

## MANZ V. SUNDHER

### Decision Summary

Court	B.C. Court of Appeal
Citation	2009 BCCA 92
Result	Appeal allowed
Judge(s)	<b>Saunders</b> , Huddard, Kirkpatrick
Date of Judgment	February 27, 2009
WCAT Decision(s) Reviewed	WCAT-2005-03693, WCAT-2006-01402

#### **Keywords:**

*Patent unreasonableness in section 58 of the Administrative Tribunals Act defined – Constitutional challenge to section 58 of the Administrative Tribunals Act - Reweighing evidence*

The Court of Appeal considered whether the B.C. Supreme Court had erred in re-weighing evidence on a judicial review of a Workers' Compensation Appeal Tribunal decision. The Court of Appeal also addressed the issue of how to define *patent unreasonableness in section 58 of the Administrative Tribunals Act (ATA)* in light of *Dunsmuir v. New Brunswick*, 2008 SCC 9.

Mr. Manz, an employee of the British Columbia Ferry Corporation at the Swartz Bay ferry terminal in Sidney, British Columbia, was leaving work on his motorcycle. While on a road open to the public but on British Columbia Ferry Corporation property, a dump truck with a trailer driven by Mr. Sundher, also a worker but not employed by the British Columbia Ferry Corporation, collided with his motorcycle. Mr. Sundher attempted to turn left through a gap in the concrete barrier in order to do a U-turn and pick up tools left at the ferry terminal and to do so, crossed over the lanes to his left, cutting across the lane in which Mr. Manz was travelling. Mr. Manz was unable to stop his motorcycle and the collision occurred.

The Court of Appeal allowed the appeal, finding that the chamber's judge while referring to the correct approach to factual issues, impermissibly weighed the evidence and moved outside the definition of patently unreasonable. The Court noted that weighing of evidence is an exercise beyond the purview of a reviewing judge applying a standard of patently unreasonable.