

Chestacow v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Court of Appeal
Citation	2023 BCCA 389
Result	Appeal dismissed
Judges	Madam Justice Fenlon, Madam Justice Fisher, Madam Justice Horsman
Date of Judgment	October 13, 2023
WCAT Decision challenged in the petition underlying the document production application	WCAT Decision No. A1606427 (October 23, 2018)

Keywords

Judicial review – Application for document production in a petition proceeding – Rules 7-1(1), 16-1(18), 22-1(4)(c) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 – Inherent jurisdiction of the court to order document production in a petition proceeding – Presumption of regularity and the principle of deliberative secrecy

Background

In 2016, Ms. Chestacow (the appellant) made a claim to the Workers' Compensation Board (the "Board") for compensation for a personal injury and for a mental disorder. The Board denied her claim and the Review Division upheld the Board's decision. She appealed the Review Division's decision to the Workers' Compensation Appeal Tribunal ("WCAT"). WCAT reassigned the appeal from the initially assigned vice chair to a different vice chair, due to the initial vice chair's medical leave. WCAT ultimately denied the appeal, in its decision numbered A1606427, dated October 23, 2018, the "WCAT Decision".

The appellant sought judicial review of the WCAT Decision. WCAT compiled, filed and served a certified record of documents for the judicial review proceeding. The certified record included the Board and Review Division documents, as well as WCAT's appeal documents. WCAT's appeal documents consisted of the correspondence to and from the parties to the appeal, submissions and evidence from the parties provided during the appeal, and any preliminary decisions on the appeal.

After receiving WCAT's filed certified record, Ms. Chestacow brought an application for document production by WCAT.

The B.C. Supreme Court's decision

The chambers judge denied the application, in reasons indexed as: *Chestacow v. Workers' Compensation Appeal Tribunal*, 2021 BCSC 2714.

Proceedings in the B.C. Court of Appeal

The appellant sought leave to appeal the chambers judge's order. The B.C. Court of Appeal, in chambers, found that the basis for the judge's order was the court's inherent jurisdiction, not Rule 7-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the "SCCR") and therefore leave to appeal was not required: *Chestacow v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2022 BCCA 369.

On the appeal, Horsman J.A. for the Court, accepted that the court had the jurisdiction to order document production in a judicial review proceeding. The former *Rules of Court*, B.C. Reg. 221/90 (the "*Former Rules*") contained no express provision for ordering document discovery in a petition proceeding. However, it was held that the court had an inherent jurisdiction to order document production. In the context of a petition for judicial review, the power to order document production was much narrower than the broad right of document discovery that applied in an action.

The court's inherent jurisdiction to order document production in a judicial review proceeding was now fully codified in the *SCCR*. Rule 7-1(1) imposes an obligation of document production on parties to an *action*, but Rule 16-1(18) grants the court the discretion to apply any of the *SCCR* to a judicial review. An order through Rule 16-1(18) that the broad discovery rights in Rule 7-1 applied to a judicial review would be exceedingly rare, however. A more likely source of the court's jurisdiction to order document production in a judicial review was Rule 22-1(4)(c) which permits the court in a chambers proceeding to "give directions required for the discovery, inspection or production of a document or copy of that document."

The appellant in the instant case had brought her document production application pursuant to Rule 7-1 of the *SCCR*. The chambers judge erred in failing to address the application in the form that it was advanced. Instead, he approached the application as one involving an exercise of the court's inherent jurisdiction to order document production. However, there was no substantive difference in the scope of the court's inherent jurisdiction to order document production, as was the practice under the former *Rules of Court*, or through the application of specific document discovery rules in the *SCCR*. The appellant was therefore not prejudiced by the chambers judge's failure to address his jurisdiction to order document production under Rule 7-1 of the *SCCR*.

The applicable principles remain that the judicial review process is intended to be a summary one. An order for document production from a tribunal remains exceptional.

Courts must exercise restraint on judicial review in intervening in tribunal processes.

The full scope of pre-trial procedures that apply to an action under the *SCCR* are presumptively inapplicable to a petition proceeding. Tribunals are protected by the presumption of regularity in their proceedings and the principle of deliberative secrecy.

A focused order for document production in a judicial review proceeding may be justified if there is some basis in the evidence for an objectively reasonable concern that the tribunal process was unfair or conducted in bad faith.

The chambers judge did not err in finding that there was no evidence to support such a concern in the instant case. The appellant's stated concerns about WCAT's process were speculative. The appellant's wish to obtain documents that may "provide insight into the respondent's unfair actions" does not justify the exceptional remedy of an order for document production from WCAT. The chambers judge did not err in refusing to grant the order sought.

The appellant did not otherwise demonstrate an error in the chambers judge's analysis.

The appeal was dismissed.