

Judicial Review

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

Judicial Review

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*. Those Guidebooks contain much of the information you need to carry on your judicial review.

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. A lawyer will also be able to help you understand 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.

This Guidebook provides general information about civil, non-family claims in the Supreme Court of BC. It does not explain the law. Legal advice must come from a lawyer, who can tell you why you should do something in your lawsuit or whether you should take certain actions. Anyone else, such as court registry staff, non-lawyer advocates, other helpers, and this guidebook can only give you legal information about how to do something, such as following certain court procedures.

Standards are in effect for the filing of all Supreme Court civil and Supreme Court family documents, except divorce and probate. When you submit your completed documents, registry staff will check to make sure they meet the minimum standards before accepting them for filing. It is your responsibility to include all other information required by the court and ensure it is correct.

For information about how to get help with your case, see the last page of this document.

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. A Dispute Resolution Officer at the Residential Tenancy Board has 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. When deciding whether to grant an extension, the judge will consider the amount of time that has gone by and the reason for missing the deadline.

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 the time limit that 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. 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 the judge does not think that the error caused any harm or prejudice to you. However, the court will intervene if the tribunal did not give you a procedurally 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 rehearing 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 tells the judge how serious an error has to be before the decision can be reviewed. In other words, the judge uses it to decide 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 remedies a court can give are limited. The court may not have the 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 if you are wondering whether you have a good chance of winning your case.

You can also get information about judicial reviews from a publication prepared by the Community Legal Assistance Society (“CLAS”) called *Representing Yourself in a Judicial Review*. In this Guidebook, the publication is called the “*CLAS Guide*”.

The *CLAS Guide* provides samples of the kind of documents you need to file in a judicial review application. You can find the *CLAS Guide* on the CLAS website: www.clasbc.net

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 you do not have it, 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 a Dispute Resolution Officer's decision under the *Residential Tenancy Act*, you will have to serve copies of your documents on the landlord, the Dispute Resolution Officer, and the Attorney General.

The documents you will need are described below. The *CLAS 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. Make sure you use the *CLAS Guide* published after July 1, 2010. The old Guide is out of date.

The petition

If you are the person applying for a judicial review, you are called the petitioner and you must file a petition. 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 *CLAS 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 the 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 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 *CLAS 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. 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 the number of copies you will need. However, the registry staff cannot give legal advice.

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.

If you can't afford the filing fee, ask the registry staff for instructions on applying to the court to have the fee waived. This is called an application for indigent status.

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 *CLAS Guide*.

Serving the tribunal

You will have to personally serve the members of the tribunal. See the *CLAS Guide*.

Serving the Attorney General of British Columbia

You can serve court documents on the Attorney General of British Columbia by:

- personal service; or
- registered mail.

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 the *CLAS Guide*.

What happens next?

A petition for a judicial review is heard in chambers. For more information, see the *CLAS Guide*.

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 *CLAS Guide*.

You will need to estimate how long you think your case will take. This will depend 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, please see the *CLAS Guide*.

Preparing your notice of hearing

Next, you must prepare a notice of hearing. See the *CLAS Guide*.

Preparing your petition record

You must prepare a petition record for the court. A petition record contains all the documents you will refer to in your hearing.

For further information about preparing, filing and delivering your petition record, see the *CLAS 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.

Preparing your written argument

When you have a date for your case to be heard, you must prepare a written argument. See the *CLAS Guide*.

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

Preparing the written argument 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 argument to make sure that you have referred to all the appropriate cases and laws that will be helpful to your case.

Attending the hearing

For more information about going to court, see the *CLAS Guide*.

What to bring to court

You should bring your copy of the petition record as well as copies of your book of authorities for yourself, the judge, and the other parties. It is also a good idea to bring a friend to court with you to give you moral support.

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 *CLAS 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.

Get Help With Your Case

Before you start your claim, you should think about resolving your case without going to court (see the guidebook, *Alternatives to Going to Court*). If you do not have a lawyer, you will have to learn about the court system, the law that relates to your case, what you and the other side need to prove, and the possible legal arguments for your case. You will also need to know about the court rules and the court forms that must be used when you bring a dispute to court.

Legal Information Online

All *Guidebooks for Representing Yourself in BC Supreme Court Civil Matters*, along with additional information, videos and resources for Supreme Court family and civil cases are available on the Justice Education Society website: www.SupremeCourtBC.ca.

Clicklaw gives you information about many areas of law and free services to help you solve your legal problems: www.Clicklaw.bc.ca.

The Supreme Court of BC's website has information for people who are representing themselves in court: www.courts.gov.bc.ca/supreme_court/self-represented_litigants/

Legal information services

The Vancouver Justice Access Centre's, Self-help and Information Services includes legal information, education and referral services for Supreme Court family and civil cases. It is located at 290 - 800 Hornby Street in Vancouver (open Monday to Friday): www.SupremeCourtSelfHelp.bc.ca.

For information about other Justice Access Centre services in Vancouver and Nanaimo, see: www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac

Legal advice

You may be eligible for free (pro bono) legal advice. Access ProBono Society of BC's website gives you information about the legal assistance that is available to you: www.AccessProBono.ca.

Legislation

BC Legislation (statutes), regulations, and Rules of Court can be found at: www.BCLaws.ca.

Court rules and forms

Supreme Court forms can be completed in 3 ways:

1. Completed online and filed at: www.justice.gov.bc.ca/cso/index.do
2. Completed online, printed and filed at the registry
3. Printed, completed manually and filed at the registry

Court forms that can be completed online are available at:

www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/sup-civil-forms

Printable court forms are available at: www.SupremeCourtBC.ca/civil/forms

Common legal terms

You can find out the meaning of legal terms at: www.SupremeCourtBC.ca/glossary

Family law

For information about family law claims, see: www.familylaw.lss.bc.ca/

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