

## Starting an Action

### Steps in an Action

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### Limits of This Guide

Judicial review is a technical process. There are many rules and legal principles that must be considered. This is a general guide and you will likely benefit from specific advice or guidance. .

#### DIY Tools

[Judicial Review Self-Help Guide](#), CLAS

If at all possible, get a lawyer with experience with Judicial Review to help, even if you intend on representing yourself at the hearing. If you lose a Judicial Review you could have costs awarded against you so it is important to be prepared and get good advice. A lawyer can let you know your chances of success in bringing a judicial review, what you might ultimately get out of the process, and help you increase your chances of success. For more information on how to find a lawyer, see [Get Help](#).

This information only covers judicial review of decisions made by British Columbia tribunals. The procedure for reviewing decisions of federal tribunals is set out in federal legislation called the [Federal Courts 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 does not provide any information about judicial reviews of federal tribunal decisions.



### Learn More

For information on starting an application for judicial review in Federal Court, click here.

Read the Rules

Federal Courts Act and Federal Court Rules

## What is Judicial Review?

The government creates tribunals to resolve disputes and implement certain laws and policies, such as resolving 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).

Judicial review is a process where the Court is asked to review the decision of an administrative tribunal to see if their decision was unreasonable or unfair.



### Learn More

Intro to Judicial Review: What is Judicial Review, CLAS

Here are some examples of the situations where you can apply for a judicial review:

### Motor Vehicle Act Issues:

An individual has been issued an "Immediate Roadside Prohibition" for refusing a breathalyzer. The individual challenged that prohibition with the Superintendent of Motor Vehicles. The individual can apply for judicial review of that decision.

**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.

**What Judicial Review is not**

A judicial review is not a re-trial or a rehearing of your case. The judge does not focus on whether they 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 in a fair and reasonable way.

The government has given tribunals the authority to make decisions about certain issues. The Court recognizes that tribunals have specialized knowledge and experience in their particular subject areas and, because of that, the Court will not easily interfere with a tribunal's decision.

**Get Help**

CLAS Online Intake Form If you are doing a judicial review, or otherwise going to court, for work-related legal issues, human rights, access to government benefits, housing evictions, or mental health and would like some information or advice specific to your situation, fill out this form and then follow the instructions in the email you get.

## When Can You Apply for Judicial Review

You must go through all of a tribunal's internal review processes before the Court will hear a Judicial Review of your issue. Different tribunals and administrative agencies have different internal review processes so it is important you familiarize yourself with the applicable process.

## Time Limits for Applying for a Judicial Review

Time limits are very important in judicial review applications as they are for all court procedures.

If the decision you want reviewed was made by a tribunal covered by 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. However, the Administrative Tribunals Act does not apply to all administrative tribunals. Some tribunals have shorter limits. If you do not file your judicial review application within the time limit, you may lose your right to apply. If you are not sure what your deadline is for your judicial review application you should seek legal advice.



### Learn More

[Time Limit for Judicial Review, CLAS](#)

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.

## What Happens to the Order While I Wait for Judicial Review?

Applying for judicial review does not automatically stop the original order from being implemented. To stop an order from being enforced, you will need to apply to the Supreme Court for a “stay” which means the order will be stopped temporarily. For example, if the Civil Resolution Tribunal ordered you to pay the other party right away, the other party can still take steps to get the money from you unless and until you get an order for a stay from the Supreme Court. You have to file your petition for judicial review and then you file your application for a stay. See Petitions and Chambers Applications for information on the process.



### Learn More

For the basic steps in a stay application and the legal test a judge will consider when deciding whether to order a stay see Intro to JR: Stay Applications, CLAS

## What Kind of Mistakes Can Be Reviewed?

As we mentioned, Courts are limited in what the Court can review when it comes to administrative tribunal decisions.

Generally they can review two types of mistakes:

1. Substantive errors, and
2. Procedural fairness errors



### Learn More

Review of Administrative Decisions for Public Complaints, LSLAP Manual

## Substantive Errors

### Errors in Law

The government creates tribunals with a statute. That statute will outline the scope of the tribunal’s powers and they cannot make decisions outside of their given

powers. If a tribunal misinterprets its own powers, the Court may find they acted outside of the allowed scope.

Tribunals, like courts, must follow the law. If a tribunal misapplies the law, they may be reviewed.

### **Errors in Fact**

Tribunals are not allowed to act arbitrarily so their decisions must be based on the facts. If their decision is not reasonably based on the evidence, the Court may find they exceeded their authority.

The Court will generally not interfere with a credibility decision. That is, if the tribunal decided that it believed one person over another, the Court will rarely interfere.

### **Procedural Fairness Errors**

Tribunals are often given the power to create their own procedures. This is why each tribunal has its own rules and way of doing things. However, they still have to follow basic principles of fairness. If the process they follow is found to be unfair, the Court may review their decision.

Basic fairness involves the right to an impartial decision maker, the right to know the case and have the opportunity to respond. It could also include the right to counsel, the right to an oral hearing and to formal written decisions, but not always.

Confusingly, what counts as fair tends to depend on the circumstances. There is a lot of case law on this point, so we recommend getting legal advice if you are not sure what level or procedural fairness is required in your case. Generally, the more serious the potential outcome the tribunal's decision could have, the more strict and "court-like" their procedures should be.

### **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 three standards of review in British Columbia:

- **Correctness:** This means that the judge will decide if they agree with the tribunal's decision, and may set aside the decision if they did not. This is the lowest standard of review, so the Court may be more willing to review an incorrect decision.
- **Reasonableness:** Here, the question is not whether the judge agrees with the decision. Rather, it is whether the decision itself is reasonable (makes logical sense). If the judge can understand how the decision was made, even if they do not agree with the decision, they will not interfere.
- **Patent Unreasonableness:** This is similar in nature to reasonableness. However, it requires an even more obvious error to justify interfering. It could mean that the decision is clearly unreasonable or without any factual basis, or that the tribunal acted in bad faith (with improper purpose) or arbitrarily. This is the highest standard.

In most cases, either the “reasonableness” or “patent unreasonableness” standard will apply but it depends on the tribunal, area of law, and what kind of issues the tribunal is dealing with.

You can figure out which standard will apply by reviewing the statute that governs your particular legal issue (such as the Residential Tenancy Act), as well as sections 58 and 59 of the Administrative Tribunals Act. It is also a good idea to consult with a lawyer to understand what standard of review applies in your case.



### Learn More

Standard of Review by Tribunal, JudicialReviewBC.ca created a table outlining the different standards of review for certain tribunals

## Possible Outcomes

In a judicial review, the remedies the 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, without making the mistakes they made the first time. Just because you win your judicial

review hearing does not mean that you will win when the tribunal hears your case again. If you lose, the original decision will remain in effect.

If you win your case, the other side may be ordered to pay your legal costs, but if you lose you could be responsible for paying their legal costs. See [Costs](#) to learn more.

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 about your case.

The documents show:

- The facts or evidence you intend to rely on
- The legal grounds of your claim
- The argument you will be making in court

## DIY Tools

[BC Judicial Review Self-Help Guide](#)

## Read the Rules

[Judicial Review Procedure Act](#)

Judicial review applications are made by filing a petition and supporting affidavits in BC Supreme Court following Rule 16-1. To learn about the process, see [Petitions](#).

It is a very 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.

## Read the Rules

Rule 16-1 Petition Proceedings

## DIY Tools

Judicial Review Package from the BC Supreme Court contains information, important rules and forms you will need to conduct a judicial review

What does a judicial review hearing look like?

A petition for a judicial review is heard in chambers. Though there is a large body of law dealing with how to conduct judicial review, procedurally a petition for judicial review is like any other chambers applications.

For a general sense as to what to expect, see Chambers Applications as well as At Court.