

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia Hydro and Power
Authority v. British Columbia (Workers'
Compensation Board)*,
2026 BCSC 987

Date: 20260529
Docket: S246414
Registry: Vancouver

In the Matter of the *Workers Compensation Act*, R.S.B.C. 2019, C.1 and the *Judicial
Review Procedure Act*, R.S.B.C. 1996, C.241

And in the Matter of Decisions made by the Review Division of the Workers
Compensation Board Dated June 11, 2024 and July 10, 2024

Between:

British Columbia Hydro and Power Authority

Petitioner

And

Workers' Compensation Board of British Columbia

Respondent

Before: The Honourable Justice Whately

Reasons for Judgment

Chambers Judicial Review

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Place and Date of Trial/Hearing:

Vancouver, B.C.
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Place and Date of Judgment:

Vancouver, B.C.
May 29, 2026

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Introduction

[1] The petitioner, British Columbia Hydro and Power Authority (“BC Hydro”) asks that this Court review a June 11, 2024 decision (“Decision 1”), and a July 10, 2024 reconsideration decision (“Decision 2”)(collectively, “the Decisions”) of the Review Division of the Worker’s Compensation Board.

[2] BC Hydro states that the Decisions were unreasonable, and asks that I quash the Decisions and cancel any resulting order, or, in the alternative, quash the Decisions and remit the matter back to the Review Division for reconsideration.

[3] The respondent is the Worker’s Compensation Board. I will refer to the “Board” when referring to the Respondent to this Petition, and variously, the “Review Division” or “Review Officer”, or “Chief Review Officer”, when referring to the decision makers under review.

[4] The Board opposes the petition for judicial review. It says that while the reconsideration decision is the proper decision subject to review, both Decisions are reasonable and should be upheld.

[5] For the reasons that follow, I dismiss BC Hydro’s petition.

Background

[6] The Decisions originated with a claim for compensation for mental disorder submitted to the Board by a BC Hydro worker.

[7] In November of 2020, the worker raised concerns about a fellow employee, and engaged BC Hydro’s respectful workplace process.

[8] The worker went off work for medical reasons in February of 2021. In March 2021, BC Hydro management met with the worker, and advised that she would receive disability benefits and that further, she was not required to file a claim with the Board.

[9] BC Hydro states that at the time, its staff was under the mistaken impression that it needed to investigate the claim before reporting the worker’s claim to the

Board. BC Hydro states that staff did not seek to dissuade the worker from filing a claim.

[10] The worker provided evidence that she was advised by BC Hydro management that it was preferable for her to stay on disability benefits rather than reporting the claim to the Board, because an investigation would be upsetting and unpleasant for her.

[11] In May of 2021, BC Hydro advised the worker she had the option to file a claim with the Board herself, which she subsequently did in August of 2021.

Inspection Report and Order

[12] Following the worker's claim for compensation for mental disorder, the Board issued an inspection report and order against BC Hydro on August 31, 2021. The inspection report and order stated:

The employers management at this workplace have openly impeded a worker from reporting their injury to the Board.

This is in contravention of the *Workers Compensation Act* section 73(1)(a).

An employer or supervisor must not by agreement, threat, promise inducement persuasion or any other means seek to discourage impeded or dissuade a worker of the employer, or a dependant of the worker, from reporting to the Board an injury, whether or not the injury occurred or is compensable under the compensation provisions.

[13] BC Hydro filed a Request for Review of the order.

[14] In its submissions to the Review Division, BC Hydro challenged the application of s. 73(1)(a) of the *Workers Compensation Act*, RSBC 2019, c 1 (the "Act") in several respects.

[15] BC Hydro stated that mental disorder was not captured by s. 73 of the Act as it existed at the time of the events.

[16] In addition, BC Hydro argued that it did not have the required intent to discourage the worker from filing the claim. Further, notwithstanding its initial misunderstanding of the appropriate procedure at the time, BC Hydro stated that it did not in fact discourage the worker from filing the claim.

Review Board's Decision on the Inspection Report and Order

[17] On June 11, 2024, the Review Division issued its decision in response to BC Hydro's Request for Review of the Inspection Report Order (Decision 1).

[18] The Review Division confirmed the order for the following reasons:

- a) There is no difference between the version of s. 73 as it existed at the time of the events and the s. 73(1)(a) cited in the order;
- b) Mental disorders are a type of injury contemplated by s. 73 as it existed in 2021;
- c) BC Hydro management sought to dissuade the worker from reporting her mental disorder to the Board; and
- d) BC Hydro contravened s. 73 of the Act.

[19] On June 27, 2024, BC Hydro requested a reconsideration of Decision 1 pursuant to s. 273 of the Act.

[20] In support of its request for a review, BC Hydro stated that the review officer committed the following errors in Decision 1:

- a) The review officer made an error of law in failing to conduct a statutory interpretation of s. 73 of the Act;
- b) In applying the principles of statutory interpretation, one must conclude that "injury" in s. 73 does not include mental disorders;
- c) The review officer failed to consider Hansard evidence of legislative intent; and
- d) The review officer wrongly concluded that mistaken belief of BC Hydro management was evidence of intent.

[21] On July 10, 2024, the Chief Review Officer declined BC Hydro's request for reconsideration, for the following reasons:

- a) The review officer did not commit an error of law by failing to refer to the modern principle of statutory interpretation, or cases about same;
- b) The review officer did not commit an error of law by not referring to Hansard; and
- c) Even though the review officer did not make a finding as to whether s. 73 required intent, she found that BC Hydro management sought to discourage or dissuade the worker from filing a claim.

Statutory Review and Appeal under the Act

[22] The Board is a statutory corporation created to administer the Act, which addresses compensation, assessment and prevention within the workers' compensation regime in British Columbia. This is a specialized jurisdiction of the Board, and its decisions are protected by privative clauses in the legislation.

[23] Board decisions made pursuant to OHS provisions can only be reviewed by the Review Division, the Board's internal first level of administrative review.

[24] Some decisions by the Review Division can be appealed to the Workers' Compensation Appeal Tribunal ("WCAT"). Decisions made under the OHS provisions cannot be appealed to the WCAT, unless they impose an administrative penalty, or pertain to cancelling or suspending a certificate.

[25] The Decisions at issue were made pursuant to OHS provisions of the Act and focus on the interpretation of s. 73 of the Act. The Decisions do not impose an administrative penalty or cancel a certificate and are therefore not subject to review or appeal by the WCAT.

[26] The Chief Review Officer may direct a reconsideration of a decision of the Review Division, based on new evidence, a clear error of law or policy, or an error of

law going to jurisdiction, which includes breaches of natural justice or procedural fairness.

Issues

[27] BC Hydro states that at its core, this judicial review concerns the statutory interpretation of s. 73 of the Act; namely, the definition of “injury” in that section at the time of the events, whether intent was required for a contravention of that section, and whether BC Hydro had the requisite intent.

[28] The Board summarized the issues under review as follows:

- BC Hydro states that the Decisions were unreasonable because:
 - a) the term “injury” in s. 73(1)(a) does not include “mental disorder” and so that section does not prohibit BC Hydro from seeking to discourage a worker from reporting a mental disorder to the Board; and
 - b) a breach of s. 73(1)(a) requires proof of intent, and the Board both failed to find that intent was required, and found facts inconsistent with intent.
- The Board states that the Decisions were reasonable because:
 - a) The term “injury” includes “mental disorders”; and
 - b) The Decisions clearly found that BC Hydro “sought to” discourage the worker, which is tantamount to a finding of intent, and the finding of intent was reasonable on the facts.

Standard of Review

[29] BC Hydro and the Board agree that regardless of whether one or both Decisions are subject to review, the applicable standard of review is reasonableness, as per *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[30] The reasonableness standard of review recognizes that there will often be a range of acceptable outcomes on questions of law or fact. If the outcomes are characterized as reasonable, a tribunal will not fall into error by choosing one of them, even if that outcome differs from what a reviewing judge may find.

Decisions Under Review

[31] BC Hydro states both Decision 1 and Decision 2 are properly under review. This is because the Chief Review Officer denied BC Hydro's application for review, meaning that no reconsideration took place. However, in somewhat circular reasoning, BC Hydro says that Decision 2 was unreasonable because of the clear errors in Decision 1, and as a result, both decisions are reviewable.

[32] The Board states that Decision 2 is the final administrative decision and is therefore the proper subject of this judicial review. It cites *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329, as support for the principle that judicial review is only available for final decisions:

[40] Where a party has taken advantage of a tribunal's reconsideration power, and the tribunal has undertaken the reconsideration, it is the reconsideration decision that represents the final decision of the tribunal. In such a situation, it is only the reconsideration decision that may be judicially reviewed, since it is the final decision of the tribunal.

[33] BC Hydro states that because the reconsideration decision can only be undertaken in exceptional circumstances, based on the discretion of the review officer, the denial of reconsideration cannot be the appropriate target for review. In this case, the review was based on the Chief Review Officer's consideration of whether Decision 1 contained "a clear error of law or policy", and because the grounds were not met, the only opportunity for BC Hydro to challenge Decision 1 is by judicial review. (see *Lysohirka v. British Columbia (Workers' Compensation Board)* 2012 BCCA 457 at para. 14)

[34] The Board comments that while the Chief Review Officer denied leave for reconsideration, Decision 2 substantively addressed the merits of BC Hydro's arguments, which were essentially the same as made before the Review Division.

[35] The Board concedes that regardless of whether Decision 2 is the proper decision under review, I must assess the reasonableness of Decision 1, because practically speaking, there is little to distinguish between reviewing the reasonableness of Decision 2, which found no clear error of law or policy in Decision 1, and reviewing the reasonableness of Decision 1. The Board also refers to the unhelpful or unwieldy “stacking standards of review” referred to in *The College of Physicians and Surgeons of British Columbia, v. The Health Professions Review Board*, 2022 BCCA 10, paras. 173-174.

[36] Ultimately, there is no disagreement as between the parties as to the methodology of my review, in terms of considering the reasonableness of both Decision 1 and Decision 2, and I have done so below.

[37] As I indicated at the outset, I determined that there is no basis to disrupt the Decisions, and therefore I will not address remedies in my reasons.

[38] In the circumstances of this case, the “air” between the issues, evidence and arguments addressed by the decision-makers in coming to both Decisions is almost negligible, despite the stated grounds for dismissing the application for reconsideration. I will say that had I found a substantive error in Decision 1 that either was not, or could not be addressed by the Chief Review Officer by virtue of the limits placed on the grounds for reconsideration, this would have necessarily informed my consideration of the decision under review, in terms of the appropriate remedy.

Legislative Framework

[39] As is often the case in judicial reviews, the history and purpose of the legislative framework is examined at length in argument. This exercise is necessary to understand the general context of the dispute, as well as the interpretation of specific terms and provisions supported by the parties. For the purpose of these reasons, I will include only the key points below.

[40] The Act is divided into sections dealing with distinct aspects of the workers compensation and protection scheme in BC. The provisions at issue largely fall in the “Occupational Health and Safety Provisions” of the Act, which are distinct from the “Compensation Provisions”. Both are defined terms in the Act.

[41] At the time of the events in issue, s. 73 of the Act stated:

Employer or supervisor must not attempt to prevent reporting

73 An employer or supervisor must not, by agreement threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer or a dependant of the worker, from reporting any of the following to the Board:

- a) An injury or allegation of an injury, whether or not the injury occurred or is compensable under the compensation provisions;
- b) An illness, whether or not the illness exists or is an occupational disease compensable under the compensation provisions;
- c) A death, whether or not the death is compensable under the compensation provisions;
- d) A hazardous condition or allegation of a hazardous condition in any work to which OHS provisions apply.

[42] In October of 2022, s. 73 was amended as follows (changes and/or additions are underlined):

Employer or supervisor must not attempt to prevent reporting or making claims

73 (1) An employer or supervisor must not, by agreement threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer or a dependant of the worker, from reporting any of the following to the Board:

- a) An injury or allegation of an injury, whether or not the injury occurred or is compensable under the compensation provisions;
- b) An illness, whether or not the illness exists or is an occupational disease compensable under the compensation provisions;
- c) A death, whether or not the death is compensable under the compensation provisions;
- d) A hazardous condition or allegation of a hazardous condition in any work to which OHS provisions apply.

(2) An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from

- a) making or maintaining an application for compensation under the compensation provisions, or
- b) receiving compensation under the compensation provisions.

[43] Section 135 of the Act states as follows:

Mental Disorder

135(1) Subject to subsection (3), a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment, if that mental disorder does not result from an injury for which the worker is otherwise entitled to compensation under this Part, and only if all the following apply [...]

[44] Also added as part of the 2022 amendments was the following definition, which is found in the Compensation provisions of the Act:

Definition and application

154.1(1) In this Division, "injury" includes an occupational disease and a mental disorder.

[45] Review of the Hansard commentary at the time of the amendment establishes that the purpose of the amendments to s. 73 was to ensure that employers could not deny or frustrate workers from seeking, making or maintaining a *compensation claim*, which had not been specified in the previous iteration of s. 73, or elsewhere in the legislation, which had only referred to reporting to the Board prior to 2022.

Analysis

[46] I will address the errors in the same order argued by BC Hydro. Generally, the arguments apply to both Decisions, but I will specify where appropriate.

Mental Disorder is excluded from section 73

[47] BC Hydro states that the Review Division's primary error is the inclusion of "mental disorder" within the definition of injury in s. 73(a). It says that s. 135 clearly differentiates mental disorder from personal injury, when it states that mental disorder will be compensable "*as if [it] were a personal injury.*"

[48] BC Hydro also states that the principles of statutory interpretation, if properly applied, make it clear that by specifically listing "injury, death, illness and hazardous

conditions” and by not mentioning “mental disorders”, mental disorders were intentionally excluded from s. 73.

[49] BC Hydro further states that by failing to reference the Hansard debate in its decision, the Review Division did not properly engage with the legislative intent behind s. 73, which is unreasonable.

[50] The Board says that both Decisions reasonably reject this argument, which BC Hydro made before both the Review Division (Decision 1) and the Chief Review Officer in the reconsideration decision (Decision 2). The Board refers to both Decisions’ review of the broad purpose of the legislation and s. 73 in particular:

Decision 1

...the purpose and intent of section 73 as a whole is to prevent an employer from hindering a worker from reporting injuries, illnesses or diseases, as well as hazardous conditions of the workplace. Therefore it would be inconsistent with the principles of statutory interpretation to restrict the application of this [subsection] to only physical injuries when that is not expressly stated.

If I accept the employer’s interpretation of the section 73(a) the result is that there would be no protection for workers against employer suppression of mental disorder reporting. It is incomprehensible to me that this was the legislative intent. Accordingly, I find that section 73(a) also applies to mental disorders.

Decision 2

The Review Officer considered the term “injury” and what it meant in the context of the specific provision as well as the scheme of the Act, the object of the Act, and the intention of the legislature...

She considered the purpose of section 73, which was to prevent an employer from hindering a worker from reporting to the Board injuries, illnesses, diseases as well as hazardous conditions of the workplace. The protection afforded by section 73 is not limited to workers with a medical condition that was eligible for compensation benefits, but also conditions of the workplace that may be hazardous to a worker’s health and safety.

Given the specific object and purpose of section 73, and the fact that mental disorders are treated as an injury for the purpose of compensation under the Act, the Review Officer concluded that it would not be reading the provision harmoniously with the scheme of the Act, and the intention of the legislature, to exclude mental disorders from the definition of injury under section 73.

[51] In my view, BC Hydro's interpretation of s. 73 is rigid and somewhat tortured. It does not reference or acknowledge the broad purpose of the Act, or the purpose of the OHS provisions in particular. I also question BC Hydro's reference to legislative intention, in terms of pointing to the "gap" BC Hydro says was filled by the 2022 amendments, which it says ought to inform the interpretation of the original s. 73 wording.

[52] In my view, the so-called gap is clear on the face of the amendments to s. 73, and does not support BC Hydro's argument regarding mental disorders being excluded. Further, the Hansard debates confirm that the "gap" filled by s. 73 (2) was in reference to expanding the existing prohibition against dissuading workers from reporting, which was not seen as sufficiently explicit or robust in terms also prohibiting dissuasion of workers making compensation claims.

[53] Perhaps more significantly, I agree with the Board that if I were to accede to BC Hydro's interpretation, I would need to find that absent specific wording to this effect, the legislature intended, prior to 2022, to exclude workers with complaints of mental disorders from the protection afforded by this specific legislation, which seeks to ensure that workers can report events to the Board without interference by employers.

[54] The purpose of s. 73, and the OHS Provisions, is to protect workers, and must be given fair, large and liberal construction and interpretation as best ensures the attainment of its objects: *Interpretation Act*, RSBC 1996 c. 238 s. 8.

[55] Reference to other sections of the Act, namely the Compensation Provisions, cannot serve to entirely oust the larger purpose of the OHS Provisions, and the purpose of s. 73 specifically, which is to provide protections for workers for reporting events leading to injury at work. The separation of the purposes and even effects as between the OHS and Compensation provisions is made clear by the legislation itself: see s. 16 of the Act.

[56] As such, I cannot find that the difference between “injury” in the OHS Provisions, and “personal injury” in the Compensation Provisions, however amended, is sufficient to indicate clear legislative intent that runs contrary to the purpose of worker protection. I do not find that Decision 1 was unreasonable in its rejection of BC Hydro’s interpretation.

[57] Further, I do not find that there was an insufficiency of reasons in terms of explicit reference to the Hansard, when both the Review Division and the Chief Review Officer engaged with the purpose of the legislation and the intention of legislature. In any event, the Hansard, in my view, does not support BC Hydro’s interpretation of s. 73, which is the same conclusion that the Chief Review Officer explicitly outlined, even after correctly acknowledging the caution advised by the courts with respect relying on Hansard, and confirming that it was within the discretion of the Review Officer to rely on same, or not. See: *Re Rizzo & Rizzo Shoes* [1998] 1 SCR 27.

[58] On a reasonableness review, I must approach the Decisions with deference, particularly when they demonstrate justification, transparency and intelligibility. I find that both Decisions were well within the reasonable outcomes available on this point.

Deficient Reasons regarding “Intent” and Misapprehension of Evidence

[59] I will address the second and third errors alleged by BC Hydro together, as they are related.

[60] The second error alleged by BC Hydro is that Decision 1 did not determine that a contravention of s. 73 required intent on the part of BC Hydro or its management.

[61] BC Hydro says that Decision 1 failed to address whether the language of s. 73 created a strict liability offence or whether *mens rea* must be established, which it says is a fatal error.

Decision 1

The employer states that section 73(a) requires intent, and that the employer's actions lacked any intention to impede any claim or report by the worker. Rather, their actions reflected an employer reasonably assisting a worker to obtain benefits. The employer advises that its management staff made an honest mistake regarding where to direct the worker and when to report a mental disorder claim to the Board. The employer says that nothing in its management staff did amounts to discouraging, impeding or dissuading the worker from filing a claim or reporting her injury to the Board.

I have come to a different conclusion. I appreciate that the employer may have intended to report the worker's mental disorder to the Board later, depending on the outcome of its internal investigation. However, I find the evidence supports a conclusion that the employer sought to discourage and dissuade the worker from reporting her mental disorder to the Board.

[62] BC Hydro also states that the Review Division failed to weigh the evidence of the worker and the evidence of BC Hydro's management, when it came to the conclusion that it "sought to discourage and dissuade the worker" from reporting. It says that the evidence of BC Hydro established a "mistaken impression" with respect to its own reporting obligations, but that the Review Division failed to provide reasons as to why it preferred the evidence of the worker over that of BC Hydro management.

[63] BC Hydro frames both errors as deficiencies in the reasons, and argues that Decision 1 is "devoid of reasons" for both the finding of a strict liability offence, and how the evidence was weighed to find intent.

[64] The Board states that there is no argument that a contravention of s. 73 requires a finding that BC Hydro "sought to" or, in other words, intended to discourage the worker from reporting her injury to the Board.

[65] The Board says that Decision 1 included two key factual findings:

- a) BC Hydro had notice from its disability insurer that the worker's claim was work-related and should be handled by the Board. However, BC Hydro persuaded the insurer to keep paying disability benefits to the worker; and

- b) BC Hydro told the worker it was preferable for her to stay on disability benefits rather than reporting to the Board, as the Board investigation of her claim would be upsetting and unpleasant for her.

[66] The Board says that it was open to the Review Officer to make these findings on the evidence before her, and that she found: “clear evidence that by its actions the employer both impeded the worker from reporting her injury to the Board, as well as attempted to dissuade her from doing so.”

[67] The Chief Review Officer in Decision 2 addressed the argument regarding BC Hydro’s management’s “mistaken understanding” and states that it rejects the position that this is inconsistent with a finding that management intended to dissuade the worker.

[68] I agree with the Board that a finding of intent to dissuade does not require a finding of mal-intent, or bad faith intent. Whether BC Hydro’s management was mistaken in understanding the process, or trying to protect the worker from upset or an unpleasant investigation, Decision 1 clearly finds that BC Hydro intended to dissuade reporting. Decision 1 found that BC Hydro did so by ensuring disability payments continued from the insurer, and advising the worker that reporting to the Board may not be in her immediate best interest.

[69] Whether BC Hydro intended to delay or dissuade reporting so it could complete its own investigation first, or because it was concerned about the worker – neither of these scenarios preclude a finding that BC Hydro intended to dissuade.

[70] In my view, the failure to explicitly find that s. 73 is a strict liability offence is a red herring, when the Review Officer in Decision 1 found, based on the evidence (including that of BC Hydro’s staff) that BC Hydro management’s actions sought to discourage, impede or dissuade the worker from reporting at that time. The Chief Review Officer in Decision 2 noted that the Review Officer accepted the evidence of BC Hydro regarding its mistaken understanding of its reporting obligations as part of

its motivation for its advice to the worker, but rejected the argument that this was inconsistent with a finding of intent.

[71] The reasons of administrative decision makers do not have to meet the standard of perfection, nor do they have to specifically outline, refer to or include every argument or piece of evidence presented to them in argument.

[72] I do not find that the Decisions are insufficient on this point, and in my view, fall well within the realm of reasonable outcomes.

Conclusion

[73] For the reasons above, I dismiss the petition.

[74] The Board advised that it would not seek costs in the event it was successful, and so there will be no costs order.

“J. Whately J.”