

Chestacow v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2021 BCSC 2714
Result	Application for document production dismissed
Judge	Mr. Justice Steeves
Date of Judgment	August 27, 2021
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

Background

In 2016, Ms. Chestacow (the petitioner) 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 petitioner 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 court's decision

The court denied the application.

The court accepted that a tribunal is not obliged to include irrelevant information in the record. The court could exercise its discretion to order production of documents from a tribunal with great caution, only in exceptional circumstances, and only when the documents sought are both necessary and relevant to the pleadings. The record in a judicial review was not an open-ended concept, capable of being expanded to include whatever documents a petitioner believes might be relevant.

The petitioner sought seven specific categories of documents. The first was “information about establishing the initial panel of the appeal tribunal”. The court essentially accepted that the (amended) petition did not raise the constitution of the initial panel (vice chair) as a ground for review of the WCAT Decision. The petitioner’s request therefore lacked relevance, and production of this category of documents was denied.

The second and third categories sought production of draft decisions of the initial panel and the second panel. The court denied production of these categories, pursuant to the principle of deliberative secrecy and the presumption of regularity.

The court accepted that WCAT had already provided the petitioner, in its certified record, with the documents sought in the fourth, fifth and sixth categories. These documents related to WCAT’s decisions to extend the statutory time limit to issue the WCAT Decision, its decision to suspend the appeal proceeding pending a further determination by the Board, and its documents regarding appointing the second panel (pursuant to the first panel’s medical leave).

The court denied an order for production of the documents in the seventh category, which essentially sought all communications within WCAT regarding the petitioner’s appeal. This request amounted to an impermissible fishing expedition.

Finally, the court denied the petitioner’s request for an order that WCAT prepare a list of documents with reference to Rule 7-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, and her request for an order that WCAT deliver “two sets of copies of non-privileged documents” to her.