

Judicial Review

This guidebook provides general information about civil, non-family claims in the Supreme Court of B.C. It does not explain the law. Court staff (and this guidebook) can only give you legal information, not legal advice. They will tell you how to do something, but not whether you should do it or why you might want to do it. Legal advice must come from a lawyer.

Where You Can Get Help With Your Case

Information if You Represent Yourself

The BC Supreme Court Self-Help Information Centre (www.supremecourtselfhelp.bc.ca) provides legal information, education, and referral services for family and civil (non-family) cases for unrepresented litigants who are involved in civil actions in the Vancouver location of the Supreme Court of British Columbia.

Legal Advice

You may be eligible for free (pro bono) legal advice. Services are listed under *legal advice* on the website for the BC Supreme Court Self-Help Information Centre.

Rules of Court

The Rules of Court govern the conduct of litigation in the Supreme Court of BC. Not only do they ensure fairness to all parties involved in a lawsuit, they will guide you through every step of your case and set time limits for when certain steps must be done. You can find these Rules at the courthouse library, or on the court's website at www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms.)

Forms

Official court documents (called court forms) must be used when you bring a dispute to court. You can print out blank forms for use in your lawsuit from the Supreme Court website. Go to www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms).

For information about family law claims, go to www.familylaw.lss.bc.ca.

Before you start your claim, you should consider talking to a lawyer to help you understand the law and the procedures that might apply to your case. You may be eligible to obtain free (pro bono) legal advice.

If you do not have a lawyer, you will have to prepare your case and do the legal research to represent yourself. You will have to do all the things a lawyer would do and it will not be easy. You will need to learn about:

- the court system;
- the law that relates to your case;
- what you and the other side need to prove;
- the possible legal arguments for your case.

You will also need to know about the Rules of Court and the forms that must be used in your lawsuit. If you do not understand these things, you might miss something (i.e. a deadline) and hurt your case. If you sue and lose, you might be ordered to pay the costs of the other party.

Judicial Review

This guidebook contains an overview of the procedure for a judicial review. In judicial review, the Supreme Court of BC is asked to set aside a decision of a government body, like a tribunal.

A judicial review is a complex legal process. Several statutes or Acts set out the rules for a judicial review. Two of these are the *Administrative Tribunals Act*, which sets out the time limits for applying for a judicial review, and the *Judicial Review Procedure Act*, which sets out the procedural requirements. If you are thinking of applying for a judicial review, you need to read these Acts.

Several Supreme Court Rules also apply to applications for judicial review. You will also need to be familiar with them. You can find all of the Rules and Acts at any courthouse library or at the websites set out at the beginning of this guidebook.

Judicial reviews are started by filing a document called a petition. (Petitions are discussed below.) You should also read two

other guidebooks in this series: *Starting a Civil Proceeding in Supreme Court* and *Chambers Applications*. You can find much of the information you need to carry on your judicial review in those guidebooks.

You should also review the guidebook, *Overview of the Supreme Court Civil Process*, to understand the court process and how to get started on some procedures.

This guidebook gives you only a general introduction to judicial reviews. To apply for a judicial review, you will need to do more research on the law, the Rules and the Acts that apply to your specific case. You should also think about talking to a lawyer about whether judicial review is appropriate for your case and your chances of success if you proceed.

What is judicial review?

A judicial review is a legal procedure that takes place in the Supreme Court. In a judicial review, a Supreme Court judge reviews a decision that has been made by an administrative tribunal or an administrative decision maker.

What is an administrative tribunal or administrative decision maker?

The government of BC creates tribunals to interpret and enforce certain laws, such as residential landlord and tenant issues.

Tribunals are specialized decision makers because their decisions concern a specific subject area (such as workers' compensation, or landlord and tenant issues). They are less formal and more cost-effective than courts.

The government has given tribunals the authority to make decisions about certain issues. The courts recognize that tribunals have specialized knowledge and experience in their particular subject areas and, because of that, the courts will not easily interfere with a tribunal's decision.

Here are some examples of the situations where you can apply for a judicial review:

- *Residential Tenancy Act* issues:

A landlord has given notice to a tenant to move out. An arbitrator at the Residential Tenancy Board heard the case and agrees with the landlord. The tenant can apply for judicial review of that decision.

- *Workers' Compensation Act* issues:

The Workers Compensation Appeals tribunal has made a decision that a worker has not suffered a permanent disability. The worker can apply for judicial review of that decision.

Time limits for applying for a judicial review

Time limits are very important in judicial review applications as they are for all court procedures.

Under the *Administrative Tribunals Act*, the time limit for filing an application for judicial review in court is 60 days from the date of the tribunal's decision. If you do not file your judicial review application within the time limit, you may lose your right to apply. However, the 60-day time limit does not apply to all administrative tribunals. You should not delay in filing your application – you may find that you have missed an important deadline.

Sometimes the court will grant an extension of the time, but there is no guarantee that it will do so. The judge will consider the amount of time that has gone by and the reason for missing the deadline in making a decision about whether to grant an extension.

Consult a lawyer as soon as you receive a decision from a tribunal or decision maker. A

lawyer can help you decide whether you have a good case for judicial review and can advise you about what time limit applies to your application.

The Judicial Review Procedure Act

The *Judicial Review Procedure Act* of BC sets out the procedure for judicial review of provincial tribunal decisions. This guidebook and the *Judicial Review Procedure Act* only cover judicial review of decisions made by provincial tribunals.

The procedure for reviewing decisions of federal tribunals is set out in federal legislation called the *Federal Court Act* and in the *Federal Court Rules*.

A decision of the Immigration and Refugee Board dismissing a claim for refugee status is an example of a federal tribunal decision. This guidebook does not provide any information about judicial reviews of federal tribunal decisions.

Who can apply for judicial review?

The word “standing” is used to describe someone who can apply for judicial review. In order to have standing to apply for a judicial review, a person must either be a party to the proceedings being reviewed, or must be directly affected by the action or decision of the tribunal. A person who is only indirectly affected by the tribunal's decision or action does not have standing.

When will the court allow a judicial review?

There is no automatic right to judicial review and the court will not allow a judicial review in every case. In general, the court will only allow a judicial review in limited circumstances. A judge will not allow a judicial review to correct a technical error made by the tribunal if it does not think that the error caused any harm or prejudice to you. The court will intervene if the tribunal did not give you a fair hearing. It will also intervene if the tribunal had no authority to deal with the subject matter of your case.

A judicial review is not a “re-hearing”

A judicial review is not a re-trial or a re-hearing of your case. The judge does not focus on whether he or she would have made a different decision from the one made by the tribunal.

In a judicial review, the judge generally focuses on determining whether the tribunal had the authority to make a particular decision and whether the tribunal exercised that authority.

The standard of review

The “standard of review” is an important legal concept in judicial review hearings. The standard of review is how the judge measures whether the tribunal’s decision should be reviewed. In other words, the judge decides whether the tribunal made a type of error that warrants court intervention.

There are different standards of review for different kinds of tribunals.

For example, there is a very high standard of review for some kinds of tribunals. Even if the

Supreme Court judge hearing a judicial review disagrees with the tribunal’s decision, he or she will not reverse the tribunal’s decision unless the decision was “patently unreasonable.” For other tribunals, the standard of review is one of “correctness.” In all cases, the court will generally not overturn a tribunal’s decision if it was based on credibility (i.e., the tribunal believed one witness over another).

It is important to know what standard of review applies so that you can properly argue your case in the Supreme Court. You must review the statute that governs your particular legal issue (such as the *Residential Tenancy Act*), as well as sections 58 and 59 of the *Administrative Tribunal Act*. It is also a good idea to consult with a lawyer to understand what standard of review applies in your case.

What decisions can the court make?

In a judicial review, the court has limited authority to give you the remedy that you would like. The court will usually set aside the decision of the tribunal and order it to hear your case again, applying the proper principles of law. Just because you win your judicial review hearing does not mean that you will win when the tribunal hears your case again.

Preparing for a judicial review application

It is a good idea to talk to a lawyer if you are thinking about applying for a judicial review or wondering whether you have a good chance of winning your case.

You can also get information about judicial reviews from a publication prepared by David Mossop, Q.C. a lawyer with the Community

Legal Assistance Society (“CLAS”) called *Judicial Review: A Lay Person’s Guide*. In this guidebook, Mr. Mossop’s publication is called the “*Mossop Guide*”.

The *Mossop Guide* provides samples of the kind of documents you need to file in a judicial review application. You can find the *Mossop Guide* on the CLAS website at <http://www.clasbc.net/>. You can also get a copy of the guide at the CLAS office at:
300 - 1140 West Pender Street
Vancouver, B.C. V6E 4G1
Tel: 604-685-3425
Toll Free: 1-888-685-6222.

If you decide to apply for judicial review, you should immediately collect and organize all your documents from the tribunal proceedings. Write down all the information you remember from the tribunal proceedings. You should have the tribunal’s decision in writing; if not, request it as quickly as possible.

The documents you prepare and file in the court registry tell the court and the other parties in your case about:

- the facts or evidence you intend to rely on;
- the legal grounds of your claim;
- the argument you will be making in court.

Copies of the documents you file in the court registry must be served on the tribunal, the Attorney General of BC, and the other parties in your case. For example, if you are a tenant asking for judicial review of an arbitrator’s decision under the *Residential Tenancy Act*, you will have to serve copies of your documents on the landlord, the arbitrator, and the Attorney General.

The documents you will need are described below. The *Mossop Guide* provides you with instructions on how to complete them. The guidebook called *Starting a Civil Proceeding in Supreme Court* will also help you complete some of these documents.

The petition

If you are the person applying for a judicial review, you are called the petitioner and you must file a petition. The tribunal who heard your case is called the respondent. All other parties who appeared before the tribunal are also called respondents. For more information about petitions, see the guidebook called *Starting a Civil Proceeding in Supreme Court*.

The *Mossop Guide* contains information on how to prepare your petition and a sample completed petition.

The petition sets out the specific order you are asking the court to make and identifies the various statutes and rules that you are relying on in your application for judicial review. It also sets out the basic facts about your case, including a description of the petitioner and respondents, the tribunal involved, and what the tribunal decided.

The petitioner’s affidavit

As the petitioner, you must also file an affidavit, which is sworn evidence (i.e., evidence that what you have sworn is true) in writing. Your affidavit is an important document and must be carefully prepared. It is a serious offence to swear an affidavit that contains information you know is false. The *Mossop Guide* tells you how to prepare your affidavit and shows you an example.

Generally, your affidavit can only contain information (i.e., evidence) that the tribunal considered when it made its decision. You cannot include evidence that the tribunal did not see or hear, such as new information that you have discovered since your tribunal hearing.

Remember that your affidavit is not an argument. (You will present your argument in

a separate document called an outline, which is discussed later in this guidebook). Your affidavit sets out the relevant facts and explains what happened in the tribunal hearing.

Attach to your affidavit any important documents you refer to in the affidavit or that are relevant to your case. The documents have to be numbered and are called exhibits.

For more information about affidavits, see the guidebook called *Starting a Civil Proceeding in Supreme Court*.

Filing the documents in court

You must file the petition and affidavit in the Supreme Court registry and pay the court fee. Make copies of the affidavit and the petition for yourself and every respondent. The court registry keeps the original affidavit and petition and gives the copies back to you with the registry stamp on them. The court registry staff can answer questions about the format of the documents or number of copies you will need.

Fees

When you file your petition and affidavit at the court registry, you will have to pay the applicable registry filing fees. The fees are listed in Schedule 1 of Appendix C to the Rules. Call the court registry to confirm the current fees or check the information on the website noted at the beginning of this guide.

If you can't afford the filing fee, ask the registry staff for instructions on how to apply to the court to have the fee waived. This is called an application for indigent status (see section S 1(1) to (4) of Schedule 1 to Appendix C to the Rules).

Once you have paid the filing fees, the registry:

- opens a file;
- gives your case a registry number (this is the permanent identification number for your case);
- stamps and returns the copies of the document to you.

If you are making an application for indigent status, the court registry will give you directions on when and how that application will be heard. If the court grants you indigent status, your petition will be filed and copies will be stamped and returned to you.

Serving the documents

After you have filed your petition and affidavit at the court registry, you have to serve the filed copies of the petition and affidavit on the tribunal, the Attorney General of BC, and the other interested parties. The other interested parties are the other people who originally appeared in front of the tribunal. Serving a document means having a document delivered in a particular way. For each party that you serve, make sure that you get evidence that you have actually served the documents. You may need this information when you appear in court.

For more information about service of documents, please see the guidebook titled *Starting a Civil Proceeding in Supreme Court*.

The Mossop Guide also contains information about serving documents.

Serving the tribunal

If the matter is urgent, you will have to personally serve the members of the tribunal. You can do this by personally serving any tribunal member on behalf of the others. For more information on serving documents, see

the guidebook called *Starting a Civil Proceeding in Supreme Court*.

If the matter is not urgent, send two copies of a letter and other documents to the tribunal so it can sign one and send it back to you to acknowledge service. You can use this signed letter to confirm to the court that the tribunal has been served.

Serving the Attorney General of British Columbia

You can serve court documents on the Attorney General of British Columbia by having a solicitor in the Attorney General's department in Victoria acknowledge in writing that they have received the documents.

If the matter is not urgent, you can serve the Attorney General by sending the court documents to the office of the Attorney General in Victoria along with two copies of the covering letter. The office will sign one copy and return it to you with an acknowledgment of service. You can use this signed letter to confirm to the court that the Attorney General was served. The *Mossop Guide* contains a sample letter for you to follow.

Serving other interested parties

Other interested parties may have to be served, such as government agencies, individuals, and corporations. There are special rules about how to serve specific parties. For more information about serving documents, see either the guidebook called *Starting a Civil Proceeding in Supreme Court*, or the *Mossop Guide*.

What happens next?

A petition for a judicial review is heard in chambers. The guidebook called *Chambers Applications* will give you information about hearings in chambers.

There are several steps to making a chambers application and each of them must be done within certain time limits. The *Chambers Application* guidebook contains information about the documents required and how to prepare them. It also has several charts and timelines that will help ensure that your court application proceeds smoothly.

In addition to a petition and supporting affidavit, you must complete the following documents:

- Response (Form 124)
- Outline (Form 125)
- Chambers record
- Notice of hearing (Form 126)
- Order (Form 43)

Each of these documents is described in the guidebook called *Chambers Applications*.

Getting a court date

Once you have filed and served your documents, you need to get a date for your petition to be heard by the court in chambers.

For more detailed information about this procedure, read the guidebook called *Chambers Applications* or you can telephone the court registry where you filed your documents to get specific information about that registry.

You will need to estimate how long you think your case will take – it depends on how complex your case is and how many respondents are involved. Consult with the other parties or their lawyer(s) to estimate the time required and to find out what dates are convenient for them. Remember that your time estimate must include the time required for both you and the respondents.

The procedure that is followed for chambers applications differs depending on whether your application will take more or less than 2 hours. For more information about this, read the guidebook called *Chambers Applications*.

Preparing your notice of hearing

Next, you must prepare a notice of hearing. See the guidebook called *Chambers Applications* for more detailed information about the notice of hearing. The *Mossop Guide* also gives you samples of a notice of hearing.

Preparing your outline

When you have a date for your case to be heard, you must prepare a written argument called an outline. For further information about the outline, see the guidebook titled *Chambers Applications* or the *Mossop Guide*.

The outline sets out the argument you are going to make to the court when it hears your judicial review application. Your outline will include a list of statutes and cases that you will rely on in your legal argument at the judicial review hearing.

Preparing the outline is a crucial part of your case because it sets out all the legal arguments you are going to make to the court. It is advisable to consult a lawyer when you prepare your outline to make sure that you have referred to all the appropriate cases and laws that will be helpful to your case.

Preparing your chambers record

If your application for a judicial review will take more than 30 minutes, you must prepare

a chambers record for the court. A chambers record contains all the documents you will refer to in your hearing.

For further information about preparing, filing and delivering your chambers record, see the guidebook called *Chambers Applications* or the *Mossop Guide*.

Book of authorities

You will also need to prepare a book of authorities that contains copies of the cases and statutes you have referred to in your outline. As noted above, you should have a lawyer help you prepare your outline, and identify the cases and statutes that are relevant to your case.

It is helpful for the court if you put your authorities in a three-ring binder with tabs separating the cases and statutes. You will give the book of authorities to the judge at the hearing. You should also have a copy for yourself, and one for each of the other respondents or their lawyers.

Attending the Hearing

For more information about going to court, see the guidebook called *Overview of the Supreme Court Civil Process*. It tells you about court etiquette and other useful information.

What to bring to court

You should bring your copy of the chambers record as well as copies of your book of authorities for yourself, the judge, and the other parties.

Your presentation in court

You may find it useful to write out exactly what you are going to say to the court or make notes to remind yourself what you need to say. The *Mossop Guide* contains further information on how to prepare your presentation to the court.

After your presentation, the respondents have their turn to present their side of the story. Take notes about what is said in case you disagree with what they say, but do not interrupt the respondents' presentation. The judge will give you a brief time to reply to what the respondents have said.

The court's decision

The judge may make a decision at the end of the hearing or give the parties a written decision later. If the judge gives a written decision later, the court registry will phone you when the decision is ready to be picked up.

If you are not successful in your judicial review hearing, you can appeal the decision to the BC Court of Appeal within 30 days. It can be expensive to file an appeal, so it is a good idea to get some legal advice about your chances of success before making the decision about whether or not to appeal.

This guidebook is part of a series, *Guidebooks for Representing Yourself in Supreme Court*, produced by:



Law Courts Education Society of BC
260-800 Hornby Street, Vancouver BC V6Z 2C5
www.lawcourtsed.ca



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