

JUDICIAL REVIEW

What is it?

A judicial review is a review of a decision that has been made by an administrative tribunal or an administrative decision maker. A Supreme Court Justice decides whether the tribunal or decision maker had the authority to make the decision it did. It is not an appeal.

An example of an application for judicial review may be a tenant applying to review an order made by an arbitrator at the Residential Tenancy Board, for example, upholding a notice which the landlord has given to the tenant to vacate the premises.

How is the application made?

The application must be made by petition and supporting affidavits. The process related to petitions is set out in Supreme Court Civil Rule 16-1.

Who needs to be given notice?

The decision maker, (in a Residential Tenancy matter, the decision maker is the arbitrator) the Attorney General and any other person involved in the matter must be given notice.

Supreme Court Civil Rule 4-3(6) sets out how service on the Attorney General is affected.

Service on Attorney General

(6)A document to be served on the Attorney General must be served at the Ministry of Justice in the City of Victoria, and is sufficiently served if it is left during office hours with any lawyer on the staff of the Attorney General at Victoria or mailed by registered mail to the Deputy Attorney General at Victoria.

the address for service by registered mail is:

Deputy Attorney General
Ministry of Attorney General
PO Box 9290
Stn Prov Govt
Victoria, British Columbia
V8W 9J7

Filing fees

The filing fee for a petition is \$200

The filing fee for a notice of application is \$80

The fee for having an affidavit sworn is \$40

Additional information:

BC Supreme Court Self Help Centre website at: <http://www.supremecourtbc.ca/civil-law>.

The Community Legal Assistance Society has also prepared a guidebook for Judicial Reviews and that guidebook is available at the following link;

<https://judicialreviewbc.ca/follow-the-steps/>

Included in this package are:

- 1) The *Judicial Review Procedure Act*
- 2) Civil Form 66 – Petition to the Court
- 3) Civil Form 32 – Notice of Application
- 4) Civil Form 109 – Affidavit
- 5) Civil Form 68 – Notice of Hearing

JUDICIAL REVIEW PROCEDURE ACT
[RSBC 1996] CHAPTER 241

Definitions

1 In this Act:

"application for judicial review" means an application under section 2;

"court" means the Supreme Court;

"decision" includes a determination or order;

"Indigenous governing body" has the same meaning as in the
Declaration on the Rights of Indigenous Peoples Act;

"licence" includes a permit, certificate, approval, order, registration or similar form of permission required by law;

"record of the proceeding" includes the following:

- (a) a document by which the proceeding is commenced;
- (b) a notice of a hearing in the proceeding;
- (c) an intermediate order made by the tribunal;
- (d) a document produced in evidence at a hearing before the tribunal, subject to any limitation expressly imposed by any other enactment on the extent to which or the purpose for which a document may be used in evidence in a proceeding;
- (e) a transcript, if any, of the oral evidence given at a hearing;
- (f) the decision of the tribunal and any reasons given by it;
- (g) in relation to a decision whether to give consent referred to in section 22 (2),
 - (i) a document or other evidence before the Indigenous governing body, subject to any limitation expressly imposed by any other enactment on the extent to

which or the purpose for which a document or other evidence may be used in a proceeding, and
(ii) the decision of the Indigenous governing body and any reasons given by it;

"statutory power" means a power or right conferred by an enactment

- (a) to make a regulation, rule, bylaw or order,
- (b) to exercise a statutory power of decision,
- (c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,
- (d) to do an act or thing that would, but for that power or right, be a breach of a legal right of any person, or
- (e) to make an investigation or inquiry into a person's legal right, power, privilege, immunity, duty or liability;

"statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing

- (a) the legal rights, powers, privileges, immunities, duties or liabilities of a person, or
- (b) the eligibility of a person to receive, or to continue to receive, a benefit or licence, whether or not the person is legally entitled to it,

and includes the powers of the Provincial Court;

"tribunal" means one or more persons, whether or not incorporated and however described, on whom a statutory power of decision is conferred.

Application for judicial review

- 2 (1) An application for judicial review must be brought by way of a petition proceeding.
- (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

- (a) relief in the nature of mandamus, prohibition or certiorari;
- (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Error of law

3 The court's power to set aside a decision because of error of law on the face of the record on an application for relief in the nature of certiorari is extended so that it applies to an application for judicial review in relation to a decision made in the exercise of a statutory power of decision to the extent it is not limited or precluded by the enactment conferring the power of decision.

Existing provision limiting judicial review not affected

4 Subject to section 3, nothing in this Act permits a person to bring a proceeding referred to in section 2 if the person is otherwise limited or prohibited by law from bringing the proceeding.

Powers to direct tribunal to reconsider

- 5**
- (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.
 - (2) In giving a direction under subsection (1), the court must
 - (a) advise the tribunal of its reasons, and
 - (b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

Effect of direction

6 In reconsidering a matter referred back to it under section 5, the tribunal must have regard to the court's reasons for giving the direction and to the court's directions.

Power to set aside decision

7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

Power to refuse relief

8 (1) If, in a proceeding referred to in section 2, the court had, before February 1, 1977, a discretion to refuse to grant relief on any ground, the court has the same discretion to refuse to grant relief on the same ground.

(2) Despite subsection (1), the court may not refuse to grant relief in a proceeding referred to in section 2 on the ground that the relief should have been sought in another proceeding referred to in section 2.

Defects in form, technical irregularities

9 (1) On an application for judicial review of a statutory power of decision, the court may refuse relief if

(a) the sole ground for relief established is a defect in form or a technical irregularity, and

(b) the court finds that no substantial wrong or miscarriage of justice has occurred.

(2) If the decision has already been made, the court may make an order validating the decision despite the defect, to have effect from a time and on terms the court considers appropriate.

Interim order

10 On an application for judicial review, the court may make an interim order it considers appropriate until the final determination of the application.

No time limit for applications

11 An application for judicial review is not barred by passage of time unless

(a) an enactment otherwise provides, and

(b) the court considers that substantial prejudice or hardship will result to any other person affected by reason of delay.

No writ to issue

12 (1) No writ of mandamus, prohibition or certiorari may be issued.

(2) An application for relief in the nature of mandamus, prohibition or certiorari, must be treated as an application for judicial review under section 2.

Summary disposition of proceedings

- 13** (1) On the application of a party to a proceeding for a declaration or injunction, the court may direct that any issue about the exercise, refusal to exercise or proposed or purported exercise of a statutory power be disposed of summarily, as if it were an application for judicial review.
- (2) Subsection (1) applies whether or not the proceeding for a declaration or injunction includes a claim for other relief.

Sufficiency of application

14 An application for judicial review is sufficient if it sets out the ground on which relief is sought and the nature of the relief sought, without specifying by which proceeding referred to in section 2 the claim would have been made before February 1, 1977.

Notice to decision maker and right to be a party

- 15** (1) For an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power
- (a) must be served with notice of the application and a copy of the petition, and
 - (b) may be a party to the application, at the person's option.
- (2) If 2 or more persons, whether styled a board or commission or any other collective title, act together to exercise a statutory power, they are deemed for the purpose of subsection (1) to be one person under the collective title, and service, if required, is effectively made on any one of those persons.

Notice to Attorney General

- 16** (1) The Attorney General must be served with notice of an application for judicial review and notice of an appeal from a decision of the court with respect to the application.

(2) The Attorney General is entitled to be heard in person or by counsel at the hearing of the application or appeal.

Court may order record filed

17 On an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision, the court may direct that the record of the proceeding, or any part of it, be filed in the court.

Informations in the nature of quo warranto

18 (1) Informations in the nature of quo warranto are abolished.

(2) If a person acts in an office in which the person is not entitled to act and an information in the nature of quo warranto would, but for subsection (1), have been available against the person the court may, under an application for judicial review, grant an injunction restraining the person from acting and may declare the office to be vacant.

(3) A proceeding for an injunction under this section may not be taken by a person who would not immediately before February 1, 1977, have been entitled to apply for an information in the nature of quo warranto.

Relationship between this Act and *Crown Proceeding Act*

19 This Act is subject to the [*Crown Proceeding Act*](#).

References in other enactments

20 If reference is made in any other enactment to a proceeding referred to in section 2 or 18, the reference is deemed to be a reference to an application for judicial review.

Application of Act in relation to laws of treaty first nations

21 If a final agreement provides that the court has jurisdiction to hear an application for judicial review of a decision taken under a law of the treaty first nation by the treaty first nation or a public institution established under a law of the treaty first nation, this Act applies in relation to the application as if the law of the treaty first nation were an enactment.

Application of Act in relation to consent of Indigenous governing body

22 (1) If under an enactment the consent of an Indigenous governing body is required to be sought or obtained in accordance with an agreement entered

into under section 6 or 7 of the *Declaration on the Rights of Indigenous Peoples Act* before the exercise of a statutory power,

- (a) Subject to subsection (2), this Act applies in relation to the decision whether to give consent as if that decision were a statutory power,
- (b) The Indigenous governing body is deemed for the purposes of section 15(1) of this Act to be one person,
- (c) Section 15(2) of this Act does not apply in relation to the decision whether to give consent, and
- (d) Service, if required to be made on the Indigenous governing body, is effectively made by a person if made in accordance with the agreement relating to the consent of the Indigenous governing body before the exercise of the statutory power, as if the person were a party to the agreement.

(2) If under an enactment the consent of an Indigenous governing body is required to be sought or obtained in accordance with an agreement entered into under section 7 of the *Declaration on the Rights of Indigenous Peoples Act* before the exercise of a statutory power of decision, this Act applies in relation to the decision whether to give consent as if that decision were a statutory power of decision.

No.
..... Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*
R.S.B.C. 1996, C. 241

Between

Petitioner(s)

and

Respondent(s)

PETITION TO THE COURT

ON NOTICE TO:

.....
[name and address of each person to be served]

.....

.....

.....

The address of the registry is :

The petitioner(s) estimate(s) that the hearing of the petition will take*[time estimate]*...

[Check whichever one of the following boxes is correct.]

[] This matter is an application for judicial review

[] This matter is not an application for judicial review

This proceeding is brought for the relief set out in Part 1 below, by

[Check whichever one of the following boxes is correct and complete any required information.]

☐ the person(s) named as petitioner(s) in the style of proceedings above

☐ (the petitioner(s))

[name]

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s)

- a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the petition anywhere else, within 49 days after that service, or,
- d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner(s) is: <i>[set out the street address of the address for service for each petitioner: One or both of a fax number and an e-mail address may be given as additional addresses for service.]</i> Fax number address for service (if any) of the petitioner(s): E-mail address for service (if any) of the petitioner(s):
(2)	The name and office address of the petitioner's(s') lawyer is:

Claim of the Petitioner(s)

Part 1: ORDER(S) SOUGHT

[Using numbered paragraphs, set out the order(s) that will be sought at the hearing of the petition and indicate against which respondent(s) the order(s) is(are) sought.]

1.

2.

Part 2: FACTUAL BASIS

[Using numbered paragraphs, set out the material facts on which this petition is based.]

1.

2.

Part 3: LEGAL BASIS

[Using paragraphs numbered sequentially from Part 2 above, specify any rule or other enactment relied on and provide a brief summary of any other legal basis on which the petitioner(s) intend(s) to rely in support of the orders sought.]

3.

4.

Part 4: MATERIAL TO BE RELIED ON

[Using numbered paragraphs, list the affidavits served with the petition. Each affidavit included on the list must be identified as follows: "Affidavit #.....[sequential number, if any, recorded in the top right hand corner of the affidavit]..... of[name]....., made[date].....".]

1.

2....

Date:

.....
Signature of petitioner(s)

.....
[type or print name]

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

.....

.....

.....

.....

Date: Signature of ☐ Judge ☐ Associate
Judge

No.
..... Registry

In the Supreme Court of British Columbia

Between

Petitioner

and

Respondent

NOTICE OF APPLICATION

Name(s) of applicant(s):

To:
[name(s) of party(ies) or person(s) affected]

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or
associate judge at the courthouse at
[address of registry in which the proceeding is being conducted]

on at for the order(s) set out in Part 1 below.
[date] [time of day]

The applicant(s) estimate(s) that the application will take*[time estimate]*.....

[Check whichever one of the immediately following is correct]

☐ This matter is within the jurisdiction of an associate judge

☐ This matter is not within the jurisdiction of an associate judge

Part 1: ORDER(S) SOUGHT

*[Using numbered paragraphs, set out the order(s) that will be sought at the
application and indicate against which party(ies) the order(s) is(are) sought.]*

1.

2.

Part 2: FACTUAL BASIS

[Using numbered paragraphs, set out a brief summary of the facts supporting the

application.]

1.

2.

[If any party sues or is sued in a representative capacity, identify the party and describe the representative capacity.]

Part 3: LEGAL BASIS

[Using paragraphs numbered sequentially from Part 2 above, specify any rule or other enactment relied on and provide a brief summary of any other legal arguments on which the applicant(s) intend(s) to rely in support of the orders sought. If appropriate, include citation of applicable cases.]

3.

4.

Part 4: MATERIAL TO BE RELIED ON

[Using numbered paragraphs, list the affidavits served with the notice of application and any other affidavits and other documents already in the court file on which the applicant(s) will rely. Each affidavit included in the list must be identified as follows: "Affidavit #.....[sequential number, if any, recorded in the top right hand corner of the affidavit]..... of[name]....., made ...[date]..."]

1.

2.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a) file an application response in Form 33,
- b) file the original of every affidavit, and of every other document, that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date:

.....
Signature of applicant(s)

.....
[type or print name]

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs of Part 1
of this notice of application
- ☐ with the following variations and additional terms:

.....
.....
.....
.....

Date:

.....
Signature of ☐ Judge ☐ Associate
Judge

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery

- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above

This is the affidavit
of in this case
and was made on

No.
.....Registry

In the Supreme Court of British Columbia

Between:

Petitioner/Tenant

and

Respondent/Landlord

AFFIDAVIT

I, of
[name] [address]

....., SWEAR (OR AFFIRM) THAT:
[occupation]

1. I am thein this proceeding and as such have personal knowledge of the matters and facts hereinafter deposed to, save where stated to be on information and belief and where so stated I verily believe the same to be true.
- 2.

[The following paragraphs must be included if the affidavit was sworn or affirmed by video conference:

[#] "I acknowledge the solemnity of making a sworn statement/solemn declaration and acknowledge the consequences of making an untrue statement." And

[##] "I was not physically present before the person before whom the affidavit was sworn or affirmed but was in that person's presence using video conferencing."]

SWORN (OR AFFIRMED) BEFORE ME)
at[*commissioner's city/town*].....,)
British Columbia on[*date*].....)
)
)
.....)
A commissioner for taking affidavits)
for British Columbia)

.....

.....
[*print name or affix stamp of commissioner*]

No.
.....Registry

In the Supreme Court of British Columbia

Between

Petitioner(s)/Tenant

and

Respondent(s)/Landlord

[or, if there is no person against whom relief is sought:

Re:.....*[State the person by whom, or the entity in respect of which, relief is sought.]*.....]

NOTICE OF HEARING

To:
[name(s) of petition respondent(s), if any]

TAKE NOTICE that the petition of
[party(ies)]

dated will be heard at the courthouse at
[date]

..... on at
[address] *[date]*

.....
[time of day]

[Check whichever one of the following boxes is correct.]

[] This matter is an application for judicial review.

[] This matter is not an application for judicial review.

1. Date of hearing

[Check whichever one of the following boxes is correct.]

☐ The parties have agreed as to the date of the hearing of the petition.

- ☐ The parties have been unable to agree as to the date of the hearing but notice of the hearing will be given to the petition respondents in accordance with Rule 16-1(8)(b) of the Supreme Court Civil Rules.
- ☐ The petition is unopposed, by consent or without notice.

2. Duration of hearing

[Check the correct box(es) and complete the required information.]

- ☐ It has been agreed by the parties that the hearing will take
[time estimate]
- ☐ The parties have been unable to agree as to how long the hearing will take and
 - a) the time estimate of the petitioner(s) is minutes, and
 - b) ☐ the time estimate of the petition respondent(s) is minutes.
 - ☐ the petition respondent(s) has(ve) not given a time estimate.

3. Jurisdiction

[Check whichever one of the following boxes is correct.]

- ☐ This matter is within the jurisdiction of an associate judge.
- ☐ This matter is not within the jurisdiction of an associate judge.

Date:

.....
Signature of [] petitioner [] lawyer for
petitioner(s)

.....
[type or print name]