compensation Act* (Act). Pursuant to section 257 of the Act, the Mr. Galleto requested that the Workers' Compensation Appeal Tribunal (WCAT) determine the status of the parties and certify that status to the court. WCAT found that Mr. Galleto was a worker, and that his injuries arose out of his employment but did not arise in the course of his employment. WCAT found that the section 5(4) presumption was rebutted. WCAT determined that the breezeway did not form part of the employer's premises and that the employer's control over the portion of the breezeway where the accident occurred was very limited, "if any".

The Petitioners sought judicial review of the WCAT decision. On judicial review, the court denied the Petitioner's application. The court found that the WCAT decision was not patently unreasonable. The court found that this was a case where there was competing evidence before WCAT that could have supported both the view that the breezeway area was part of the employer's premises and that it was not. The Court concluded that there was nothing openly, clearly, evidently unreasonable in reaching the conclusion that the breezeway area in question was not a part of the Hotel's premises. There was therefore a rational basis for WCAT's decision.