

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Chestacow v. British Columbia (Workers' Compensation Appeal Tribunal)*,  
2023 BCCA 389

Date: 20231013  
Docket: CA47764

Between:

**Lucy Chestacow**

Appellant  
(Petitioner)

And

**Workers' Compensation Appeal Tribunal**

Respondent  
(Respondent)

Before: The Honourable Madam Justice Fenlon  
The Honourable Madam Justice Fisher  
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated August 27, 2021 (*Chestacow v. Workers' Compensation Appeal Tribunal*, 2021 BCSC 2714, Victoria Docket S185560).

## Oral Reasons for Judgment

Appearing on behalf of the Appellant  
(via videoconference):

E. Chestacow

Counsel for the Respondent:

K. Koles

Place and Date of Hearing:

Vancouver, British Columbia  
October 13, 2023

Place and Date of Judgment:

Vancouver, British Columbia  
October 13, 2023

**Summary:**

*In her petition for judicial review of a decision of the Workers' Compensation Appeal Tribunal, the appellant sought an order requiring the tribunal to produce a list of documents under R. 7-1 of the Supreme Court Civil Rules. The chambers judge found that he had inherent jurisdiction to order the production of documents in a judicial review in exceptional cases, but he concluded that an order for production was not justified in this case. Held: Appeal dismissed. The chambers judge erred in relying on the court's inherent jurisdiction rather than express Rules in the Supreme Court Civil Rules that authorized orders for document production. However, this error had no substantive impact on his analysis. Regardless of the source of the court's jurisdiction, an order for document production was not justified in this case.*

[1] **HORSMAN J.A.:** The appellant, Lucy Chestacow, appeals an order of a chambers judge dismissing her application for production of documents in the context of her petition for judicial review of a decision of the Workers' Compensation Appeal Tribunal ("WCAT").

[2] At the outset of the hearing, we gave leave to the appellant's husband, Eugene Chestacow, to appear on the appellant's behalf on this appeal. Mr. Chestacow submitted that the appellant required his assistance due to her psychological disorders, and the negative effect the proceeding will otherwise have on her mental state. The appellant has stated in writing her desire that Mr. Chestacow act as her agent in the court proceedings. In the circumstances, we considered it in the interests of justice to permit Mr. Chestacow to speak on behalf of the appellant in this proceeding.

**Background**

**History of the proceeding before the Board and WCAT**

[3] The merits of the appellant's petition are not in issue on this appeal. I will briefly review the history of the proceedings before the Workers' Compensation Board (the "Board") and WCAT in order to give context to the issues that do arise for determination.

[4] The petitioner has been employed as a resident care attendant at Mount St. Mary Hospital since 1999. In 2015, she injured her knee at work. The Board accepted the petitioner's injury claim, and she went off work.

[5] On February 23, 2016, the appellant went to work. That day, she was called into a meeting that was attended by the director of human resources, the director of residential care, and a union representative. The appellant alleged that in the course of this meeting, she was verbally and physically abused and sexually harassed, and that she felt threatened. The other attendees at the meeting denied these allegations. They stated that the appellant was asked to attend the meeting because she had returned to work without an approved return-to-work plan in place. The purpose of the meeting, according to the other attendees, was to explain this requirement to the appellant. These participants described the meeting as involving polite and non-aggressive communication.

[6] The appellant applied to the Board seeking compensation for the mental disorder and physical injury she says that she suffered as a result of the February 23, 2016 meeting. The appellant's claim was denied by the Board. She unsuccessfully applied for review of the dismissal.

[7] The appellant then appealed to WCAT.

[8] In a decision dated October 23, 2018, a WCAT vice chair dismissed the appeal. The vice chair concluded that the evidence did not establish either that the appellant sustained a mental disorder or physical injury arising out of the February 23, 2016 meeting, or that the meeting aggravated, accelerated, or activated any pre-existing mental disorder (the "WCAT Decision").

### **The petition**

[9] On December 20, 2018, the appellant filed a petition for judicial review of the WCAT Decision. The petition was amended in December 2019.

[10] The grounds for the petition, as particularized in Part 3, include a substantive challenge to the WCAT Decision on the basis that it is patently unreasonable. In addition, the petition alleges that there was procedural unfairness in the appeal process, as well as negligence, bias, and bad faith on the part of the WCAT vice chair.

[11] Section 280(2)(o) of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, requires the WCAT chair, or their delegate, to prepare a certificate attaching the record of the appeal tribunal for the purpose of judicial proceedings. Following the filing of the petition, there was lengthy correspondence between WCAT counsel and Mr. Chestacow regarding the content of the record. It is unnecessary to review this correspondence in detail. In summary, the appellant obtained records from WCAT pursuant to requests she made under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 [*FIPPA*]. The appellant took the position that all of the documents produced under *FIPPA* must be included in the WCAT certified record. WCAT counsel agreed to include some of the *FIPPA* documents, but declined to include all of them in the absence of an explanation of their relevance to the petition.

[12] On May 13, 2021, WCAT filed a certified record in the Supreme Court of British Columbia. The record is contained in three volumes, comprised of approximately 740 pages (the “Certified Record”).

### **The application for document production**

[13] On June 29, 2021, the appellant filed a notice of application seeking document production from WCAT. The application was brought pursuant to R. 7-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*SCCR*].

[14] In Part 1 of her Notice of Application, the appellant sought two substantive orders:

- (1) an order requiring WCAT to deliver a list of documents in Form 22 within 14 days, including all documents in respect to the WCAT proceeding that are, or have been, in WCAT's control; and
- (2) an order requiring WCAT to deliver two sets of copies of non-privileged documents to the appellant within 14 days.

[15] In para. 5 of Part 3 of the Notice of Application, the appellant particularized categories of documents that she sought production of:

5. The documents sought by the petitioner that the respondent decline[d] to produce include:
  - a. decisions of extending the statutory time limits;
  - b. decision of establishing the initial panel of the appeal tribunal;
  - c. draft decisions of the initial panel;
  - d. decision to suspend the appeal proceeding;
  - e. decision of appointing the second panel;
  - f. draft decisions of the second panel;
  - g. all communications between WCAT officers and WorkSafeBC officers and communications between WCAT officers themselves that were made in relation to appeal matters of appeal A1606427 such as:
    - i. e-mail messages;
    - ii. memos;
    - iii. requests;
    - iv. assignments;
    - v. instructions;
    - vi. team meeting records.

[16] The appellant maintained that these documents “might provide insight into the respondent’s unfair actions during the appeal” (Notice of Application, Part 3, para. 6).

### **The chambers judgment**

[17] The chambers judge began his oral reasons by highlighting certain general principles that govern judicial review. He stated that a tribunal has the right to determine the extent of its record, and is not obliged to include irrelevant information

in the record: at para. 3. He noted that there is no presumptive right to document discovery on judicial review, “although the court has inherent jurisdiction to order disclosure”: at para. 4. The judge stated that the court’s power to order document discovery on a judicial review was to be exercised with great caution, only in exceptional circumstances, and only when the documents are necessary and relevant to the pleaded grounds for judicial review: at para. 4.

[18] In relation to the specific categories of documents sought in para. 5(a)–(g) of Part 3 of the Notice of Application, the judge held as follows at paras. 7 and 10–13 of his reasons:

- (1) WCAT had already produced the documents sought in subparagraphs (a) (decisions extending statutory time limits), (d) (decision to suspend the appeal decision), and (d) (decision appointing the second panel);
- (2) The petition did not challenge the constitution of the panel, therefore the documents sought in subparagraph (b) (decision to establish the initial tribunal) are not relevant;
- (3) In relation to subparagraphs (c) and (f) (draft decisions), the judge declined to order production on the basis that such material was protected from disclosure by the presumption of regularity and the principle of deliberative secrecy; and
- (4) The broadly-stated request in subparagraph (g) amounted to a “fishing expedition”, and disclosure of this scope is not available on a judicial review.

[19] In the result, in his original ruling the judge ordered that: “the petitioner’s application is dismissed, with the exception of categories A, D, and E, which have been provided by WCAT”: at para. 14.

[20] It appears to have taken some time, and a reopening application by WCAT, to settle the terms of the order of the chambers judge. The issues relating to document production are addressed in the following terms of the entered order:

...

2. The petitioner's application in paragraph 5(b) of Part 3 of the notice of application filed June 29, 2021, for the respondent to produce information about establishing the initial panel of the tribunal, is denied.
3. The petitioner's application in paragraph 5(c) for the respondent to produce draft decisions of the initial panel is denied.
4. The petitioner's application in paragraph 5(f) for the respondent to produce draft decisions of the second panel is denied.
5. The petitioner's application is dismissed with respect to categories 5(a), (d), and (e).
6. The petitioner's application for production of the documents listed in paragraph 5(g) is denied.
7. The petitioner's application in Part 1 for the respondent to deliver to the petitioner a list of documents in Form 22 is denied.
8. The petitioner's application in Part 1 for the respondent to deliver to the petitioner two sets of copies of non-privileged documents within 14 days of the date of this order, is dismissed. The only documents the petitioner is entitled to are the ones she has already gotten.

### **Issues on appeal**

[21] The appellant brings this appeal as of right. The basis for the judge's order was the court's inherent jurisdiction, and not Rule 7-1, and therefore leave to appeal was not required: *Chestacow v. Workers' Compensation Appeal Tribunal*, 2022 BCCA 369.

[22] The appellant alleges numerous, and overlapping, errors by the chambers judge. The various alleged errors may be summarized in two essential points:

- a) the judge erred in law, and misconstrued the relevant legislation and case authorities, in failing to require WCAT to comply with R. 7-1 of the SCCR;
- b) the judge's order deprives the appellant of her common law and s. 7 *Charter* rights to a fair hearing of the petition.

**Standard of review**

[23] An order dismissing an application for the production of documents in a judicial review proceeding involves an exercise of discretion. In order to succeed on this appeal, the appellant must show that the chambers judge erred in principle, gave insufficient weight to all circumstances, clearly and demonstrably misconceived the evidence, or made an order resulting in a clear injustice: *Eastside Pharmacy Ltd. v. British Columbia (Minister of Health)*, 2019 BCCA 60 at para. 46 [*Eastside Pharmacy (2019)*], citing *British Columbia (Attorney General) v. Malik*, 2009 BCCA 201 at para. 19.

**Analysis**

**Legal framework**

[24] It is useful to begin with a review of the overarching legal principles that govern an application for document production in a judicial review. The appellant's arguments assume that the document production rules that govern a civil action—particularly Rule 7-1 of the *SCCR*—apply without modification to a petition for judicial review. This is incorrect. For reasons I will explain, judicial review typically proceeds on the basis of the record that was before the tribunal when it made its decision. While the court has the jurisdiction to order the production of documents to supplement the record, such orders are, as the chambers judge noted, exceptional.

***The scope of admissible evidence on judicial review***

[25] The limits on the scope of evidence properly admissible on judicial review flow from the nature of the court's function, which is supervisory. The court's task is to review decisions made by administrative decision-makers in the exercise of powers assigned to them by the legislature or Parliament. The court's role is to not make the substantive decisions, but rather ensure that the tribunal exercising the delegated decision-making power has acted in accordance with legal norms. As explained by Justice Groberman in *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387:

[34] ...Courts are, in a very strict sense, reviewing what went on before the tribunal. They are not undertaking a fresh examination of the substantive issues. For that reason, judicial review normally concerns itself only with evidence that was before the tribunal: see *Albu v. The University of British Columbia*, 2015 BCCA 41 (particularly at paras. 35–36); and *Sobeys West Inc. v. College of Pharmacists of British Columbia*, 2016 BCCA 41 (particularly at paras. 51–53).

[26] Consistent with the court's supervisory role, the record on judicial review, *prima facie*, consists of the material (documents and other information) that was before the decision maker: *British Columbia (Lieutenant Governor in Council) v. Canada Mink Breeders Association*, 2023 BCCA 310 at para. 25 [*Mink Breeders*].

[27] The court does have the power, in limited circumstances, to admit evidence to augment or supplement the record where the admission of such evidence is necessary to ensure that the court can properly discharge its supervisory role. For example, if it is alleged that a tribunal is biased or acted for an improper purpose, resort to extrinsic evidence may be necessary because the relevant evidence will often not be in the record before the tribunal: *Mink Breeders* at para. 77, citing *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at para. 99. The reviewing court must be able to fully consider the question of whether proceedings before a tribunal met standards of procedural fairness, and therefore extrinsic evidence casting light on the procedures before a tribunal may be admissible: *Air Canada* at para. 37. The question of whether evidence beyond the record will be admitted on judicial review will, in every case, be guided by the question of whether the admission of the evidence is consistent with the court's supervisory role: *Air Canada* at para. 39.

### ***Document production in a judicial review***

[28] The nature of the court's role on judicial review also influences the exercise of the court's discretion to order a tribunal to produce documents beyond the record on a judicial review. Section 2(1) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, provides that an application for judicial review "must be brought by way of a petition proceeding". The process is intended to be a summary one. The full scope of pre-trial procedures that apply to an action under the *SCCR* are presumptively

inapplicable to a petition proceeding. This includes Rule 7-1(1), which imposes an obligation of document production on “each party of record to an action”.

[29] There is no question that a court has the jurisdiction to order document production in a judicial review proceeding, although the source of that jurisdiction is not always clearly identified.

[30] The former *Rules of Court*, B.C. Reg. 221/90 [*Former Rules*], contained no express provision for ordering document discovery in a petition proceeding pursuant to R. 26 (the predecessor to R. 7-1 of the *SCCR*). 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 said to be much narrower than the broad right of document discovery that applied in an action. Further, in order to obtain the production of documents from a tribunal, the applicant had the onus to establish a basis in the evidence to believe that the tribunal’s process was flawed in some manner: *Nechako Environmental Coalition v. British Columbia (Minister of Environment)*, (1997), 24 C.E.L.R. (N.S.) 79, 1997 CanLII 2107 (B.C.S.C.) at paras. 25–26.

[31] With the enactment of R. 16-1 of *SCCR*, which applies to petition proceedings, there is now explicit authority for the court to order document discovery in a petition proceeding. Rule 16-1 includes the following provision:

(18) Without limiting the court’s right under Rule 22-1(7)(d) to transfer the proceeding referred to in this rule to the trial list, the court may, whether or not on the application of a party, apply any other of these Supreme Court Civil Rules to a proceeding referred to in this rule.

[32] It is conceivable that, through R. 16-1(18), the court could order that R. 7-1 of the *SCCR* applies to a judicial review, although an order for such broad discovery rights would be exceedingly rare. A more likely source of the court’s jurisdiction is R. 22-1(4)(c) of the *SCCR*. This sub-rule 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 scope of R. 22-1(4)(c) more closely aligns with the limited scope of document production one might expect in a judicial review

proceeding: see *Ip v. Wilson*, 2019 BCCA 189 at paras. 2–3; *Eastside Pharmacy Ltd. v. British Columbia (Minister of Health)*, 2021 BCCA 280 at para. 59 [*Eastside Pharmacy (2021)*].

[33] Although the court's inherent jurisdiction to order document production is now fully codified in specific provisions of the *SCCR*—see *Eastside Pharmacy (2021)* at para. 55—this has not changed the principles that govern document production in a petition proceeding, or the scope of the available relief. An order for document production from a tribunal remains exceptional. Furthermore, an applicant who seeks document production in order to establish that a tribunal acted unfairly or in bad faith must provide a sufficient evidentiary basis for the allegation to warrant such an order. Tribunals are, as the chambers judge noted in this case, protected by the presumption of regularity in their proceedings and the principle of deliberative secrecy. In *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, 2007 NSCA 37, Justice Cromwell, as he then was, described the principle of deliberative secrecy as follows:

[15] At the core of the principle is protection of the substance of the matters decided and the decision-maker's thinking with respect to such matters: *Tremblay v. Quebec (Commission des affaires sociales)*, [1992] 1 S.C.R. 952 at 964-65. Deliberative secrecy also extends to the administrative aspects of the decision-making process - at least those matters which directly affect adjudication - such as the assignment of adjudicators to particular cases: *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796 per McLachlin J. (as she then was) at 831-33.

[34] The principle of deliberative secrecy applies to administrative decision-makers unless a party can present a valid reason, based in evidence, for believing that a tribunal's process did not comply with rules of procedural fairness: *Eastside Pharmacy (2019)* at para. 50. Any judicial intervention in a tribunal's process on the ground of alleged procedural unfairness would have to be based on something more than mere speculation: *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4 at paras. 55–56.

[35] The appellant places heavy reliance on the decision of this Court in *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 [*Beedie*].

However, *Beedie* is entirely consistent with the foregoing authorities, and the principle that courts must exercise restraint on judicial review in intervening in tribunal processes.

[36] In *Beedie*, the petitioner applied for judicial review of a decision of the Development Permit Board of the City of Vancouver refusing to grant a development permit for a residential/commercial building in the Chinatown area of Vancouver. The petitioner alleged that the Board acted in bad faith and in breach of rules of procedural fairness. It sought an order that the petition be moved to the trial list. The chambers judge declined to convert the petition to a trial, despite finding that *bona fide* issues existed between the parties to the judicial review. She found that the test for referring a petition to the trial list, as set out in the then-leading case of *British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P.*, 2017 BCCA 247 [*Saputo*], was not intended to govern an application to convert a petition for judicial review to an action.

[37] On appeal in *Beedie*, this Court held that the chambers judge was correct in ruling that the *Saputo* test generally did not apply to a petition for judicial review. Madam Justice Newbury, writing for the Court, stated:

[79] Returning to *Saputo*, I see no indication that this court intended to disregard the essential supervisory nature of judicial review, or to set aside the considerable body of law that generally restricts the reviewing court to an examination of the record. Thus I am not persuaded the chambers judge erred in her analysis (at paras. 61-80) of the relationship between *Saputo* and judicial review. In particular, I do not find that she erred in declining to order the conversion of the petition proceeding to an action by reason only of the fact that “bona fide issues” had been raised; or in observing that generally, evidence beyond the record is admitted “sparingly and only in an exceptional case.” ...

[Emphasis added.]

[38] The Court in *Beedie* found that the chambers judge did err in imposing an overly-onerous evidentiary standard on the petitioner to obtain discovery rights in a judicial review. As set out in para. 81 of *Beedie*, the chambers judge held that the petitioner had to provide “clear evidence” to rebut the presumption of regularity and the principle of deliberative secrecy. On appeal, this Court held that where

allegations of bad faith or procedural unfairness are advanced in a judicial review, further discovery may be ordered if there is “some basis” in the evidence for an objectively reasonable concern that the allegations have merit: at paras. 88 and 90. The Court found that the evidence tendered by the petitioner arguably demonstrated that the Board’s reasons were not the product of the thought process of a majority of the Board, but rather may have involved an arbitrary exercise of public power: at para. 89. Thus, in the Court’s view, some basis had been shown for an objectively reasonable concern on the petitioner’s part that there was procedural unfairness or bad faith in the decision process: at para. 90.

[39] Notably, despite this finding, the Court in *Beedie* was not persuaded that it was appropriate to convert the petition to an action. In crafting a remedy, the Court observed that the petitioner’s application in the court below did not include any alternative relief, such as an order under R. 22-1(4), R. 16-1, or any other applicable rule, for document production or cross-examination. The petitioner was given leave to address this deficiency by providing the City with notice of the exact orders, short of conversion, that it sought: at para. 91.

**The alleged errors of the chambers judge**

[40] With the foregoing legal principles in mind, I now turn to the errors alleged by the appellant in the analysis of the chambers judge.

***Did the judge err in law in failing to require WCAT to comply with R. 7-1 of the SCCR?***

[41] The appellant says that the chambers judge erred in dismissing her application for document production by relying on authorities that did not involve an allegation of breach of procedural unfairness. She says that the “modern approach” to judicial review, as reflected in this Court’s decision in *Beedie*, requires that a petitioner have access to full disclosure of information in the possession of a tribunal that may bear on an issue in the judicial review. In the present case, the appellant says, she alleges not only that the WCAT Decision is patently unreasonable, but also that the decision process was unfair and the decision-maker was biased,

negligent, and acted in bad faith. In these circumstances, the appellant says that she is entitled to broad document discovery from WCAT to allow for a full testing of these allegations. The appellant emphasizes that while her Notice of Application was brought pursuant to R. 7-1 of the *SCCR*, the chambers judge dismissed her application without acknowledging or addressing the applicability of that Rule.

[42] It is true that the chambers judge dealt with the appellant's application on a different basis than it was brought. He approached the application as one involving an exercise of the court's inherent jurisdiction, as opposed to the court's jurisdiction under R. 16-1(18) to directly apply R. 7-1. However, there is no substantive difference in the scope of the court's jurisdiction to order document production pursuant to its inherent jurisdiction, as was the practice under the Former Rules, or through the application of specific document discovery rules in the *SCCR*. For the reasons I have explained, a petitioner does not have a presumptive right to document production from a tribunal. Among other concerns, an order for the type of broad document production sought by the appellant—which includes a request for the tribunal's draft decisions—would undermine the presumption of regularity and the principle of deliberative secrecy.

[43] In my view, accordingly, the chambers judge did err in failing to address the application in the form that it was advanced: as an application for document production pursuant to R. 7-1 of the *SCCR*. There was no need to resort to the court's inherent jurisdiction given that the *SCCR* comprehensively codifies the court's power to order document production in this context. However, the appellant was not prejudiced by the chambers judge's failure to address his jurisdiction to order document production under R. 7-1 of the *SCCR*. On the contrary, the judge's reliance on the court's inherent jurisdiction created practical benefit for the appellant in circumventing the requirement for her to obtain leave to appeal his order, which would otherwise have been required if the chambers judge had refused relief under R. 7-1. I note that as of July 18, 2022, orders made pursuant to R. 22-1(4) of the *SCCR* are also limited appeal orders: *Court of Appeal Rules*, B.C. Reg. 120/2022, R. 11(a)(iii) and (x).

[44] A focussed 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: *Beedie* at para. 90. In the present case, the chambers judge concluded that there was no evidence to support an objectively reasonable concern about WCAT's decision-making process that would warrant the type of broad disclosure sought by the appellant; instead, he found the application was in the nature of a "fishing expedition". I see no error in the conclusion of the chambers judge in this respect. The appellant's stated concerns about the process are speculative. As the chambers judge found, 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.

[45] For these reasons, I conclude there is no merit in the appellant's complaints that the chambers judge erred in failing to order WCAT to comply with R. 7-1 of the *SCCR*, or to produce documents under any other provision of the *SCCR*. The chambers judge's reliance on the court's inherent jurisdiction as the source of his jurisdiction had no substantive impact on his analysis. The appellant has otherwise demonstrated no error in principle in that analysis.

***Did the judge's order deprive the appellant of her common law and s. 7 Charter rights to a fair hearing of the petition?***

[46] For the reasons I have already stated, the chambers judge's order does not deprive the appellant of her right to a fair hearing of the petition. The appellant will have an opportunity to make every argument she wishes to about the WCAT Decision and the fairness of the process leading to it. WCAT has filed a comprehensive Certified Record containing the documents necessary to demonstrate the basis for the decision, and the process through which it was reached. There is no indication in the material that the reviewing court will be unable to carry out its supervisory function on the judicial review without an order for further document production from WCAT.

[47] As I have endeavoured to explain, the limits on the court's jurisdiction to order document production from a tribunal on judicial review are rooted in recognition of the appropriate role of the court on judicial review. These limits do not create procedural unfairness. Rather, they ensure that judicial review is conducted in a manner that respects the legitimacy of the tribunal process, and the intent of the legislature in delegating decision-making functions to the tribunal and not the court. Within the proper parameters of a petition for judicial review, the appellant will have a fair opportunity to present her case.

[48] The appellant's invocation of s. 7 of the *Charter*—which I note she did not rely on before the chambers judge—does not change the outcome. The appellant's petition for judicial review of the WCAT Decision does not engage her s. 7 rights to life, liberty and security of the person. Furthermore, and in any event, it is not contrary to principles of fundamental justice to apply principled and well-established rules of evidence and disclosure to this petition proceeding.

### **Disposition**

[49] In my view, the chambers judge did not commit a reversible error in the exercise of discretion in this case. I would dismiss this appeal.

[50] **FENLON J.A.:** I agree.

[51] **FISHER J.A.:** I agree.

[52] **FENLON J.A.:** The appeal is dismissed.

“The Honourable Madam Justice Horsman”