

# West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)

## Decision Summary

Court	B.C. Supreme Court
Citation	2015 BCSC 1098
Result	Judicial Review Denied
Judge	Mr. Justice MacKenzie
Date of Judgment	June 25, 2015
WCAT Decision(s) Reviewed	WCAT-2013-01952

### **Keywords**

*Judicial review – Occupational health and safety – Administrative penalty – Section 196 of the Workers Compensation Act – When an employer may be liable for a penalty for something it did as an owner*

*Judicial review – Jurisdiction – Workers' Compensation Board Policy – Section 26.2 of the Occupational Health and Safety Regulation*

*Judicial review – Standing – Scope of tribunal's standing on judicial review*

### **Summary:**

This judicial review involved two interconnected issues: i) the jurisdiction of the Workers' Compensation Board to make section 26.2 of the *Occupational Health and Safety Regulation* and ii) whether the Workers' Compensation Appeal Tribunal (WCAT) was patently unreasonable in confirming an administrative penalty levied against the petitioner for violation of the *Regulation*. The judgment also considered the scope of a tribunal's standing on judicial review and the standards of review applicable to the issues. The Court found that both the Board and WCAT had standing to respond to the petitioner's submissions and dismissed the petition.

The petitioner operates a forest products business and owned a forest license on which it had contracted with an individual to fall some trees. The contractor hired another faller to help him with the work. Sadly, that other person was fatally injured while doing the work. The Board investigated and determined that the petitioner was in violation of section 26.2 of the *Occupational Health and Safety Regulation*, which requires the owner of a forestry operation to ensure that all activities of the operation are both planned and conducted safely. The Board also levied an administrative penalty against the petitioner. The petitioner argued that section 26.2 of the *Regulation* purports to

impose obligations on an owner independent of the obligations imposed on owners under section 119 of the *Act* and, therefore, the Board lacked the jurisdiction to pass that section of the *Regulation*. The petitioner also objected to WCAT's confirmation of the administrative penalty on the basis that such penalties can only be imposed upon employers and it was not acting in its capacity as an employer when it was found to have contravened the *Regulation*.

The Board and WCAT each limited their respective submissions to one of the issues. The Court held that because there was no other respondent to address the petitioner's arguments, both the Board and WCAT had standing to make the submissions they did (*i.e.*, the Board argued it had jurisdiction to pass the *Regulation* and WCAT submitted that its decision was not patently unreasonable). The Court also disagreed with the petitioner's position that WCAT's decision was one that involved "a true question of jurisdiction" and thus called for review on the standard of correctness. The Court held that the issue of the administrative penalty involved a finding of law that was within WCAT's jurisdiction and, therefore, the standard to apply was that of patent unreasonableness.

After finding that the Board did have the jurisdiction to pass section 26.2 of the *Occupational Health and Safety Regulation*, the Court considered the petitioner's objection to WCAT's decision upholding the administrative penalty. The WCAT panel accepted that the injured worker was not an employee of the petitioner, but it noted that one of the petitioner's managers had attended the worksite. The panel concluded that when an owner is also an "employer" within the meaning of the *Act*, and the worksite in question is a workplace for the owner/employer's workers, the Board has the authority to impose an administrative penalty against the owner/employer, even when the underlying violation is one related to the obligations of an owner. The Court found the language of section 196 – the penalty provision – was sufficiently general to form a rational basis for WCAT's interpretation. It followed that WCAT's decision was not patently unreasonable.