

KERTON v. WORKERS' COMPENSATION APPEAL TRIBUNAL

Decision Summary

Court	B.C. Supreme Court
Citation	2010 BCSC 644
Result	Judicial Review Allowed
Judge	Mr. Justice Rice
Date of Judgment	May 5, 2010
WCAT Decision(s) Reviewed	WCAT-2006-03952, WCAT-2008-00058

Keywords

Extension of time – Discretionary power

This judicial review addressed the issue of whether section 243(3) of the *Workers Compensation Act* confers on the Workers' Compensation Appeal Tribunal (WCAT) a residual discretion to deny an extension of the time to appeal where the special circumstances and injustice criteria have been met.

In the WCAT decisions under review (and as set out in WCAT's *Manual of Rules of Practice and Procedure*) the panels determined that WCAT has a residual discretion. The Court found, on a correctness standard, that WCAT does not have a residual discretion - principally on the basis that the legislature could not have intended an extension of time to be refused where there would be a proven injustice - and returned the matter to WCAT for rehearing and to consider afresh what "special circumstances" and "injustice" means in the absence of a residual discretion.