

## LAVIGNE V. BRITISH COLUMBIA (WORKERS' COMPENSATION REVIEW BOARD)

### Decision Summary

Court	B.C. Supreme Court
Citation	2008 BCSC 1107
Result	Judicial Review Allowed
Judge	Mr. Justice Truscott
Date of Judgment	August 15, 2008
WCAT Decision(s) Reviewed	WCAT-2007-00480, WCAT-2003-03236-RB

#### **Keywords:**

*Wage rate – Change in circumstances – Oral hearing – Standard of review – Patent unreasonableness*

#### **Facts:**

This was a petition for judicial review of a decision by the Workers' Compensation Appeal Tribunal (WCAT) which considered the Petitioner's long term wage rate.

On September 8, 2000, the Petitioner was injured while working for Quesnel Traffic Control on a highway construction project. The vehicle driven by the Petitioner was struck by a moose causing the vehicle to roll over and injure her. The Workers' Compensation Board, operating as WorkSafeBC (Board), set the Petitioner's long term wage rate based on her earnings in the one year prior to the date of injury. The Petitioner appealed the decision to the Review Board. The appeal was transferred to WCAT under the transition provisions in the *Workers Compensation Act*. WCAT denied the appeal and confirmed the long term wage rate, finding that the Petitioner's contention that there was a fixed change in her circumstances as she was hired as a first aid attendant, rather than a flag person, was not supported by the evidence. In turn, the panel was not satisfied the Petitioner's earnings in the three month period prior to the accident were the best reflection of her long term loss. The Petitioner's application for reconsideration was also denied.

The Court returned the matter to WCAT with the direction to reconsider and determine whether it would accept the letter of the employer as new evidence or as evidence demonstrating that it was unfair as a matter of natural justice not to have conducted an oral hearing where the employer would have been required to be present to explain his comments in the log note and what he had promised the Petitioner in terms of employment.