

Type	Commissioner's Procedure/Policy	CP-014
Title	Judicial Review Assistance Policy	
Effective date	January 31, 2020	
Replaces	New	
Next review date	December 1, 2022	

1 Context

Administrative decisions can be anything from a letter from a Workers' Compensation Board (WCB) Claims Manager, to WCB Policies, to a decision of the Appeals Commission (AC) for Alberta Workers' Compensation. Courts can make sure administrative decision-makers follow the rules. They do this through a process called "judicial review."

In keeping with the Meredith Principles underlying all worker's compensation systems in Canada, the Alberta workers' compensation system is independent from government, and the WCB and AC enjoy exclusive jurisdiction over compensation claims and appeal processes. However, this jurisdiction is not absolute. Courts can, and have, reviewed WCB Policies and AC decisions to determine if their administrative decisions about the law and their respective authority are correct, or are otherwise reasonable.

The Fair Practices Offices (FPO) established the Workers Appeals Advisor Branch (WAAB) to provide advice and robust representation to injured workers and their dependants when appealing administrative decisions about compensation, up to and including the AC. The FPO established the Employer Appeals Advisor Branch (EAAB) to provide the same robust appeal services up to and including the AC.

In the 2017 report on Alberta's workers' compensation system entitled "Working Together," the panel thought FPO advisors (WAAB and EAAB) should be empowered to "bring matters forward for judicial review/appeal, or provide support for representation at judicial review." However, the power to bring a judicial review application was not granted to the FPO in the Workers Compensation Act or attendant regulations. Without that express grant of power, the FPO does not have standing to commence a judicial review or to participate in a judicial review as a party.

In the absence of an express grant of legislative authority to refer matters to the courts, the FPO is limited to seeking intervener status, or to providing assistance to workers or employers in preparing their brief and oral arguments for a judicial review. However, an FPO advisor cannot represent the worker or employer in court. Under section 106 of the Legal Profession Act, a person cannot be represented by a (non-lawyer) agent in the Court of Queen's Bench or the Court of Appeal. They must have a lawyer, except if the party is an individual, they can represent themselves.

The purpose of this Commissioner's Procedure is to provide guidelines about intervening in judicial reviews and/ or otherwise providing assistance to workers or employers engaged in judicial reviews.

2 Authority

Section 23.2(1)(b) of the *Workers Compensation Act*, [RSA 2000, Chapter W-15] reads that "The Fair Practices Commissioner shall... establish programs directed at providing independent advice, assistance and advocacy services to employers and to workers and their dependants."

3 Guidelines for supporting judicial reviews

The FPO's legislative authority for judicial reviews is limited. It is limited to sometimes seeking intervener status and to sometimes assisting (but not representing) parties with their judicial reviews.

In either case, it is solely for the Fair Practices Commissioner to determine whether the FPO will seek intervener status, and/or to determine whether an FPO advisor assists parties in preparing briefs or oral arguments for a judicial review.

Considerations

The Commissioner will exercise their discretion with care and with a view to:

- a. seeking intervener status only if the FPO is specifically affected by the decision to be made by the Court or has some special expertise or insight which would allow the FPO to make useful submissions different from those of the parties;
- b. recognizing that the FPO's support of judicial reviews is not based on the outcome to the claimant. Rather, it is based on *significant policy considerations* that cannot readily be resolved through other means within the Alberta's workers' compensation system, including existing WCB or AC appeal processes, through dialogue, including discussions at the Council of Workers Compensation System Partners, or through the Commissioner's Own Motion Review process; and
- c. managing budget and other resource constraints.

4 Requesting support for judicial review

Applications for FPO support of judicial reviews must:

- a. be made in writing to the Fair Practices Commissioner at

Fair Practices Office
Attention: Fair Practices Commissioner
10th Floor, Sun Life Place
Suite 1000, 10123 – 99 Street
Edmonton, AB T5J 3H1
- b. be received by the Fair Practices Office at least 15 working days prior to the Court's appeal deadline; and
- c. include the administrative decision in question and the applicant's understanding of the significant policy consideration at stake.

5 Authorizing signature and date

Approved by	Harold Robinson, Fair Practices Commissioner
Signature	[original signed]
Date	January 31, 2020