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### **WORKERS' COMPENSATION PRACTICE IN ALBERTA**

**William Ostapek**

**Release No. 3, September 2022**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Workers' Compensation Practice in Alberta, 2<sup>nd</sup> Edition, combines both the theory and practice of workers' compensation into one succinct resource. It provides detailed interpretive and analytical commentary on the Alberta workers' compensation legislation, together with annotations of the Act itself, as well as helpful precedent forms.

This release includes updates to Chapter 7 — JUDICIAL REVIEW AND JUDICIAL APPEAL and Appendix F — STANDARD OF REVIEW CHART. The Index has also been updated.

## Highlights

- Material in this release includes:

### **CHAPTER 7 — JUDICIAL REVIEW AND JUDICIAL APPEAL**

— The application of reasonableness review post-Vavilov and the tension between a reviewing court reweighing evidence versus delving into the internal logic of a decision is illustrated in *Zarooben v. Workers' Compensation Board*, 2022 ABCA 50, upholding *Zarooben v. Workers' Compensation Board*, 2021 ABQB 232. In determining that the decision of the Appeals Commission was unreasonable the reviewing court and Court of Appeal found that the Commission had not taken steps to resolve evidentiary inconsistencies where it could have done so. Additionally, both courts found that the Commission failed to consider the possibility that the worker's difficult behaviours were a result of his workplace injury. Because of these deficiencies the Commission's decision was found not to fall within the range of possible, acceptable outcomes which were defensible with respect to the facts and law and was therefore not reasonable..

**APPENDIX F — STANDARD OF REVIEW CHART**— This table is intended to provide general guidance about how reviewing courts have applied standard of review analysis to workers' compensation cases. The table includes cases that apply the standard of review analysis formulated in *Dunsmuir v. New Brunswick*, [2008] S.C.J No. 9 and the analysis formulated in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Cases are divided according to the derivation of the standard of review analysis they use and are listed in chronological order with cases using the Dunsmuir analysis listed first, followed by those using the *Vavilov* analysis.

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