REPRESENTING YOURSELF IN A JUDICIAL REVIEW

Community Legal Assistance Society

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This publication is based on the revised BC Supreme Civil Court Rules in force July 1, 2010.

A PDF edition of this guide is available at www.clasbc.net

The publication of this guide is made possible by funding from the Law Foundation of British Columbia.

WARNING AND WAIVER

What this guide covers

This guide explains how to represent yourself in a judicial review in the Supreme Court of British Columbia. It does not apply to judicial reviews in other courts and does not apply to appeals of Small Claims Court decisions. Please note that this guide is particularly designed for judicial reviews of decisions made by the Employment and Assistance Appeal Tribunal and by Arbitrators through the Residential Tenancy Branch.

Getting legal advice

Users of this guide should not rely on the guide for legal advice or as a substitute for legal advice. If you have a legal problem, including if you plan to represent yourself in court, you should consult a lawyer. Getting legal advice is important because:

- This guide is produced for educational purposes.
- This guide cannot and does not cover all possible situations. It covers common situations, and your situation might be different.
- The law, including statutes, regulations, Rules of Court, court practices and court precedents can change without warning and those changes may not be reflected in this guide.

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1 THE BASICS OF JUDICIAL REVIEW*

(A) What is a judicial review?

A judicial review is an opportunity for the BC Supreme Court to review the decision of a Tribunal (or another legal decision maker) for serious errors or unfairness. Tribunals are decision-makers set up by the government to resolve certain types of disputes without going to court. The Employment and Assistance Appeal Tribunal is one example of a Tribunal in BC. The Arbitrators appointed under the *Residential Tenancy Act* are another. Small Claims Court is not a Tribunal.

While Tribunals have the power to decide many types of disputes, the courts have a limited power to supervise Tribunals, by reviewing their decisions to make sure that they are procedurally fair and free from serious errors. This is judicial review.

However, a judicial review is not an appeal, and a judge will generally not re-hear the case on judicial review. The role of the court on judicial review is limited to reviewing the decision, and the decision-maker's procedures in reaching the decision, to see if it is so flawed or procedurally unfair that it should be set aside or cancelled.

In reviewing a Tribunal decision, the court recognizes that the government has given the Tribunal (and not the court) the power to decide certain issues. With that in mind, the court will usually defer to the Tribunal. This means the court will not interfere with the Tribunal's decision lightly, and usually only if there is a very serious error.

It is important to remember that a court is unlikely to overturn a tribunal decision simply because you think that the Tribunal was wrong, or because you do not agree with the decision made, or because you want a second chance to argue your case.

* This guide is just an overview of judicial review. To determine whether there are grounds for judicial review in your case, and to discuss the risks and benefits of pursing a judicial review, consult a lawyer who will review your case and give you legal advice.

To succeed in a judicial review you need to show the court that the Tribunal made a serious legal or factual error in the decision, or that the Tribunal's process for making the decision was so unfair that the decision should be set aside.

(B) What kind of error do I need to show the court?

There are essentially two types of errors that might, if they are serious enough, lead a court to overturn a Tribunal decision on judicial review:

- First, there are **procedural fairness errors**, or errors in the way the hearing was conducted or the way the decision was made, that make the process unfair.
- Second, there are **substantive errors**, or errors in the actual decision made by the decision maker.

These two types of errors are explained below.

(i) Procedural fairness errors

You may have a case for judicial review if the Tribunal made a decision in an unfair way. This might include the following situations:

- You didn't get proper notice of the Tribunal hearing.
- You were unable to attend the Tribunal hearing because of circumstances that you could not control.
- You did not get a chance to see all of the evidence that the Tribunal used to reach its decision (for example, you didn't get a copy of the other side's evidence).
- You did not get a chance to make your case (for example, you were not allowed to talk at the hearing or you were cut off).
- You were not allowed to have someone represent you or assist you at the hearing.
- You did not have a chance to test the other side's evidence (for example, you were not allowed to question the other side's witnesses on important points).
- The Tribunal issued a decision that does not adequately explain what evidence it relied on, what findings it made, and how it reached its decision.

Before alleging procedural unfairness, think carefully about the examples listed above and the procedures the Tribunal used. If you lost your case, you may think the outcome is unfair, but that does not necessarily mean the decision will be set aside on judicial review.

You need to show a very serious error in the Tribunal's procedure, along the lines of the examples listed above.

The following types of problems with decisions are usually NOT the basis for a judicial review:

- There was conflicting testimony or evidence and the Tribunal believed the other side's testimony or evidence instead of yours.
- The Tribunal did not consider evidence that was not put before the Tribunal.
- During the hearing, the Tribunal asked you to wait your turn to speak.
- You disagree with the Tribunal's decision.

If you are alleging procedural unfairness, you need to show the court that the Tribunal failed to act fairly in all the circumstances.

(ii) Substantive errors

A Tribunal makes a substantive error when it makes a mistake in its:

- factual findings (for example, how it resolved conflicting evidence about what happened);
- legal findings (for example, how the Tribunal interpreted the law that applies); or
- exercise of discretion (for example, how the Tribunal decided to act when it had the option to do something in a particular way, like extending a timeline for submitting a document).

How serious does a substantive error have to be for a court to set aside a Tribunal decision on judicial review? It depends on what Tribunal you are dealing with and what type of error you are saying the Tribunal made.

For most Tribunals in BC there are three possible levels of error that you might need to show the court. These are called "standards of review," because they show what standard the court will use when reviewing the Tribunal's findings. The law on standard of review is complicated and you should get legal advice to make sure you understand how it fits into your case. Here is a rough overview of the three possible standards of review:

- Correctness: Where the standard of review is correctness, all you need to show is that the Tribunal was incorrect. The court will review the evidence and decide

whether or not it agrees with the Tribunal. Correctness is the least deferential standard of review, meaning the court will be more willing to interfere with the Tribunal's decision where correctness is the standard of review.

- Reasonableness: Where the standard of review is reasonableness, you need to show that, given all the evidence that was before the Tribunal and given the applicable law, the Tribunal's findings were *not within the range of reasonable options*. On this standard of review the court might disagree with the Tribunal's decision but will not interfere with the decision if it is within the range of reasonable options.

- Patent Unreasonableness: This usually has two meanings, depending on whether you are alleging that the Tribunal erred in factual or legal findings, or in an exercise of discretion. This is the most deferential standard of review, which means the court will be the least likely to interfere.

    - For factual or legal findings, you need to show that the Tribunal's decision was openly and clearly unreasonable, or that there is no evidence to rationally support the Tribunal's decision. This means that, even if a court disagrees with the Tribunal's decision, as long as there is something to support it, the court will not interfere.
    - For discretionary decisions, you most often need to show that the Tribunal (i) acted arbitrarily or in bad faith; (ii) had an improper purpose; (iii) considered primarily irrelevant factors; or (iv) failed to take the legislative requirements into account.

To determine which standards of review apply to the Tribunal you are dealing with, see the table that starts in the next page.

STANDARDS OF REVIEW BY TRIBUNAL

Tribunal	Procedural fairness	Factual findings	Legal findings	Discretionary decisions	Other decisions
Agricultural Land Commission	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Community Care and Assisted Living Appeal Board	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Employment and Assistance Appeal Tribunal	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Employment Standards Tribunal	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Farm Industry Review Board	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Financial Services Tribunal	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Health Professions Review Board	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Hospital Appeal Board	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness

STANDARDS OF REVIEW BY TRIBUNAL – page 2

Tribunal	Procedural fairness	Factual findings	Legal findings	Discretionary decisions	Other decisions
Human Rights Tribunal	Whether, in all of the circumstances, the tribunal acted fairly	Reasonableness	Correctness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Industry Training Appeal Board	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Mediation and Arbitration Board	Whether, in all of the circumstances, the tribunal acted fairly	Reasonableness	Correctness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Mental Health Review Panels	Whether, in all of the circumstances, the tribunal acted fairly	Reasonableness	Correctness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Passengers Transportation Board	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Residential Tenancy Branch	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Safety Standards Appeal Board	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness
Workers Compensation Appeal Tribunal	Whether, in all of the circumstances, the tribunal acted fairly	Patent Unreasonableness	Patent Unreasonableness	The Tribunal (i) acted arbitrarily/in bad faith; (ii) had an improper purpose; (iii) considered irrelevant factors; or (iv) failed to consider the legislative requirements.	Correctness

Note: If the Tribunal you are dealing with is not on this list, then you need to seek legal advice to find out what standard of review applies.

(C) What will I get if I win my judicial review?

If you bring a judicial review and you win (the court agrees that the Tribunal decision is so faulty it should be set aside), it is up to the court to decide the best remedy.

Typically, the court will set aside the Tribunal's original decision and send the case back to the Tribunal for a re-hearing. This means that the Tribunal will have a second chance to hear the case and make a new decision without repeating the same errors.

In most court cases, the losing party in a judicial review is responsible for paying the other side's court costs. If you win your judicial review, the other side may have to pay for your legal costs. That could be several thousand dollars, even if you did not hire a lawyer.

(D) What happens if I lose my judicial review?

If you bring a judicial review and you lose (the court decides not to interfere with the Tribunal's decision), then the original Tribunal decision remains in effect.

In most court cases, the losing party in a judicial review is responsible for paying the other side's court costs. If you lose your judicial review, you may have to pay the other side's legal costs. That could be several thousand dollars, even if the other side did not hire a lawyer.

(E) Time limit to file a judicial review

There is a time limit for filing a judicial review. If the Tribunal that issued your decision is covered by the *Administrative Tribunals Act*, then you have 60 days from the date the decision was made (not the date you received the decision) to file a judicial review.

If you do not file within the time limit, you may lose your right to bring a judicial review. It is possible to apply for an extension of time, but there is no guarantee that the court will give one and it complicates the judicial review process if you file late.

The 60 day time limit applies to decisions of the following bodies:

- Agricultural Land Commission
- British Columbia Human Rights Tribunal
- Director, Business Practices and Consumer Protection
- Director of the Residential Tenancy Branch (decisions made by Arbitrators)

- Employment and Assistance Appeal Tribunal
- Employment Standards Tribunal
- Farm Industry Review Board
- Financial Services Tribunal
- Health Professions Review Board
- Hospital Appeal Board
- Industry Training Appeal Board
- Labour Relations Board
- Mediation and Arbitration Board
- Mental Health Review Panels
- Passenger Transportation Board
- Safety Standards Appeal Board
- Workers' Compensation Appeal Tribunal

If the Tribunal or body that made your decision is not listed above, then you should seek legal advice to find out how long you have to file a judicial review.

2 AN INTRODUCTION TO REPRESENTING YOURSELF

You have the right to represent yourself in court, whether you are doing so because you prefer to represent yourself or because you cannot afford a lawyer.

(A) Tips to help you prepare for representing yourself

When preparing your court documents and preparing to speak in court, the following tips may help you with your case.

- Take the time to prepare. Preparing for a judicial review takes quite a bit of time and you need to spend the time required to put all the materials together.
- If you have access to a computer, type your documents if possible. It will help the judge.
- Have a friend available through the process to bounce ideas off and to go over your material. It is also useful to have a friend go with you to the court hearing.
- Always tell the truth in your court documents and in your presentations to the court. Lying to the court is a serious violation of the law and it may also hurt your case.
- Keep all receipts for expenses related to the judicial review. These include court fees, hearing fees, photocopying fees, the cost of binding documents, postage fees, etc. If you keep these receipts you may be able to get the other side to repay those expenses if you win.
- Go and see what court is like. Go to the courthouse and ask at the information booth when the court will be hearing a *contested chambers application*, since these are the types of cases that are most likely to be similar to a judicial review. Court typically starts at 10 a.m. and is open to the public. Do not eat, drink, or disrupt the court process and please turn off your cell phone.

(B) Tips for your presentation to the court

When it comes time to speak to the judge or to write an argument for the judge, follow these tips:

- Keep it short and simple. Decide what you think is fundamentally wrong with the Tribunal decision. Your job is to make the problem(s) with the Tribunal's decision clear to the judge. Most judicial reviews can be reduced down to a few simple sentences. Make sure that you include all the important points, but keep it simple and as short as possible.

- Stay on topic. Once you have identified what the judicial review is about, stick to that. Focus on showing the judge specifically what is wrong with the Tribunal decision. It may be tempting to go into a lot of background, perhaps to try and make the other side look bad or make yourself look sympathetic, but this is usually not helpful. Going off topic makes it harder for the judge to understand what is really wrong with the Tribunal decision. Again, you should be able to summarize your case in a few sentences.

- Be polite and patient. There is a lot of waiting in chambers and it can take time for your case to be called. Once your case is called, the judge may want you to slow down, and you may have to listen to the other side say things that you do not agree with. Sometimes the judge might just be having a bad day. Stay calm, do not get frustrated, and do not talk over top of other people (especially the judge).

- Be organized. The more organized you are, the clearer you can make things for the judge. Remember, your job is to help the judge see why the Tribunal's decision is problematic. When presenting to the judge, come up with an organized way to explain your case. Chronological order is often a good way to organize a presentation, but there may be other approaches that make sense.

(C) A warning about representing yourself

There are risks to representing yourself. It is always better to have legal advice. This guide cannot deal with all cases and situations, so try to get advice from a lawyer.

Most people involved in court cases in BC have lawyers representing them in court. Judges are used to having lawyers make presentations, so sometimes judges can get frustrated with self-represented people. This is especially true if the self-represented person is not prepared, rude, or unable to present the case in a concise and organized way.

As set out above in the section entitled "What happens if I lose my judicial review" on page 7 above, you could have to pay the other side's court costs if you lose. This can be several thousand dollars. This is yet another reason why it is good to get legal advice on the strength of your case before going ahead with a judicial review.

(D) What NOT to do when representing yourself

Do not do the following things, which will hurt your case for judicial review:

- Do not wait until the last minute. Deadlines are important, and it is essential to properly prepare.
- Do not be late for court.
- Do not eat or drink in the courtroom (other than the water provided in the courtroom).
- Do not have your cell phone on.
- Do not attempt to contact the judge outside of the courtroom (by phone, in writing, etc.).

3 GETTING LEGAL ADVICE

It is very important that you get legal advice about your specific case. Here are some tips when trying to get advice.

More and more lawyers are becoming open to the idea of "unbundled" legal services. This means that they may be willing to help you with bits and pieces of your case as you go along in the judicial review. If you are getting unbundled legal services, your case will usually be your responsibility, but (depending on your agreement with the lawyer) the lawyer might give you advice at certain points along the way, or help you with certain documents.

Below is a breakdown of the steps in the judicial review process with suggestions about when it is a good idea to get legal advice.

	Step	**What to bring**
1	When deciding whether or not to apply for judicial review, ask for advice about: (i) naming the proper respondents, (ii) naming and/or serving other interested parties, (iii) the correct style of proceedings, (the formal title of the court case), (iv) what legislation you need to rely on, and (v) your grounds for judicial review (this is very important) **REMEMBER THE 60 DAY TIME LIMIT**	• Clean copies of all documents that were before the Tribunal (no writing or underlining). Try to organize them in chronological order. • If you give the lawyer a document that was not before the Tribunal, tell her or him that it was not before the Tribunal.
2	Before you file for judicial review, ask a lawyer to review your documents to see if you have everything required and that it is all correct. You may need to get the documents re-checked after you have made any changes the lawyer suggests.	• Drafts of all your court documents, including (at least) your petition and affidavit.

3	Once you have filed your judicial review and you have received a response to petition, and possibly affidavits from the other side, get advice about whether the other side has a good defense.	• Any court documents you have received from other parties.
4	Before your hearing, get advice on a draft of your written argument, and a draft of the petition record. You can also bring a copy of any authorities (cases and statutes) you want to rely on. You may need to get these re-checked after you have made any changes the lawyer suggests.	• Your draft written argument. • A draft of your petition record. • Any authorities (cases and statutes) you want to rely on at the hearing.
5	Once you get the other side's written argument, get advice on what they have argued and the final version of the petition record.	• The other side's written argument. • A final copy of the petition record.
6	After your court hearing and once you have got the court's decision, get advice on what the decision means and how to prepare an order and a bill of costs if applicable.	• Your notes on what the judge decided. • Any written reasons the judge issued. • A draft of the order. • A draft bill of costs if applicable.

4 PREPARING YOUR INITIAL COURT DOCUMENTS

To file a judicial review, you need to file certain court documents with the BC Supreme Court, and provide filed copies of these documents to other parties.

These court documents will set out your legal basis for judicial review; give the other side notice of what you are going to argue; and set out the facts and evidence you will rely on.

This guide will go through each document and explain what it is for and when you will need it. We have also produced a blank version of each form, highlighting the spaces you will need to fill in and explaining how to complete the form. Follow the directions on each form and fill in the forms by replacing the grey notes with your own information (you will need to delete the grey text).

We have also provided sample court documents that we have prepared for a case we made up as an example. Please do not copy the sample documents exactly. They are meant to provide you with assistance in understanding the directions in this guide.

(A) A hypothetical case

The sample court documents in this guide have been prepared based on a made-up, hypothetical situation, a judicial review of a Residential Tenancy Branch decision of an Arbitrator. Here are the facts of the hypothetical case:

Don Smith has lived at 1234 ABC Street, Vancouver for four years. He is a 46-year-old tenant. His Landlord is Betty Jones, who lives alone at 4321 GHI Drive, Vancouver. Don pays $575 per month in rent.

Last month, Don received a 1 Month Notice to End Tenancy for Cause. He found this Notice taped to his door on May 13th, 2010. The Notice indicated that he was being evicted for "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so" - but it had no other information. He tried to talk to Betty, but she would not return his phone calls.

So, on May 17th, 2010 he applied to the Residential Tenancy Branch to dispute the Notice to End Tenancy. The Residential Tenancy Branch issued a hearing package to him setting the hearing date for June 25th, 2010. The hearing was to be held by telephone conference call. He served Betty with a copy of the hearing materials by posting them on her door on May 18th, 2010. He did not receive anything from Betty.

On June 25th, Don called in to the teleconference hearing. Betty and an Arbitrator named H. Hetter were on the line. Mr. Hetter started the hearing and asked Betty to explain why she was evicting Don. Betty testified that Don had repeatedly smoked inside 1234 ABC Street despite her written requests that he stop.

Betty referred to written warning letters, and Mr. Hetter confirmed that he had a copy of all of the letters. Don spoke up and asked Mr. Hetter what documents they were talking about because he did not have copies.

Mr. Hetter told Don to wait until it was his turn, and continued to ask Betty questions about the warnings and why it was important that tenants not smoke in 1234 ABC Street. Mr. Hetter then asked Don if he smoked in the rental unit. Don said that he had, but that he didn't know he was not allowed and that he had not received any warning letters.

Mr. Hetter then said that he was upholding the 1 Month Notice to End Tenancy. Betty asked for an Order of Possession, and Mr. Hetter granted one, saying that Don had to be out of his apartment by July 31st, 2010 at 1:00 p.m. Mr. Hetter then said he was concluding the hearing and the line went dead.

On June 29th, Don received a mailed copy of an Order saying he must leave 1234 ABC Street by 1:00 p.m. on July 31st, 2010, and a copy of the decision of Mr. Hetter. The decision says:

The Landlord gave the Tenant several written warnings that she considered smoking in the rental unit a breach of a material term of their tenancy agreement and that he must stop. The tenant ignored these warnings and continued to smoke. I find that the tenant breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after he received written notice to do so.

(B) Getting started: style of proceeding

Every court document that you draft will have the same heading on the first page. This heading is called the "style of proceeding" and it gives basic information about the case: what court the case is filed in; what registry it is filed in; the court file number; and the parties to the judicial review. The "parties" are usually all the people, organizations, or companies that are involved in the dispute that led to the judicial review. For example, if you have a Tribunal decision relating to your welfare benefits, the Ministry of Social Development and Social Innovation will be a party. If you have a Tribunal decision relating to a dispute with your landlord, the landlord will be a party.

Once you draft the style of proceeding you will use it on the first page of every court document you draft.

This guide will instruct you to put your style of proceeding in certain spaces on the court documents you will draft. You can copy the style of proceeding into those spaces.

- **Form 1a: Blank Style of Proceeding**
- **Form 1b: Sample Style of Proceeding**

(C) Petition for judicial review

A petition is the court form that starts your judicial review. It sets out what you are asking the court to do, why you are asking the court to do it, and the facts that form the basis for your judicial review.

- **Form 2a: Blank Petition**
- **Form 2b: Sample Petition**

(D) Affidavit in support of your judicial review

In a judicial review, you typically do not give evidence by testifying in court. All the evidence is in affidavit form, which means it is written down in a sworn statement, or attached as an exhibit to a sworn statement. Usually you will be restricted to the evidence that was in front of the Tribunal that made the decision. That is because the court will be considering whether, given the evidence in front of the Tribunal, the Tribunal made a reviewable error.
The person swearing the affidavit will need to vouch for its accuracy and swear that its

contents are true, so be very careful when drafting affidavits.

The sworn statement part of an affidavit (called the body of the affidavit) is where you state the facts of the case. In an affidavit, you are trying to provide evidence for the court about what happened leading up to the Tribunal hearing; what happened at the Tribunal hearing; and occasionally, what happened since the Tribunal hearing. It is not appropriate to put legal arguments in the body of an affidavit.

Your affidavit must be sworn in front of a commissioner for taking affidavits. Each court registry has someone that can swear your affidavit for a fee. All lawyers and notaries can swear affidavits.

- **Form 3a: Blank Affidavit**
- **Form 3b: Sample Affidavit**

(E) If you cannot afford to pay court filing fees

It currently costs $200 to file a judicial review. There may be additional fees for any other court applications you might need to do.

If you cannot afford these fees, and if your case has some merit, the court has the power to waive the fees. To do that, you must appear before a judge or master and prove that you cannot afford the fees. You must also show that there is at least some merit to your judicial review.

To request a waiver of fees, you will need to prepare 3 things:

i. A "requisition" requesting that the court waive the fees. See Form 4.

ii. Evidence supporting your request for a fee waiver. The evidence must be in the form of an affidavit. See Form 5.

iii. A draft of a court order granting the fee waiver. See Form 6.

Important note: Even if you get an order from the court waiving filing fees, this does not mean that you will not have to pay the other side's court costs if you lose.

(i) Requisition for fee waiver

This is the document that indicates to the court you are asking for your court fees to be waived.

- **Form 4a: Blank Requisition for Fee Waiver**
- **Form 4b: Sample Requisition for Fee Waiver**

(ii) Evidence to support your application for a fee waiver

The court will only grant a fee waiver if:

- the person cannot afford the court fees, and
- the person has an arguable case for judicial review.

To satisfy the court on these points, you will need to file an "affidavit for fee waiver."

This affidavit must set out your financial situation in detail (including a statement of income and expenses, assets and liabilities). If you are on income assistance or disability assistance, you will need to attach proof of that. See Form 5.

In addition to setting out your financial situation, the affidavit for fee waiver also needs to attach a draft copy of your petition so the court can see what the case is about.

The court will use the affidavit for fee waiver to decide whether you cannot afford the fees, and whether or not you have an arguable case for judicial review.

- **Form 5a: Blank Affidavit for Fee Waiver**
- **Form 5b: Sample Affidavit for Fee Waiver**

(iii) Order to waive fees

This is the document the court will sign if the judge grants your fee waiver request. You should prepare a draft order to make it easier for the court. You will probably have to leave some details blank for the court to fill in, since you will not know before you go to the court which judge or master you will see.

Note that all orders must have "backer" sheets, which is the last page in both the blank and sample orders. This page must be stapled on the back of the order, but with the text facing out so that the registry can see it.

- **Form 6a: Blank Order to Waive Fees**
- **Form 6b: Sample Order to Waive Fees**

5 FILING YOUR JUDICIAL REVIEW

To start your judicial review, you need to go to the court registry and file your petition and affidavit. This starts the judicial review process.

When you go to the court to file your documents, bring the following:

- your original petition, plus enough copies for you and every other party listed under the "On Notice To" section on the first page;
- your original affidavit in support of your judicial review, plus enough copies for you and every other party listed under the "On Notice To" section on the first page; and
- money to pay the $200 filing fee (see next paragraph if you cannot pay the fee).

If you are asking the court to waive your fees, you do not need to bring the $200, but you do need to bring the following, in addition to the items listed above:

- your requisition for a fee waiver plus one copy for you;
- your original affidavit for fee waiver plus one copy for you; and
- a draft of the order waiving your fees.

Make the copies of all these documents after you have signed and dated the originals. The copies need to be exactly the same as the originals.

When you get to the courthouse, look for the civil registry desk. Get in line, and when it is your turn, tell the clerk at the desk that you are representing yourself in a judicial review and you would like to file your documents. If you are applying for a fee waiver, tell the person that you want to apply to have the court filing fees waived. Hand the clerk your original documents and copies.

(i) If you are paying the filing fees

If you are not requesting that the court waive filing fees, pay the clerk the $200 filing fee to file your judicial review. The registry accepts cash, cheque, debit cards, or money orders.

The registry will then review your documents. If they are properly filled in, the clerk will take your filing fee and file the documents. To file the documents, the clerk will stamp your original petition and affidavit, and stamp your copies. The clerk will keep the originals at the registry, and give you back the copies. The copies are the documents you will need to serve (see Part 6). You should leave with enough stamped copies for you and everyone listed under the "On Notice To" section of your petition.

(ii) If you are applying to have your filing fees waived

If you are requesting that the court fees be waived, the person at the registry will not file your petition and affidavit until you go in front of a judge or master to get an order waiving the fees. They will probably hand you back your stamped requisition and affidavit for fee waiver, and they should be able to tell you when you can see a judge or master.

Depending on the location of the registry you are filing in, you might be able to speak to a judge or master about the fee waiver that same day, or you might have to wait until a day when a judge or master is available.

When you are at the registry, ask the registry clerk to review or "vet" your draft order for a fee waiver. He or she might sign it, which will speed things along when you go in front of the judge.

Whether the registry sends you to a courtroom right away or it happens later, the process is the same. Find the courtroom you are going to by asking the registry staff or the sheriff. When you go to the courtroom, you may find court already in session. If that is the case, quietly go up to the side of the clerk's desk, which is at the front of the courtroom. Hand the court clerk your requisition and affidavit for your fee waiver request. You will then need to wait until you name is called.

Once your name is called, go up to the podium and tell the judge or master the following:

1. You are representing yourself in a judicial review and you are seeking a fee waiver because you cannot afford the court filing fees.
2. Explain your financial situation and why you cannot afford the filing fees.

3. Explain very briefly what your judicial review is about and what errors you think the Tribunal made in its decision. Before you speak to the judge or master think of a clear and concise way to explain this in a few sentences.

4. The judge or master might ask you some questions about your financial status and the merits of your judicial review.

Remember, your goal here is to quickly show the court that you cannot afford the filing fees and your judicial review has merit.

If the judge or master decides to grant your fee waiver request, tell her or him that you have brought a draft order and that the registry has reviewed ("vetted") it. Hand the draft order to the court clerk, who will give it to the judge or master. After the order is signed, you should take it back down to the registry and give it to them. Ask them to enter it urgently. You should also ask them for a copy of the signed order. This will let you file your documents without paying the filing fees.

If the judge or master does not grant your request for a fee waiver, you will have to pay the filing fees to file your judicial review.

(iii) Filing your documents

Once your documents are filed, the registry will give you stamped copies of your petition and affidavit.

Make sure you leave the court with a copy of your petition and affidavit that are stamped with the following:

- File number (usually at the top right corner)
- Date stamp (usually at the top left corner)
- *For the petition only*, a court seal (usually at the top left corner)

Once your petition and affidavit are stamped in this way your judicial review is filed.

6 SERVING YOUR COURT DOCUMENTS

Once you have filed your petition and affidavit in support of your judicial review, you will need to serve stamped copies of these documents on all other interested parties.

Usually the interested parties are the same ones listed in your "On Notice To" section on the first page of your petition. The interested parties will always include the Tribunal, the Attorney General of BC, and anyone that was a party in the Tribunal hearing.

The purpose of serving the court documents is to give the other parties formal notice of your court proceeding, and to give them a chance to respond to your judicial review. **You cannot proceed with the judicial review without serving the other parties.**

Because the petition and the affidavit are the first documents to give the other parties notice of your judicial review, they must be served in a special way.

(A) How to serve the Tribunal

To serve the Tribunal, you have to personally take the filed petition and affidavit to the Tribunal's office and give the documents to a secretary, clerk or agent of the Tribunal. Include a cover letter with the documents (see Form 7). Make sure that you write down the date, time and the name of the person you gave the documents to.

If you do not live near an office of the Tribunal, you can arrange for someone else to serve the documents for you. This person will have to be able to provide an affidavit of service (see below, "proving service").

(B) How to serve the Attorney General

You can serve the Attorney General in either of the following ways:

(i) By personally taking a copy of your stamped petition and affidavit into the Ministry of the Attorney General's office in Victoria during office hours, and leaving it with a lawyer there. Make sure you write down the date and time, and the name of the lawyer.

(ii) By sending copies of your stamped petition and affidavit by registered mail to the Deputy Attorney General in Victoria. If you are using this method, keep your receipts and tracking number.

In either case, you should attach a cover letter to your documents (see Form 7). The Attorney General's Victoria address is:

Ministry of Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7

(C) How to serve other parties

Typically, other parties will be individual people, corporations (including companies, societies, and co-ops), or government bodies. To personally serve these parties your stamped petition and affidavit, you must do the following:

- Individual: you must personally hand the documents to the individual.

- Corporation:
  - you can personally leave the documents with a manager, clerk or secretary at a branch office of the corporation; or
  - if it is a BC corporation (including a company, a society, or a co-op), you can send the documents by registered mail to the corporation's registered office. You can find out a company, society, co-op's registered service address by doing a search of the British Columbia Corporate Registry.

- Government bodies other than the Attorney General: you must personally hand the documents to a clerk, agent or secretary at the agency's office.

Include a cover letter with these documents (see Form 7) and remember to keep a record of the date and time of service, and the name of the person you physically give the documents to. Note that, if you are serving all the parties in the same way (for example, by personally handing over the documents), you can use the same service letter for each party. Otherwise, you will need a separate letter for each party. Keep a copy of all of your signed cover letters.

If you do not live near enough to one of the parties to be able to serve them as set out

above, you can arrange for someone else to serve the documents for you. This person will have to be able to provide an affidavit of service (see below, "Proving service").

Form 7a: Blank Service Letter
Form 7b: Sample Service Letter

(D) Proving service

Generally, you can prove that you served the parties in your judicial review in two ways:

(1) **The parties file a response to petition.** If the opposing party files a response to petition (a court document indicating that they are responding to your judicial review), that will prove to the court they were served properly. Opposing parties have 21 days from when you served them to file and serve you a copy of their response to petition. **NOTE**: if you get a response to petition form from a respondent, then you have to give them notice of the court steps for the rest of the judicial review.

(2) **You file an affidavit of service.** If the opposing party does not file a response to petition form (and they may not if they decide not to contest your judicial review), then you can prove you served them by swearing an affidavit of service. In the affidavit, you need to set out the date and time of service, and the name of the person you personally gave the documents to. You will also need a copy of the stamped documents that you served. If you need to swear an affidavit of service and you are in Vancouver, go to the BC Supreme Court Self-Help Centre at the Vancouver BC Supreme Court Registry and ask for Court Form 15.

If you are serving a corporation at its registered office or the Attorney General by registered mail, keep copies of your registered mail receipts and tracking numbers.

7 SETTING A COURT HEARING

There are two basic ways to set a date for your court hearing. Which one you use depends on how long you have estimated your case will take.

If you have filed your judicial review in a registry other than Vancouver, speak with the registry staff, because they may have a different process than what is set out below.

When setting a court date, it is best to check with the other parties and pick a date that works for everyone. This will avoid the risk of an adjournment if the other parties or their lawyers cannot attend on the day you choose.

(A) Hearings under 2 hours

If your judicial review will take less than 2 hours, you can set the hearing for 9:45 a.m. on any day the court hears petitions. In Vancouver, this is every weekday, but some other registries can only hear petitions on certain days.

(B) Hearings over 2 hours

If your judicial review will take more than 2 hours, you will need to set a date through the court registry, usually through part of the registry called "Trial Scheduling". Call the registry and ask when they next have available dates for a petition hearing in front of a judge. If there are no hearing dates available when you call, ask when the court will be opening up new dates you can book. In Vancouver, you can reach Trial Scheduling at 604-660-2853. It will probably be at least a month or two before you can get a court date. Once you have a court date, confirm the date with all parties right away so they continue to hold the date.

(C) Notice of hearing

Once you have a court date set, you must prepare, file, and serve a notice of hearing. You must prepare, file, and serve a notice of hearing regardless of how long your hearing is set

for. Once you have prepared the notice of hearing, you must file it in the court registry. The court registry staff will stamp the notice of hearing when it is filed.

Even if you have already told the other parties about the hearing date, you must formally file and serve a notice of hearing. You must serve a stamped copy of the notice of hearing on everyone who served you with a response to petition form. You have to do this at least 7 days before the hearing date. In calculating "at least 7 days" before the hearing date, you do not include either the day of the hearing, or the day you serve. For example, if you are setting a hearing for a Wednesday, then you have to serve the filed notice of hearing by the Tuesday the week before.

If no one has served you with a response to petition form, then you only need to prepare your notice of hearing and file it with the court, and you don't need to serve it on anyone. In that case, you can file the notice of hearing any time before your hearing begins.

- **Form 8a: Blank Notice of Hearing**

8 DOCUMENTS FOR YOUR HEARING

Before you have your judicial review hearing, you will need to prepare the materials that the judge will look at to decide the case. These are:

- a written argument; and
- a petition record.

The goal of a written argument and a petition record is to make things easier for the judge. You are trying to present the case in an organized and concise way so that the judge can understand it quickly and easily find everything she or he might need.

(A) Written argument

It is not mandatory to have a written argument. However, it is often a good idea to create a brief written argument that explains your case.

If your judicial review will take more than 2 hours and is scheduled for a specific date (see Part 7), you should give the judge a copy of your written argument so that she or he can follow it while you speak. The easiest way to do this is to include your written argument in your petition record.

You will also need to provide the other parties with a copy of your written argument. It is best to give it to the other parties a week or so before the hearing, to make sure that they have time to reply to it. If you don't give the other parties enough time, they may ask the court to adjourn the judicial review hearing until a later date.

If your judicial review will take less than 2 hours (see Part 7), the rules of court say you should not give the judge your written argument, so do not put the written argument in the petition record (see the "Petitioner Record" section below). It is still useful to draft a written argument to prepare what you are going to say to the judge. You can follow your written argument when you are speaking in court. It is a good idea to bring an extra copy of the written argument to court in case the judge asks to see it.

It is a good idea to try to get some legal advice on your argument, even if you do not have a lawyer to represent you in court.

If you draft a written argument, make it brief (no more than a few pages). Using short numbered paragraphs, briefly set out:

- the main facts you are relying on and where those facts are located in the affidavits that have been filed in your case;
- the main errors you think the Tribunal made;
- any statutes or other legal sources you are relying on; and
- what orders you are asking the court to make.

- **Form 9a: Blank Written Argument**

(B) Petition record

You will also need to prepare two copies of a binder called a "petition record". This is a binder containing all the materials that the judge may want to look at in the judicial review. The goal of the petition record is to make it easy for the judge to find documents and to understand your case.

One copy of the petition record will go to the judge, and you will keep the other copy for your reference. You will also have to provide a copy of the index of your petition record to all the other parties, so that they can create their own petition record that matches yours.

Petition records must contain:

- a title page with the style of proceeding taped to the front of the binder;
- an index;
- a copy of your petition;
- a copy of any responses to petition filed; and
- a copy of every affidavit filed that you or the other parties will be referring to at the hearing.

If you wish, you can also put the following in your petition record:

- a draft of the order you are asking the court to make;

- a written argument;
- a list of authorities; and
- a draft bill of costs.

You cannot put the following in your petition record:

- affidavits proving service;
- copies of authorities; or
- any other documents, unless all parties agree.

Put each copy of your petition record in a 3 ring binder. Tape the title page to the front of the petition record binder, and make the index the first page inside the binder. It is a good idea to use tabs so that each document is separated and easy to find. Put the tab numbers on the index. Number all the pages of the petition record consecutively (do not restart numbering at each tab; if there are 40 pages in the entire petition record, pages should be numbered 1 to 40). Use copies of documents for the petition record, not originals.

- **Form 10a: Blank Petition Record Title Page**
- **Form 10b: Sample Petition Record Title Page**

- **Form 11a: Blank Petition Record Index**
- **Form 11b Sample Petition Record Index**

(C) Filing your petition record and serving the index

You will need to file the court's copy of your petition record before 4:00 p.m. on the business day that is one full business day before the date set for the hearing. For example, if the hearing is set for a Wednesday, you will need to file the petition record by 4:00 p.m. on the Monday of that same week (assuming there are no statutory holidays that week). If your hearing is set for a Monday, you will have to file the petition record by 4:00 p.m. on Thursday (again, assuming there are no statutory holidays). Because of storage constraints, the registry will not accept your petition record more than 3 business days before your hearing.

The registry needs an extra copy of your petition attached to the petition record. You should make an extra copy of your filed petition and highlight Part 1. Then use an elastic band to attach the highlighted copy of the filed petition to the front of the petition record binder that you intend to file.

Take it to the court registry and tell them your hearing date and say that you need to file the petition record. They will stamp it and take the binder so that the judge will have it at your hearing.

You must also serve the other parties with a copy of <u>just the index</u> of your petition record <u>before 4:00 p.m. on the business day that is one full business day before your hearing is set</u> (the same deadline as the deadline for filing your petition record). The other parties should already have copies of all the documents that belong in the petition record, so the index will let them make their own binder that matches yours. (NOTE: make sure that you have given the other parties a copy of your written argument, if you are using one.)

(D) Authorities (cases or statutes)

If you plan to refer to any cases or statutes at the judicial review hearing, you will need to bring them to court. Authorities do not need to be filed with the court registry.

If you plan to use a lot of authorities, it is helpful to the court if you can put them together in binder. If you are going to do this, it's a good idea to tab the authorities and create an index (just like you did with the petition record) to make it easy for the judge to find things.

You will need enough copies of your authorities to make sure that you, the judge, and the other parties each have a copy. At the start of your case, give one copy to the court clerk and one to the other parties, and keep one for yourself.

9 PREPARING TO PRESENT YOUR CASE IN COURT

(A) Getting ready

It is very important to prepare for your judicial review hearing. A judge may hear many cases in a day and you need to be able to present your case quickly and clearly. You also need to be able to answer any questions the judge might have. You and the respondents to your petition have to get the entire case done within the time you reserved for your judicial review, and the judge may have a lot of questions.

Spend some time thinking about how you can clearly explain your case to the judge. You should be able to reduce your case down to a few sentences. If you have a friend willing to listen, you should practice how you will explain things clearly to the judge.

It is important that you review all the judicial review documents, especially affidavits, and know where everything is in the petition record. Have all your documents organized so that you can find things quickly if you need to. It might be helpful to use post-it notes to flag important documents.

(B) The day of the hearing

The courtrooms open at 9:45 a.m and court generally starts at 10:00 a.m. Do not be late for court. Get there well before the courtroom opens at 9:45.

Be sure to bring your petition record with you on the day of the hearing as well as all your other court documents. Also bring some spare paper and pens to take notes.

When you get to the courthouse, look for a list of cases being heard that day "in chambers". That list should tell you what courtroom you need to go to. If you cannot find the list, ask a sheriff.

When you get to the courtroom, go up to the clerk's desk at the front of the courtroom and tell the clerk your name and that you are representing yourself. If court is already in session, go up to the clerk's desk and hand him or her a piece of paper with your name written on it, along with the fact you are representing yourself.

Other cases may be scheduled for the same courtroom, so once you have given the clerk your name, you may have to wait until your case is called. If this is the case, go sit in the gallery (the seats in the back of the courtroom) and wait. Be patient and do not disrupt the court if other cases are going first. Once your case is called, you will go up to the podium.

Court generally runs from 10:00 a.m. until 12:30 p.m., and then from 2:00 p.m. until 4:00 p.m. There is also a short break in the middle of the morning and afternoon.

You can bring a support person to court with you if you think that will make you more comfortable. The support person can either wait in the back of the courtroom for you, or you can ask the judge if they can be a "McKenzie Friend" and sit up at the counsel table with you. That way, your support person can take notes and pass you things if you need it. Your McKenzie friend cannot speak for you or represent you in the court without very special permission from the judge. You should only request such permission if there is a good reason why you cannot represent yourself, for example if you have serious disabilities that limit your ability to explain things or handle the stress of court, or if your English is limited and you need the assistance of a friend with fluent English.

(C) Presenting your case to the judge

When the court clerk calls your name, go up to the front of the courtroom. You can put your things on one of the tables at the front. If you are the petitioner, take the table on the right. When it's time to speak, you will stand at the podium.

When everyone is ready, including the judge, introduce yourself and spell your last name slowly. Tell the judge that you are representing yourself and you are the petitioner in the judicial review. The other parties (or their lawyers) will then introduce themselves.

The judge will then ask you to proceed with your case.

When it comes time to actually speak to the judge, the following tips will help you with your case:

- Keep it short and simple. Decide what you think is fundamentally wrong with the Tribunal decision. Your job is to make the problem(s) with the Tribunal's decision clear to the judge. Most judicial reviews can be reduced down to a few simple sentences. Make sure that you include all the important points, but keep it simple and as short as possible.

- Stay on topic. Once you have identified what is wrong with the Tribunal decision, stick to that. Focus on showing the judge specifically what is wrong with the Tribunal decision. It may be tempting to go into a lot of background, perhaps to try and make the other side look bad or make yourself look sympathetic, but that is almost never helpful. Going off topic distracts the judge and makes it harder to understand what is really wrong with the Tribunal decision. Again, you should be able to summarize your case in a few sentences.
- Be polite and patient. There is a lot of waiting in chambers and it can take time for your case to be called. Once your case is called, the judge may want you to slow down, and you may have to listen to the other side say things that you do not agree with. Sometimes the judge might be having a bad day. Stay calm, do not get frustrated, and do not talk over other people (especially the judge!).

- Be organized. The more organized you are, the clearer you can make things for the judge. Remember, your job is to help the judge see why the Tribunal's decision is problematic. When presenting to the judge, come up with an organized way to explain your case. Chronological order is often a good way to organize a presentation, but there may be other approaches that make sense.

The judge will have the petition record in front of him or her, but it is important to realize that the judge may not have read everything. Some helpful things you should do to get your case across are:

- Give a very brief summary of what you are asking for and what your case is about (a couple of sentences).

- If the other parties are not there, tell the judge how and when you served the other parties with your court materials.

- You can follow your written argument when making your presentation to the court. If you included your written argument in your petition record, you can ask the judge to read your written argument along with you (see the section "Written Argument" on page 28).

- Go over the facts in an organized way.

- Go over the legal issues and the specific errors you are saying the Tribunal made.

- Show the judge the evidence that supports your case by pointing out where the evidence is in the affidavits in the petition record (use the tab numbers and page numbers to help the judge find the documents).

The judge may well interrupt you and ask you questions. Be patient and try to answer the questions honestly and simply. If you need a minute to find something, or if you don't understand what is being asked, politely tell the judge.

Here is an example of how you might start to present your case to the judge:

> *My name is Don Smith. I am representing myself as the petitioner in this judicial review. I am asking the court to set aside the decision of Arbitrator Hetter made June 25, 2010. I am a tenant and that decision upheld my eviction and issued an order of possession for July 31, 2010. I am asking the court to set aside that decision and order.*
>
> *I have included a written argument at tab 4 of my petition record. I will go over that argument.*
>
> *I served the petition, affidavit and notice of this hearing on my landlord. A lawyer for the Attorney General and the Residential Tenancy Branch has informed me that they will not be appearing.*
>
> *This is a judicial review of a decision made by an Arbitrator under the Residential Tenancy Act.*
>
> *The Arbitrator upheld my eviction because he found that I had smoked in my rental unit despite written warnings not to do so.*
>
> *I am asking that the Arbitrator's decision be set aside because the Arbitrator went ahead with the hearing even though I explained that I did not get copies of my*

landlord's evidence for the hearing. My landlord did not serve me anything. I do not know what the evidence was and I was not able to respond to it.

The Arbitrator found I had been warned in writing about smoking. In fact, I was never warned, and I did not get a copy of the evidence my landlord submitted to show that I was warned.

I told the Arbitrator that I did not have any of the evidence and he did not stop the hearing or ask my landlord if she served me with her evidence.

I think the Arbitrator failed to act fairly by not making sure I was properly served with the case against me so that I could respond to it.

Once you are finished, the other parties will have a chance to present their case and why they do not agree with your judicial review. It is important to listen quietly and not interrupt. Take notes on what they are saying. When they are finished, the judge may give you a brief time to reply to what they said.

10 THE COURT'S DECISION

The judge may give you an oral judgment right at the end of your hearing, or she or he might reserve the decision until another day. This means that the judge will think about your case and release a decision at a later date. The judge will tell you at the end of the hearing whether judgment is being reserved.

If judgment is reserved, you may have to come back to court on another day to hear the judge give an oral decision. The other option is that the judge may give written reasons, in which case the registry will contact you before the reasons are released. You then can get the reasons by e-mail or you can go to the courthouse and get a paper copy of the reasons.

If the judge gives oral reasons, pay attention to what the judge is saying, and try to write it all down. If you have a friend with you, ask him or her to write it down as well.

Generally, listen for:

- Whether the court has "set aside" or "quashed" the Tribunal's decision;
- Whether the court makes some other type of order; and
- Whether the judge orders court costs.

The judge's decision is in effect from the date it is pronounced, even if a written order has not been drafted yet.

The party that loses the judicial review can appeal the decision to the BC Court of Appeal within thirty days from the date the court issues its order. Make sure you get legal advice before considering an appeal.

11 DRAFTING THE COURT'S ORDER

Generally the winning party drafts the court order. The only exception is when all parties are representing themselves, when sometimes the judge will ask the court registry to draft the order. Usually, if you win, you should prepare the court order.

To be able to draft the order, you will need to know exactly what the judge said. Listen carefully to the judge. Make sure to note whether the judge orders or mentions court costs. If you win the judicial review, you can assume that you are entitled to court costs unless the judge expressly says that you are not.

If you can't remember or did not understand what the judge said, you can look at the court clerk's notes at the court registry or through Court Services Online. If necessary, you can order a transcript of the reasons or listen to the recording of the hearing at the court registry.

To draft the order, you will need:

- the name of the judge that heard your judicial review;
- the date of the hearing; and
- what the judge ordered, including whether the judge said that either party was entitled to court costs (if you think you are entitled to court costs and want to claim them, you must put it in the order).

Once you have drafted the order, it must be approved and signed by you and all the parties that appeared at the judicial review hearing, unless the court orders otherwise.

Once all the parties that appeared at the hearing have signed the order, you need to take it to the court registry and tell them that you want to file it. Keep a copy of the unfiled order for your records.

NOTE: Court orders must have a backing sheet, which is a sheet that you attach to the back of the order, but with the text facing out.

- **Form 12a: Blank Order**
- **Form 12b: Sample Order**

A APPENDIX: IF YOU'RE BEING EVICTED

CONTENTS

IMPORTANT NOTE:

This document is an appendix to "Representing Yourself in a Judicial Review," which is a guide to representing yourself in a judicial review in the Supreme Court of British Columbia.

This appendix deals specifically with how to apply for an interim stay of a Residential Tenancy Branch order of possession, as part of a judicial review.

The appendix is not meant to be used as a stand-alone document. If you do not already have it, you should also obtain a copy of the rest of the Guide, published online as "Representing Yourself in a Judicial Review."

(A) The eviction process

If you are being evicted, your landlord will serve you with an order of possession. The order of possession will set a date by which you must vacate your rental unit. If you have not moved out by this date, your landlord can start the process of forcing you out.

i. Applying for review at the Residential Tenancy Branch

The first thing to consider if you have received an order of possession is whether you have a case to get the order set aside through an internal review by the Residential Tenancy Branch.

If you receive an order of possession either from the Residential Tenancy Branch or from your landlord, **you have 2 days from the date you received the order** to apply to the Residential Tenancy Branch for an internal review. You can apply for an internal review in any of the following situations:

- You were unable to attend the Residential Tenancy Branch hearing due to circumstances that were beyond your control;
- You have new and relevant evidence that was unavailable at the time of the Residential Tenancy Branch hearing; or
- The original decision or order was obtained by fraud and you have evidence that proves the fraud.

If you think any of the above points might describe your situation, you should go to the Residential Tenancy Branch office or website, or the nearest Service BC office, and request a review as soon as possible. The Residential Tenancy Branch should be able to confirm that you have filed for review if your landlord calls to ask.

Legally, a landlord is not entitled to force you out of your rental unit until the Residential Tenancy Branch has made a decision about your application for review. However, some landlords may not know this or may try to ignore the law.

It is very important to tell your landlord you have filed a review. Give your landlord a copy of the review application stamped by the Residential Tenancy Branch.

Be warned: the review decision from the Residential Tenancy Branch can come down at **any time**. If the review decision goes against you, your landlord will be able to take **immediate** steps to force you out as of the date and time on the order of possession. If that date has passed by the time the review decision comes down, and if you lose your review, your landlord can take steps to evict you **right away**.

ii. The steps your landlord must take to evict you

The only legal way a landlord can evict you forcibly is by obtaining a court document called a Writ of Possession, and then hiring a court bailiff to enforce the Writ.

A court bailiff can remove your belongings and then change the locks. If necessary, a court bailiff can even physically remove you from the property to comply with the Writ.

It is illegal for a landlord to remove your belongings from the rental unit or lock you out of the rental unit without using an **authorized court bailiff**. The Attorney General publishes a list of authorized court bailiffs, and only the companies on this list are allowed to enforce a Writ of Possession. A link to the current list of authorized court bailiffs is posted on the CLAS website in the "Self-Help Guides" section.

> **WARNING:** There are people in BC who make their living by pressuring tenants to move out, even though they're not actually authorized by the Attorney General to carry out an eviction.
>
> **TIP:** If someone comes to your door saying that he/she is a bailiff, make sure you ask for identification, including the name of the bailiff company. Then, look to see if that company is on the Attorney General's list. If not, they don't have the authority to evict you.

To be able to use a court bailiff and evict you from your rental unit in compliance with the *Residential Tenancy Act* (and Residential Tenancy Branch policy), your landlord must do the following:

- Serve you with a copy of the order of possession.
- Wait for the 2-day review period to expire.
    - NOTE: If you file an application for review during the 2-day review period, your landlord is not entitled to enforce the order of possession by getting a Writ from BC Supreme Court until the review is decided. Make sure you give your landlord a stamped copy of the application for review.
- Take the order of possession down to the BC Supreme Court Registry, and get a Writ of Possession from the Court. This is a very quick process.
- Once the Writ of Possession is issued, hire a court-appointed bailiff to evict you.

Being evicted by a court bailiff is a very stressful process. It means you have no control over the timeline for your move. The court bailiffs may move your belongings out on the street or they may put your belongings into a storage facility. If your belongings are put in storage, the bailiff may ask you to pay something towards the storage fees

before they will let you get your belongings out of storage. The bailiffs may even seize some of your belongings to go towards the bailiff fees if some of your belongings are financially valuable.

Your landlord can try to collect the cost of hiring the court bailiffs from you after the eviction, which can be several thousand dollars.

If your landlord is on track to get a Writ of Possession, we strongly recommend you get legal advice right away and – even more important – **work on finding a new place to live immediately.**

(B) Judicial review and the eviction process

If you don't have the option of filing a review application with the Residential Tenancy Branch, or if you filed a review application with the Residential Tenancy Branch and lost, you can consider filing a judicial review in BC Supreme Court.

A judicial review is a legal process in which you can ask a BC Supreme Court judge to set aside your order of possession. See Part 1 of this Guide for general information about judicial reviews.

However, simply filing a judicial review does not automatically put your eviction on hold. Unless you apply for, and obtain, a court order saying that your eviction is put on hold, your landlord can go ahead with the eviction while your judicial review is pending.

i. How does an interim stay affect an eviction?

In appropriate cases, a judge of the BC Supreme Court may decide to put an eviction on hold while a judicial review is pending. To do this, the court makes an order called an "interim stay".

It is up to the judge to decide in each case whether or not to order an interim stay. When a judge does decide to put an eviction on hold, she or he usually specifies that the interim stay is in effect only until a certain specific date or only until the court has dealt with the full application for judicial review.

ii. I'm filing a judicial review - do I need an interim stay?

We only recommend applying for an interim stay if the Residential Tenancy Branch decision you want to challenge relates to an eviction or some other urgent issue. If the Residential Tenancy Branch decision doesn't deal with an urgent issue, there is no need to apply for an interim stay. For example, if your eviction date is far enough in the future that your judicial review can be heard before the eviction date, you may not need an interim stay.

Because your interim stay application will be tied to your judicial review, it is very important to seriously consider whether filing a judicial review is the right choice in your case. Specifically:

1. You need to ask yourself whether there is a realistic chance that you will succeed on your application for interim stay and in your judicial review. See pages 1 to 4 of this

Guide for information to help you decide if you have a good case.

2. You also need to consider whether pursing an interim stay and a judicial review are worth the risks involved. Read "A warning about representing yourself" on page 10 of this Guide and keep in mind the risk of court costs. Keep in mind that if you lose your application for an interim stay, or even if you get an interim stay but then lose your judicial review, you risk losing any control over how and when you move once the court decision comes down. It may be possible for your landlord to hire a court bailiff very quickly to remove you from your rental unit.

3. Most importantly, consider whether it is better to spend your time preparing materials for your judicial review, or on finding a new place to live. Preparing a judicial review requires a large amount of paperwork and time, and is not guaranteed to succeed.

   Rather than preparing a judicial review, it may be worth trying to negotiate with your landlord for more time to move out. Your landlord may agree that you can stay in the rental unit for a certain amount of time after the eviction date to save the time and cost of responding to a judicial review or hiring court bailiffs to forcibly evict you.

iii. How does an interim stay fit into a judicial review?

It is not usually possible to get an interim stay without filing an application for judicial review. Therefore, this appendix explains how to apply for an interim stay **as part of a judicial review**. An interim stay is a temporary hold on your eviction until your judicial review can be heard. The main body of this Guide explains how to file an application for judicial review. Be sure to read the whole Guide, not just this appendix, if you are applying for an interim stay.

To ask the court for an interim stay of an order of possession, you need to:

- file an application for judicial review of the order of possession and the decision that it is based on; and
- make a special court application asking for an interim stay.

If the court gives you an interim stay, it will be important to set the hearing of your judicial review for sometime before the interim stays runs out. (See Part 7 of this Guide for how to set your judicial review down for hearing.) Otherwise, your landlord will be able to evict you once the interim stay runs out.

(C) Applying for a stay – deciding which process to use

If you decide to pursue a judicial review and ask for an interim stay to put your eviction on hold, the process will be different depending on how far away the eviction date is (see figure on page A-11 below). The "eviction date" is the date and time, listed on the order of possession, when you must give up your rental unit.

If you are applying for an interim stay, we recommend 2 different approaches depending on how much time you have left before your eviction date:

i. a REGULAR interim stay application; or
ii. a WITHOUT NOTICE interim stay application.

We have given a short description of each of these options in the next couple of pages.

To decide which option you should take, figure out **when you can have all of your court documents prepared, filed and served.** Consider these points:

1. It might take quite a while to prepare your court documents. This will affect how soon you can file and serve them.

2. If you cannot pay the court fees, you will have to speak to a judge or master about a fee waiver before you can file your documents. If you are filing at a smaller registry, there may be a delay before you can speak to a judge or master, which will determine when you can file your documents. You should talk to the registry to find out when you will be able to speak to a judge or master about your fee waiver so that you can file your documents.

i. REGULAR interim stay application - overview

This option is suitable when you have enough time to apply for an interim stay within the regular court timelines.

We recommend this approach if your eviction date is far enough away that **you can get all your court documents prepared, filed and served at least 2 weeks before the eviction date.** If you take this approach you will have to:

- Pick a hearing date that is on or before the eviction date, and put that date in your "notice of application" form;
- Prepare and file your court documents as soon as possible;

- Serve your documents at least 8 business days before the hearing date (see important note below);
- Go in front of a judge on the hearing date and ask for an interim stay; and
- Serve the interim stay order (if you get it) on your landlord.

Important note: *In calculating "at least 8 business days" before the hearing date, do not include either the day of the hearing, or the day you serve. Also, keep in mind that a "business day" is any day when the court registry is open (which usually means any week day that is not a statutory holiday). For example, if you are setting a hearing for a Wednesday, you will have to file and serve the court documents by the Thursday nearly two weeks earlier, assuming there are no statutory holidays those weeks.*

See section (D) below (pages A-12 to A-21) for a detailed description of how to do a REGULAR interim stay application.

ii. WITHOUT NOTICE interim stay application - overview

In this option, you will ask the court for an interim stay without giving your landlord and the other parties any formal legal notice of your application because you do not have time to do so within the regular court timelines.

We recommend this approach if the **effective date of the order of possession is less than 2 weeks away**. If you take this approach you will have to:

- Prepare and file your court documents as soon as possible; and
- Go in front of a judge, usually on the same day you file the court documents, and ask for an interim stay without notice to the other parties.

Important Note*: Do not intentionally wait until shortly before the eviction date to prepare your documents. If you are able to file a REGULAR interim stay application, you should do so. The WITHOUT NOTICE option is for when you do not have enough time to get a interim stay under the regular timelines.*

See section (E) below (pages A-22 to A-29) for a detailed description of how to do a WITHOUT NOTICE interim stay application.

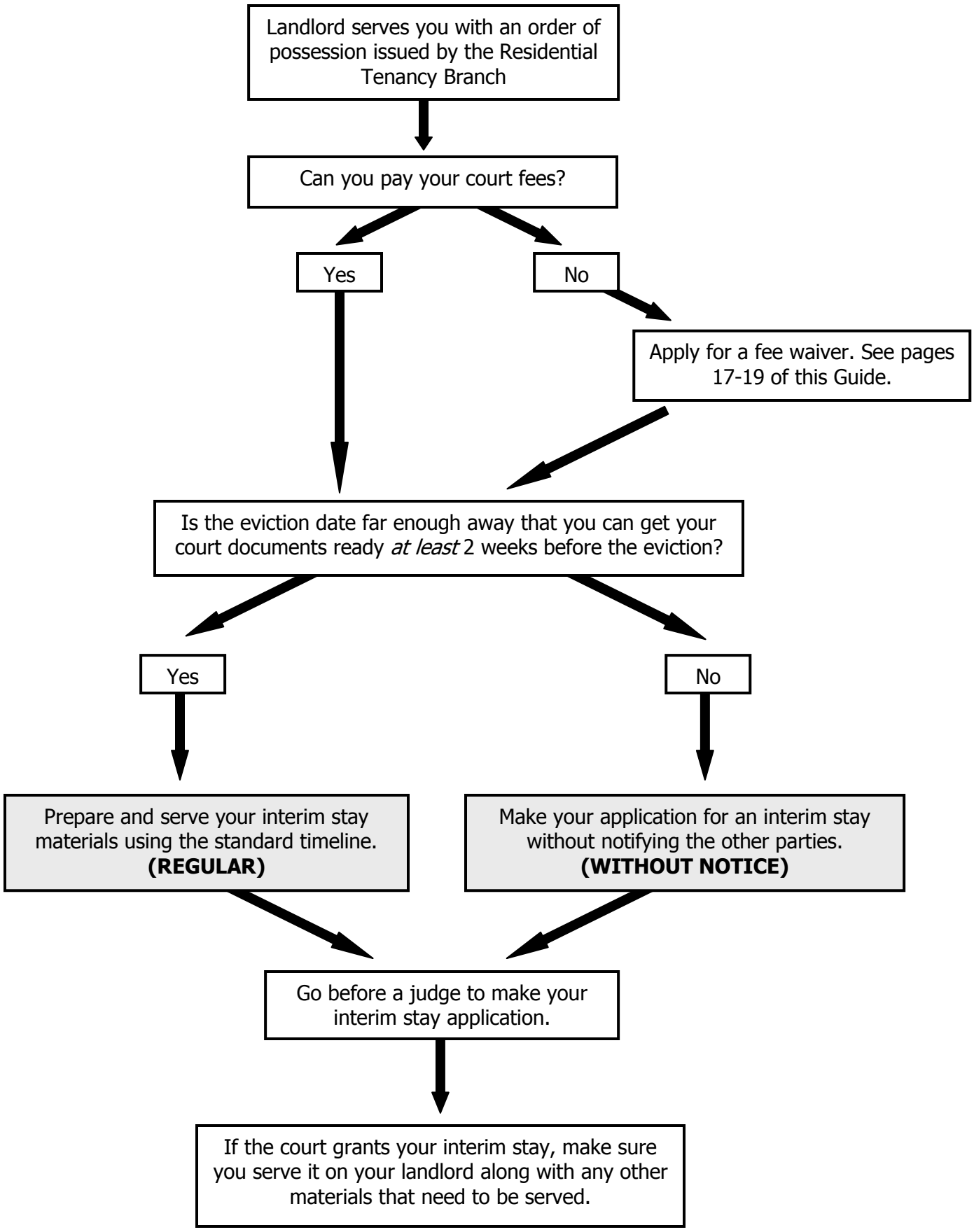
iii. How to use this appendix

Use the previous section and the table on the next page to figure out whether you need an interim stay application and if so whether you should do:

i. a REGULAR interim stay application; or
ii. a WITHOUT NOTICE interim stay application.

The remainder of this Appendix will go through these 2 ways of applying for an interim stay, and tell you what forms you will need. It will give you basic information about how to fill in the forms and what to do with them.

As in the main part of this Guide, we have prepared a sample version and a blank version of each form you will need. Use the sample forms as a guide and the directions on the forms to fill in the grey areas of the blank forms (making sure you remove the grey text).


Landlord serves you with an order of possession issued by the Residential Tenancy Branch
Can you pay your court fees?
Yes
No
Apply for a fee waiver. See pages 17-19 of this Guide.
Is the eviction date far enough away that you can get your court documents ready *at least* 2 weeks before the eviction?
Yes
No
Prepare and serve your interim stay materials using the standard timeline. **(REGULAR)**
Make your application for an interim stay without notifying the other parties. **(WITHOUT NOTICE)**
Go before a judge to make your interim stay application.
If the court grants your interim stay, make sure you serve it on your landlord along with any other materials that need to be served.

(D) REGULAR interim stay application

The eviction date is far enough away that you can get your documents prepared, filed and served *at least* 2 weeks before the eviction.

If you have enough time to prepare, file and serve your court documents by at least 2 weeks before the eviction date, we generally recommend a **REGULAR interim stay application**.

Using this approach you will:

- Pick a hearing date that is on or before the eviction date, and put that date in your "notice of application" form;
- Prepare and file your court documents as soon as possible;
- Serve your documents at least 8 business days before the hearing date;
- Go in front of a judge on the hearing date and ask for an interim stay; and
- Serve the interim stay order (if you get it) on your landlord.

In our sample forms and examples of what you should say to the judge on a REGULAR interim stay application, we have used the hypothetical case from page 14 of this Guide, *with the assumption that Don Smith needs an interim stay because he cannot have his judicial review heard before his eviction date on July 31, 2010, but Don will be able to file his court documents more than 2 weeks before the eviction date.*

i. Court documents for a REGULAR interim stay application

In addition to the basic materials for starting a judicial review (see Part 4 of this Guide), you will need to prepare the following extra documents to make a REGULAR interim stay application.

Prepare these documents at the same time when you are preparing your basic materials for starting the judicial review.

The notice of application form

This form tells the court, and the parties, that you are applying for an interim stay. It also sets a hearing date when you will ask the judge for the interim stay. Pick a hearing

date that is on or before the eviction date.

- **Form 13a: Blank Notice of Application for Interim Stay**
- **Form 13b: Sample Notice of Application for Interim Stay (REGULAR)**

The draft interim stay order

An interim stay order is the court's formal document stating that the court has ordered that your eviction is put on hold. It is helpful to the court if you can prepare a **draft** of the interim stay order that you will be asking for.

This draft order will give the judge a template to use on the day of your interim stay hearing. The judge can write in the details of any interim stay that he or she decides to grant.

- **Form 14a: Blank Interim Stay Order**
- **Form 14b: Sample Interim Stay Order (REGULAR)**

ii. Filing your court documents

Before filing your documents, review Part 5 of this Guide.

When you go to the court registry to file your documents, bring the following:

- your original notice of application plus at least 4 copies (enough for you, your landlord, the Director of the Residential Tenancy Branch, the Attorney General, and anyone else that was a party at the Dispute Resolution Hearing);
- all of the materials you will be filing to start your judicial review (see page 20 of this Guide);
- money to pay the $80 fee for filing your notice of application plus the $200 fee for filing your petition, OR the necessary forms to apply for a fee waiver (see pages 17-19 of this Guide); and
- your draft interim stay order.

Go to the civil registry desk. When you get to the front of the line at the court registry, tell the clerk that:

- you are representing yourself in a judicial review; and
- you are also applying for an interim stay of an order of possession.

If applicable, also tell the clerk that you are requesting a fee waiver. Follow the instructions in Part 5 of this Guide to file your documents, and if you are asking for a fee waiver follow the instructions on page 17-19.

When you are at the registry, ask the registry clerk to review or "vet" your draft interim stay order. The clerk might sign it, which will speed things along when you eventually go in front of a judge to ask for an interim stay.

After filing your documents, you should leave the courthouse with the following:

- **Petition** – at least 4 copies, stamped with a file number and a date stamp (usually inside a rectangle);
- **Affidavit** in support of your petition – at least 4 copies, stamped with the file number and a date stamp (usually inside an oval);
- **Notice of application for an interim stay** – at least 4 copies, stamped with the file number and a date stamp (usually inside an oval);
- **Order to waive fees**, if you obtained a fee waiver – at least one copy, stamped with the file number and an "Entered" stamp; and
- **Draft interim stay order** vetted by the registry.

If you applied for a fee waiver, you will probably have copies of the stamped requisition and affidavit for a fee waiver, too. Those are just for your records.

iii. Serving the documents

You will now need to serve each party listed in the "On Notice To" section of your petition with the following documents, using the procedure set out in Part 6 of this Guide:

- A copy of the filed and stamped petition;
- A copy of the filed and stamped affidavit in support of the petition; and
- A copy of the filed and stamped notice of application for an interim stay.

There is no need to serve the fee waiver materials or the draft interim stay order.

See Part 6 of this Guide for an explanation of how to properly serve different parties and how to draft a service cover letter (See Form 7).

You will need to serve your documents right away to give the other parties proper notice of your notice of application for an interim stay. <u>All parties need to be served</u>

with the documents at least 8 business days before the hearing date in your Notice of Application. In calculating "at least 8 business days" before the hearing date, do not include either the day of the hearing, or the day you serve. Also, keep in mind that a "business day" is any day when the court registry is open (which usually means any week day that is not a statutory holiday).

> **EXAMPLE:** If you are setting a hearing for a Wednesday, you will have to file and serve the court documents by the Thursday nearly two weeks earlier, assuming there are no statutory holidays those weeks.

iv. Preparing the application record

Before your interim stay hearing, you will need to prepare two copies of a binder called an "application record". This is a binder containing all the materials that the judge may want to look at in the interim stay application. The goal of the application record is to make it easy for the judge to find documents and to understand your interim stay application.

One copy of the application record will go to the judge and you will keep the other copy for your reference. You will also have to provide a copy of the index of your application record to all the other parties so that they can create their own application record that matches yours.

The other parties in your case might respond to your court documents by serving you with a document called an "application response" stating their position on your notice of application. They may also serve you with affidavits. These documents will need to go into the application record along with your documents.

Application records must contain:

- a title page with the style of proceeding;
- an index;
- a copy of your filed notice of application;
- a copy of any filed application responses;
- a copy of every filed affidavit that you or the respondents will be referring to at your application for an interim stay; and
- a copy of your filed petition.

If you wish, your application record can also contain your draft interim stay order.

You cannot put the following in your application record:

- affidavits proving service;
- copies of legal authorities; or
- any other documents, unless all parties agree.

Put each copy of your application record in a 3 ring binder. Tape the title page to the front of the application record binder, and make the index the first page inside the binder. It is a good idea to use tabs so that each document is separated and easy to find. Put the tab numbers on the index. Number all the pages of the application record consecutively (do not restart numbering at each tab; if there are 40 pages in the entire application record, pages should be numbered 1 to 40). Use copies of documents for the application record, not originals.

- **Form 15a: Blank Application Record Title Page**
- **Form 15b: Sample Application Record Title Page**

- **Form 16a: Blank Application Record Index**
- **Form 16b: Sample Application Record Index**

v. Filing your application record and serving the index

You will need to file one copy of your application record before 4:00 p.m. on the business day that is one full business day before the date set for the hearing. For example, if the hearing is set for a Wednesday, you will need to file the application record by 4:00 p.m. on the Monday of that same week (assuming there are no statutory holidays that week). If your hearing is set for a Monday, you will have to file the application record by 4:00 p.m. on Thursday (again, assuming there are no statutory holidays).

Because of storage constraints, the registry will not accept your application record more than 3 business days before your hearing.

The registry needs an extra copy of your notice of application attached to the application record. You should make an extra copy of your filed notice of application and highlight Part 1. Then use an elastic band to attach the highlighted copy of the filed notice of application to the front of the application record binder that you intend to file.

Take the application record to the court registry and tell them your hearing date and

say that you need to file the application record. They will stamp it and take the binder so that the judge will have it at your hearing. Once you have filed your application record, your hearing will automatically be set for the date on the notice of application.

You will also need to serve the other parties with a copy of <u>just the index</u> of your application record. You need to serve the index <u>before 4:00 p.m. on the business day that is one full business day before the date set for the hearing</u>. The other parties should already have copies of all the documents that belong in the application record, so the index will let them make their own binder that matches yours.

vi. Getting ready for the interim stay hearing

At your interim stay hearing, you will have to explain to a judge why it is fair for your eviction to be put on hold for a period of time.

To succeed in persuading a judge to put your eviction on hold you will usually have to make the following 3 points:

1. **Your judicial review raises a real problem with the Residential Tenancy Branch decision that led to the order of possession**. Pages 2 to 4 of this Guide explain what kinds of problems with a Residential Tenancy Branch decision may be valid grounds for a judicial review. If there is no real problem with the Residential Tenancy Branch decision, then it is unlikely that you will get an interim stay.

2. **You will suffer some type of "irreparable harm" if the eviction goes ahead right away.** This means harm that cannot be adequately compensated by money. Irreparable harm is more likely to occur if the eviction will force you to leave your home and you don't have anywhere else to go right away. A judge may also be more likely to find irreparable harm if children or other vulnerable people are living at your rental unit, or if you are particularly vulnerable for some reason.

3. **The "balance of convenience" favours granting a stay**. This means that, taking into account all sides of the situation, it is fairer to grant the stay than not to do so. Some points to consider:

    - The balance of convenience is more likely to favour an interim stay if it will not inconvenience your landlord too much. For example, it is helpful if the landlord has not yet rented your place to a new tenant, and if you are willing and able to keep paying rent while the interim stay is in effect. If you are being evicted for non-payment of rent, then it is helpful if you can pay any arrears owing and then keep paying rent during the interim stay.

- The balance of convenience is also more likely to favour an interim stay if you can show that an immediate eviction will cause serious harm to you or others.

- It is very helpful if you can ask the judge for an interim stay with a specific end date in mind (for example, asking for a two month interim stay). A judge may be less willing to give you a stay if you are just asking to have the eviction put off generally with no end date in sight.

Before you go to court for your interim stay application, think carefully about how each of these three points applies in your case. Get ready to tell the judge why, with these points in mind, you should get an interim stay.

You should also carefully read Part 2 (An introduction to representing yourself) and Part 9 (Preparing to present your case in court) in this Guide.

vii. The day of the interim stay hearing

Before you go to court on your interim stay application, **it is very important to read pages 32 to 33 from Part 9 of this Guide**, which explain when you need to get to court, how to find the right courtroom, and what to do when you get there.

On the day of the interim stay application, make sure you bring your Application Record and your draft Interim Stay Order, as well as all your other court documents.

Once you have found the right courtroom and given your name to the court clerk, wait for your name to be called.

When the clerk calls your name, go up to the podium and hand the clerk your draft interim stay order.

When everyone is ready, including the judge, introduce yourself and spell your last name slowly. Tell the judge that you are representing yourself and you are the petitioner in the judicial review. If any other parties are there, pause and let them introduce themselves as well.

The judge will then ask you to proceed with your application. You should then go through the following points:

- Tell the judge you are representing yourself in a judicial review of a Residential Tenancy Branch decision.

- Tell the judge that today you are applying for an interim stay of an order of

possession. Tell the judge the date when you are going to be evicted.

- If the other parties are not there, tell the judge how and when you served the other parties with your court materials.
- Tell the judge why you think it is appropriate to grant an interim stay:
  1. Explain how your judicial review raises a real problem with the Residential Tenancy Branch decision that led to the order of possession. Before you speak to the judge, think of a clear and concise way to explain this in a few sentences.
  2. Explain what harm you will suffer if the eviction goes ahead right away.
  3. Explain why it is not unfair to your landlord to grant you an interim stay.

Here is an example of how you might start to present your case to the judge on an interim stay application.

> *My name is Don Smith. I am representing myself as the petitioner in this judicial review. My judicial review involves the decision and order of possession issued by Arbitrator Hetter on June 25, 2010.*
>
> *Today I am asking the court for an interim stay of the decision and order of possession. I am a tenant, and the order of possession takes effect July 31, 2010 and evicts me from my home. I would like an interim stay until August 31, 2010, to give me time to have my judicial review heard.*
>
> *I served my petition, affidavit, and my notice of this application on my landlord, on July 13th. A lawyer for the Attorney General and the Residential Tenancy Branch has informed me that they will not be appearing in court today.*
>
> *Here are the reasons why I think it would be fair for the court to give me an interim stay to August 31, 2010:*
>
> ***Point #1.** My judicial review raises a real problem with the June 25, 2010 decision. Specifically, the problem is that I did not get a fair hearing. The Arbitrator went ahead with the hearing even though I explained that I did not get copies of my landlord's evidence. I did not know what the landlord's evidence was and I was not able to respond to it.*
>
> ***Point #2.** If the eviction goes ahead on July 31, 2010 I will be homeless. I have a low paying job and I have not been able to find a new place for August 1st. It is not fair for me to lose my home when I have a good case for judicial review.*

> ***Point #3.*** *It will not cause the landlord any real difficulty if the court orders that I can stay in my place until August 31, 2010. I can pay my rent for August. I am not causing any problems at the building. And as far as I know the landlord has not taken any steps to rent out my unit to someone else.*

The judge may interrupt you and ask you questions. Be patient and try to answer the questions honestly and simply. If you need a minute to find something, or if you don't understand what is being asked, politely tell the judge.

Once you are finished, any other parties present will have a chance to present their reasons why they do not think you should get an interim stay. It is important to listen quietly and not interrupt, even if you disagree. Take notes on what they are saying. When they are finished, the judge may give you a brief time to reply to what they said.

viii. The judge's decision on the interim stay

On an interim stay application, the judge will most likely decide on the spot whether to give you an interim stay, and if so how long it will be.

If the judge grants you an interim stay, tell him or her that you have given the clerk a draft interim stay order, and that the registry has reviewed ("vetted") it. Also tell the judge that there are spaces on the order that the judge can fill in if needed.

The judge may then sign the draft interim stay order and give it back to you.

> ***NOTE:*** *If you did not prepare a draft interim stay order before the hearing, or if the judge is not happy with the draft order you prepared, you will have to prepare the order quickly after the hearing using the method set out in Part 10 of this Guide. Pay attention to what the judge is saying when the order is made, and try to write it all down. If you have a friend with you, ask him or her to write it down as well. Generally, listen for (1) whether the court has given you an interim stay; (2) what the timeline is on the interim stay; and (3) whether you are required to do anything during the interim stay period.*

Assuming that the judge has filled in and signed the interim stay order and given it back to you, you should take it back down to the registry and give it to the registry staff. **Ask the registry to enter the order urgently**. The registry staff should be able to tell you when it will be ready for you to pick up, usually later that same day. In the meantime, ask the registry for a copy of the signed interim stay order for your records.

Do not leave the courthouse without a copy of the interim stay order stamped with the file number and an "Entered" stamp.

ix. Serving the interim stay order

If the judge granted you an interim stay order, it is essential that you serve the entered order on the other parties as soon as possible. **It is especially important that you serve the order on your landlord** to ensure your landlord doesn't try to evict you.

To serve the order, use the process set out in Part 6 of this Guide.

REMEMBER, the interim stay order does not resolve your eviction issue permanently! It only puts the order of possession on hold temporarily. This means it is very important that you either set your judicial review down for hearing, or find a new place to live, before the interim stay runs out.

(E) WITHOUT NOTICE interim stay application

The eviction date is less than 2 weeks away.

If your eviction date is less than 2 weeks away and you need an interim stay, you should do a **WITHOUT NOTICE interim stay application**, which means you will ask the court for an interim stay without giving the other parties any notice or warning of your application.

Using this approach you will:

- Prepare and file your court documents as soon as possible;
- Appear in front of a judge the same day you file the court documents and ask the judge for an interim stay; and
- Serve the interim stay order (if you get it) on your landlord.

Please note that you should only make a without notice application if you are very close to being evicted and you absolutely have to. The court does not like granting orders if some of the parties haven't had notice of the application. **If you are applying for an interim stay without notice and there are still several days to go before you are evicted, the court might tell you to serve the documents on the other side quickly and then come back on a later date to ask for an interim stay.**

Also keep in mind that if the court does grant you an interim stay without notice, the other parties can always apply to set aside the interim stay.

In our sample forms and examples of what you should say to the judge on a WITHOUT NOTICE interim stay application, we have used the hypothetical case from page 14 of this Guide *with the assumption that Don Smith needs an interim stay without notice because he is not in a position to file his court documents until July 29, 2010 and his eviction date is July 31, 2010.*

i. Court documents for a WITHOUT NOTICE interim stay

The notice of application form

This form tells the court, and the parties, that you are applying for an interim stay. It also sets a hearing date when you will ask the judge for the interim stay. The hearing date will be the date when you will be filing your documents.

- **Form 13a: Blank Notice of Application for Interim Stay**
- **Form 13c: Sample Notice of Application for Interim Stay (WITHOUT NOTICE)**

The draft interim stay order (without notice)

An interim stay order is the court's formal document stating that the court has ordered that your eviction is put on hold. It is helpful to the court if you can prepare a **draft** of the interim stay order that you will eventually be asking for.

This draft order will give the judge a template to use at your interim stay hearing. The judge can write in the details of any interim stay that he or she decides to grant. The order also leaves room for other orders the court may make. For example, the judge might order that you serve the other parties' documents by a certain date and come back to the court in a few days to speak to the interim stay again.

- **Form 14a: Blank Interim Stay Order**
- **Form 14c: Sample Interim Stay Order (WITHOUT NOTICE)**

ii. Getting ready for the WITHOUT NOTICE interim stay application

Before you go to court to file your documents and apply for a WITHOUT NOTICE interim stay, **it is very important to read pages 32-33 from Part 9 of this Guide**, which explain what to do and where to go and give general tips for your presentation to the court.

Then, get ready for your WITHOUT NOTICE interim stay application by following the instructions in section "vi" on page (A-17) above.

In addition to the instructions on page (A-17) above, you should think about how to convince the judge it is fair to give you an interim stay without notice to your landlord. Here are some things to consider:

- Did you receive the order of possession very recently? (If you have had it for a while and have delayed in applying for an interim stay, the judge might be less willing to grant you the interim stay.)
- Is the eviction coming up so soon that you truly don't have time to notify your landlord? (If the eviction is more than a few days away, the judge will probably

not give you a WITHOUT NOTICE interim stay, and will instead ask you to serve the court documents on short timelines and then come back another day to ask for the interim stay.)

- Have you tried to talk to your landlord about putting off the eviction? (If you have not made a reasonable effort to talk to your landlord about the eviction, the judge might be less willing to grant you an interim stay.)

You should also try to let your landlord know about your application and the date and time you intend to go to court to speak to a judge about an interim stay. Even if you don't have time to properly serve your landlord with all the court documents, the judge may be more likely to grant you an interim stay if you at least told your landlord about the application so he or she could attend the court hearing.

iii. Preparing the application record

Before you go to court to apply for a WITHOUT NOTICE interim stay, you will need to prepare and bring two copies of a binder called an "application record". This is a binder containing all the materials that the judge may want to look at in the interim stay application. The goal of the application record is to make it easy for the judge to find documents and to understand your interim stay application.

One copy of the application record will go to the judge and you will keep the other copy for your reference.

The registry will expect you to prepare an application record for a WITHOUT NOTICE interim stay application. However, if you do not have time to prepare an application record properly because your eviction will be taking place that day, go to the registry with your court documents for your application anyways. Tell the clerk that you have not been able to prepare the application record because your eviction is taking place that day and it is urgent that you go in front of a judge today. As an exception, the registry staff may allow you to make your application with only your court documents, but they may refuse to accept your court documents for filing and ask you to prepare the application record and then return.

Application records must contain:

- a title page with the style of proceeding;
- an index;
- a copy of your filed notice of application;
- a copy of any filed application responses;

- a copy of every filed affidavit that you or the respondents will be referring to at your application for an interim stay; and
- a copy of your filed petition.

If you wish, your application record can also contain your draft interim stay order.

You cannot put the following in your application record:

- affidavits proving service;
- copies of legal authorities; or
- any other documents, unless all parties agree.

Put each copy of your application record in a 3 ring binder. Tape the title page to the front of the application record binder, and make the index the first page inside the binder. It is a good idea to use tabs so that each document is separated and easy to find. Put the tab numbers in the index. Number all the pages of the petition record consecutively (do not restart numbering at each tab; if there are 40 pages in the entire application record, pages should be numbered 1 to 40). Use copies of documents for the application record, not originals.

- **Form 15a: Blank Application Record Title Page**
- **Form 15b: Sample Application Record Title Page**

- **Form 16a: Blank Application Record Index**
- **Form 16b: Sample Application Record Index**

iv. Filing your court documents

Once you have prepared your documents and finished getting ready for the WITHOUT NOTICE interim stay application, it is time to go to the courthouse to file your documents and then apply for your interim stay.

Before filing your documents, review Part 5 of this Guide. When you go to the court registry to file your documents, bring the following:

- your original notice of application plus at least 4 copies (enough for you, your landlord, the Director of the Residential Tenancy Branch, the Attorney General, and anyone else that was a party at the Dispute Resolution Hearing);
- all of the materials you will be filing to start your judicial review (see page 20 of

this Guide);

- your application record (see the previous section);
- money to pay the $80 fee for filing your notice of application plus the $200 fee for filing your petition, OR the necessary forms to apply for a fee waiver (see pages 17 to 19 of this Guide); and
- your draft interim stay order (without notice).

Go to the civil registry desk. When you get to the front of the line, tell the clerk at the desk that:

- you are representing yourself in a judicial review;
- you are also applying, **without notice**, for an interim stay of an order of possession; and
- if applicable, also tell the clerk that you are requesting a fee waiver.

Follow the instructions in Part 5 of this Guide to file your documents, and if you are asking for a fee waiver follow the instructions on pages 21 to 22.

When you are at the registry, ask the registry clerk to review or "vet" your draft interim stay order. If you are also applying for a fee waiver, you will have your draft order to waive fees to get "vetted" at the same time. The clerk might sign the order(s), which will speed things along when you eventually go in front of a judge.

The registry staff will tell you when you can speak to a judge. Depending on the registry, you might be able to speak to a judge right away, or you might have to wait. Make sure the registry understands that your situation is urgent.

v. A note on applying for a fee waiver and a WITHOUT NOTICE interim stay

If you are applying for a fee waiver on a WITHOUT NOTICE interim stay application, read the instructions on pages 21 to 22 and keep them in mind for the fee waiver aspect.

Be aware that there are two different approaches the registry might take if you are applying for a fee waiver and an interim stay WITHOUT NOTICE:

A. The registry might send you to a courtroom to deal with your fee waiver application and your WITHOUT NOTICE interim stay application at the same time;

OR

B. The registry might (1) send you to a courtroom to deal with your fee waiver application so you can file your documents, and then (2) send you back to a courtroom, once your documents are filed, to deal with your WITHOUT NOTICE interim stay application separately.

The next section will explain how to handle your WITHOUT NOTICE interim stay application, whether or not it is combined with a fee waiver application.

- If the registry has taken approach A above (telling you to deal with your fee waiver application and your WITHOUT NOTICE interim stay application at the same time), follow the special notes in *[italics and brackets]* in the next sections, which contain the information you will need for the fee waiver aspect.
- If the registry has taken approach B above (telling you to deal with your fee waiver application and your WITHOUT NOTICE interim stay application separately), we recommend you (1) follow the guidelines on pages 21-22 for your fee waiver application, and then (2) follow the sections below for your WITHOUT NOTICE interim stay application, ignoring the information in *[italics and brackets].*
- If you are not applying for a fee waiver, just follow the section below for your WITHOUT NOTICE interim stay application, ignoring the information in the *[italics and brackets].*

vi. The WITHOUT NOTICE interim stay hearing

The registry will tell you what courtroom to go to. They may tell you to carry your documents up to that court room or they may send them up for you.

When you get to the courtroom, you may find court already in session. If so, quietly go up to the side of the clerk's desk at the front of the courtroom and hand her or him your documents. Or, if the registry has sent the documents up for you, just hand the clerk a piece of paper with your name written on it and the words "without notice interim stay application".

Other cases may be scheduled for the same courtroom so you may have to wait until your case is called. If this is the case, go sit in the gallery (the seats in the back of the courtroom) and wait. Be patient and do not disrupt the court during other cases.

Once your name is called, go up to the podium and hand the clerk your draft interim stay order. *[**IF APPLYING FOR A FEE WAIVER:** Also hand the clerk your draft order to waive fees.]*

The judge will then ask you to proceed with your application. You should then go through the following points:

- Tell the judge you are representing yourself in a judicial review. If any other party shows up because you've told them about this hearing, pause and let them introduce themselves.

- Tell the judge that today you are applying for an interim stay of an order of possession, **without notice** to the other parties.

- *[**IF APPLYING FOR A FEE WAIVER**: Also tell the judge you are applying for a fee waiver. You will then need to explain to the judge your financial situation and why you cannot afford the filing fees (see the instructions on pages 21-22).]*

- Tell the judge the date when you are going to be evicted.

- Tell the judge why you think it is appropriate for you to be applying **without notice.** For example, you should tell the judge if any of the following apply:

  - You just recently received the order of possession;

  - The order of possession takes effect in the next few days; or

  - You have tried to talk to your landlord about putting off the eviction but you haven't been able to reach him or her.

- Then, tell the judge why you think it is appropriate to grant an interim stay:

  1. Explain how your judicial review raises a real problem with the Residential Tenancy Branch decision that led to the order of possession. Before you speak to the judge, think of a clear and concise way to explain this in a few sentences.
  2. Explain what harm you will suffer if the eviction goes ahead right away.
  3. Explain why it is not unfair to your landlord to grant you an interim stay.

The judge may interrupt you and ask you questions. Be patient and try to answer the questions honestly and simply. If you need a minute to find something, or if you don't understand what is being asked, politely tell the judge.

Once you are finished, if any other parties are present, they will have a chance to give their reasons why they do not think you should get an interim stay. It is important to listen quietly and not interrupt, even if you disagree. Take notes on what they are saying. When they are finished, the judge may give you a brief time to reply.

vii. The judge's decision on the WITHOUT NOTICE interim stay application

On a without notice interim stay application, the judge will most likely decide on the spot whether to give you an interim stay, and if so how long it will be.

If the judge grants you an interim stay, tell her or him that you have given the clerk a draft interim stay order, and that the registry has reviewed ("vetted") it. Also tell the judge that there are spaces on the order that the judge can fill in if needed. The judge may then sign the draft interim stay order and give it back to you.

*[**IF APPLYING FOR A FEE WAIVER**: Tell the judge that you have given the clerk a draft order to waive fees, and that the registry has vetted it. Make sure you get the signed order back from the judge, and take it to the registry.]*

Be aware that rather than giving you an interim stay, the judge may order you to serve your documents quickly on the other side and come back in the next day or two to apply again for an interim stay. Make sure you look at the order the judge signs: she or he may have filled in some of the blanks on the order, and it might require you to do specific things.

> ***NOTE:*** *If you did not prepare a draft interim stay order before the hearing, or if the judge is not happy with the draft order you prepared, you will have to prepare the order quickly after the hearing using the method set out in Part 10 of this Guide. Pay attention to what the judge is saying, and try to write it all down. If you have a friend with you, ask him or her to write it down as well. Generally, listen for (1) whether the court has given you an interim stay; (2) what the timeline is on the interim stay; and (3) whether you are required to do anything during the interim stay period.*

After the judge has filled in and signed the order(s) and given it back to you, you should take it back down to the registry and give it to the registry staff. **Ask the registry to enter the interim stay order urgently**. The registry staff should be able to tell you when it will be ready for you to pick up, usually later that same day. In the meantime, ask the registry for a copy of the signed order for your records.

Do not leave the courthouse without a copy of the interim stay order (or other order, if the court granted something other than an interim stay). The order should be stamped with the file number and an "Entered" stamp.

viii. *Serving the interim stay order*

Follow the instructions in section "ix" on page (A-21) above for serving the court's interim stay order (or other order) on your landlord.

IMPORTANT: If you have obtained an interim stay without notice, your landlord can apply to have it set aside.

ALSO IMPORTANT: an interim stay order does not resolve your eviction issue permanently! It only puts the order of possession on hold temporarily. This means it is very important that you either set your judicial review down for hearing, or find a new place to live, before the interim stay runs out.