The British Columbia Administrative Tribunals Act and Administrative Arbitration Design Consideration

By Stephen Antle
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INTRODUCTION

This paper addresses two loosely connected topics: a review of the British Columbia Administrative Tribunals Act, S.B.C. 2004, c. 45 (Appendix A to this paper), and an introduction to the “design considerations” for arbitration in the administrative law context.


THE BRITISH COLUMBIA ADMINISTRATIVE TRIBUNALS ACT

Background

The Administrative Tribunals Act is a result of the British Columbia government’s comprehensive review of the province’s administrative justice system in the Administrative Justice Project.

B.C.’s administrative tribunals were said to be originally intended as an effective alternative to the courts. They were intended to be easier to access (including not requiring representation by lawyers), less costly and more timely than the courts, and to have specific subject matter expertise. The Project arose from concerns expressed by participants in the B.C. administrative justice system that the province’s tribunals were in...
danger of ceasing to be such an effective alternative. Among the perceived reasons for that were the confusion for the public (and sometimes for lawyers) caused by the wide diversity of the tribunals’ powers and procedures. The provincial government was also concerned to efficiently deliver an affordable public service in this area.

The Project was initiated by the provincial attorney general in July 2001. Its terms of reference called for systemic reform of administrative institutions to ensure they met the needs of the people they served, were open and transparent, had modern and relevant mandates and were able to carry out those mandates effectively. The Project’s objective was an administrative justice system that would provide high quality service, reflect the government’s core values and principles, and achieve the “right” balance between independence and accountability.

In July 2002 the Project released a white paper containing more than 50 recommendations, including the enactment of the *Administrative Tribunals Act.*


**Basic Concepts**

The novelty of the *Administrative Tribunals Act* is that it is not a stand-alone statute. It has no effect by itself. It does not create any new administrative tribunal. It does not directly give any existing administrative tribunal any new powers.

What the Act does is provide a “menu” of tribunal powers. It then gives some of those powers to specific tribunals, not directly but by amending each tribunal’s enabling legislation. For example, s. 182 of the Act added s. 245.1 to the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, providing:

> Sections 1, 11, 13–15, 28–32, 35(1)–(3), 37, 38, 42, 44, 48, 49, 52, 55-58, 60(a) and (b) and 61 of the Administrative Tribunals Act apply to the appeal tribunal.
Similarly, s. 105 of the Act repealed s. 32 of the *Human Rights Code*, R.S.B.C., 1996, c. 210 and replaced it with the following:

> Sections 1, 4–10, 17, 29, 30, 34(3) and (4), 45, 46, 48–50, 55–57, 59 and 61 of the Administrative Tribunals Act apply to the tribunal.

No other Canadian province appears to have taken quite this approach.

The Ontario *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 sets out a broad range of powers for administrative tribunals. But it gives all those powers to all provincial tribunals which exercise a “statutory power of decision” under provincial legislation and which are required to hold a hearing before making a decision. It does not attempt to customize the tribunals’ powers by “picking and choosing” from a “menu”.

The Alberta *Administrative Procedures Act*, R.S.A. 2000, c. A-3 does permit the provincial cabinet to designate “persons authorized to exercise statutory powers” as being subject to the Act, and to designate particular provisions of the Act that apply to them. But the Act includes only a very limited menu of basic procedural powers. Even if all those powers applied to a particular tribunal, it would have to have many others to function.

The Quebec *Act Respecting Administrative Justice*, R.S.Q. 1996, c. J-3 sets out some basic legal principles applicable to all provincial administrative tribunals, but detailed procedural powers only for the new Administrative Tribunal of Quebec which it creates to deal with proceedings brought against other administrative tribunals.

Note that because the *Administrative Tribunals Act* is provincial legislation it applies only to provincial, not federal, tribunals. Nonetheless, the Act does apply to the British Columbia Review Board. Although this tribunal is established under the Criminal Code, appointments to it are made by the provincial cabinet. Section 62 of the Act gives some of the menu of tribunal powers to this tribunal.
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Appointments
Sections 2 through 10 of the Act concern the appointment of members of administrative tribunals.

These provisions are not the focus of this paper. Suffice it to say that they provide for:

- the appointment of chairs and members of tribunals after “a merit-based process”;
- a consultative role for the chairs of tribunals in the appointment of their members;
- appointments, and reappointments, for fixed terms;
- the imposition on the chairs of tribunals of responsibility for the tribunal’s effective management and operation, and for the organization and allocation of work among their members.

These provisions also address:

- the appointments of acting chairs;
- the absence or incapacity of members;
- the temporary appointment of members;
- the termination of chairs and members for cause;
- the remuneration and benefits of members.

The Menu of Powers
Sections 11 through 61 of the Administrative Tribunals Act set out the menu of tribunal powers.
Although these are said to be “modern” powers, with the significant exceptions discussed below seems to be little new here. Most tribunals already had most of these powers, either expressly in their enabling legislation or under common law.

What is new in this menu is an attempt to standardize the language conferring those powers among the province’s many tribunals.

It is important to remember that the Act chooses for each tribunal a subset of the powers in the menu, and gives it to that tribunal by amending the tribunal’s enabling legislation.

While I have not conducted an exhaustive analysis, I expect that few tribunals in the province have been given precisely the same set of powers.

No tribunal has all the powers on the menu. If nothing else, some are different options for dealing with the same issue. For example ss. 22 and 23 are different procedures for how tribunal decisions may be appealed. Section 22 is a procedure including the payment of a prescribed fee. Section 23 is a virtually identical procedure where no fee is payable.

As well, any tribunal can (and most probably do) have powers in addition to any of those listed in the menu. The Act may give them powers listed in the menu but with a variation. They may have been given powers in their own enabling legislation or regulations, which the Act has not repealed or amended. They may have powers under common law.

One unfortunate side effect of the essential “selection from a menu” concept of the Act is that it is no longer possible (if it ever was) to consult any single source to find all the powers of a particular tribunal. It is certainly not enough to consult the provision of the Act amending the tribunal’s enabling legislation and the list of the powers from the menu given to that tribunal.

To determine what powers a particular tribunal has one must now consult:

- the tribunal’s enabling legislation and regulations;
• the Act’s amendment of the enabling legislation and the list of powers from the menu thereby given the tribunal;
• the tribunal’s own rules (if any);
• any cabinet regulations under s. 60 of the Act (see below) repealing or amending the tribunal’s rules;
• the tribunal’s practice directives; and
• the common law.

The Act is not responsible for all this complexity. But it has added another layer to it, and foregone the opportunity to simplify it.

Another important consequence of the Act’s fundamental concept of amending specific tribunal’s enabling legislation to give them selections of powers from the menu is that until the Act amends a particular tribunal’s enabling legislation that tribunal has none of the powers in the menu. While the vast majority of the province’s tribunals have been given some of the powers in the menu in this way, the enabling legislation of the British Columbia Securities Commission, the Environmental Appeal Board, the Financial Institutions Commission and the Forest Appeals Commission has not yet been amended. Those important tribunals therefore have as yet none of the powers in the menu (at least not by virtue of the Act).

Another important point flowing from the Act’s basic conception is that the amendment of a power listed in the menu will automatically amend that power for each tribunal whose enabling legislation has been amended to incorporate it. That is apparently the provincial governments’ plan for amending these powers, when that becomes necessary.

Some of the province’s major administrative tribunals - the Labour Relations Board, the Workers Compensation Appeal Tribunal and the Property Assessment Appeal Board -
have said that the powers given them by the Act are really nothing new, and they expect no significant change in their practice and procedure. Some of the province’s smaller administrative tribunals may experience a greater change in their procedures.

**Standards of Judicial Review**

There are two aspects of the menu of powers which are new, and which raise significant issues. The first has to do with standards of judicial review.

First, s. 57 of the Act sets out a default period of 60 days from the date of a tribunal’s decision to commence an application for judicial review, subject to extension by the court. This is brand new and a significant change to British Columbia administrative law practice. Previously, under the British Columbia *Judicial Review Procedure Act*, there was no limitation period for a judicial review application.

More importantly, ss. 58 and 59 of the Act legislate standards of judicial review. These standards are also brand new. They differ significantly from the existing common law.

Section 58 deals with tribunals protected by privative clauses. It provides that such tribunals must be considered to be “expert” in relation to all matters over which they have exclusive jurisdiction.

This provision applies to the Agricultural Land Commission, Community Care and Assisted Living Appeal Board, Employment Assistance Appeal Tribunal, Employment Standards Tribunal, Farm Industry Review Board, Hospital Appeal Board, Industry Training Appeal Board, Labour Relations Board, Manufactured Home Park Tenancy Arbitrators, Parole Board, Passenger Transportation Board, Residential Tenancy Arbitrators, Safety Standards Appeal Board and Workers Compensation Appeal Tribunal.

Sub-section 58(2) sets the standard for the judicial review of decisions of such tribunals:

- patent unreasonableness, for findings of fact and law, and for exercises of discretion within the tribunal’s exclusive jurisdiction;
• fairness, for questions of natural justice and procedure; and

• correctness, for all other matters.

Moreover ss. 58(3) expressly defines patent unreasonableness in the context of a discretionary decision:

• arbitrariness or bad faith;

• improper purpose;

• entirely or predominantly based on irrelevant factors; or

• failing to take statutory requirements into account.

The other common law justifications for a court interfering with a tribunal’s exercise of discretion – such as fettering discretion and failing to consider relevant evidence – are not included in this definition.

Note that ss. 58(3) does not apply to the Labour Relations Board, leaving patent unreasonableness in the context of a discretionary decision by that tribunal undefined by the Act.

In Basura v. British Columbia (Workers’ Compensation Board), [2005] B.C.J. No. 590, the British Columbia Supreme Court noted that ss. 58(3) defines patent unreasonableness only in the context of discretionary decisions. The court held that that appears to leave the common law definition of patent unreasonableness in place for questions of mixed fact and law (and presumably for findings of fact and law as well). The court then applied the Supreme Court of Canada’s “pragmatic and functional approach” to determine that patent unreasonableness, but patent unreasonableness as defined by the common law, was the appropriate standard of review for the question of mixed fact and law before it.
Section 59 goes through the same exercise of setting the standard of judicial review for tribunals without the protection of a privative clause:

- absence of evidence or unreasonableness, for findings of fact;
- patent unreasonableness, for exercises of discretion (defined in the same way as in s. 58(3));
- fairness, for issues of natural justice and procedure; and
- correctness, for all other issues (presumably including findings of law).

This provision applies to the Financial Services Tribunal, Human Rights Tribunal, Mediation and Arbitration Board and Mental Health Review Panels.

It will be interesting to see how the courts will interpret these standards. According to Macaulay and Sprague, their intent is to remove the need for the pragmatic and functional approach to determining the appropriate standard of review. What use will the courts make in applying these standards of the voluminous and complex common law on standards of judicial review? What will be the effect of the Supreme Court of Canada’s pronouncements on those issues?

In *Public Service Alliance of Canada, Local 05/20500 v. British Columbia (Labour Relations Board)*, [2005] B.C.J. No. 848, the British Columbia Supreme Court considered the standard of judicial review of the Labour Relations Board’s decisions that it had jurisdiction to issue a partial revocation of bargaining rights and that it declined to rule on objections to its policy in that regard. The parties agreed that s. 58 of the Act applied and that it required the second issue, which concerned natural justice and the right to a fair hearing, be decided on the basis of whether the Board acted fairly. The Board argued, relying on earlier case law, that its decision on the partial revocation was entitled to judicial deference and to be reviewed on a standard of correctness. The Court disagreed, holding that the intent of the Act was to codify the standard of review with respect to the tribunals to which it applied, to eliminate the need to engage in the
pragmatic and functional analysis and to simplify determining standards of review. The Court held that the Board’s power to order a partial revocation of bargaining rights was a matter going to jurisdiction, which s. 58(2) required to be reviewed on a standard of correctness.

This legislated standard of judicial review aspect of the Act raises the possibility of similar tribunals in different provinces (labour relations boards, workers compensation tribunals, environmental tribunals) having their decisions judicially reviewed under different standards. What will the Supreme Court of Canada make of that?

**Constitutional Issues**

The second significant new aspect of the menu of tribunals’ powers has to do with the tribunals’ powers to deal with constitutional and Canadian Charter of Rights and Freedoms issues.

The menu of powers includes three which deal with this issue:

- s. 43 gives a tribunal jurisdiction to determine all constitutional questions that arise in any matter before it (or to refer them to the courts by stated case);

- s. 45 gives a tribunal has jurisdiction to determine all constitutional questions that arise in any matter before it (or to refer them to the courts by stated case), except those relating to the Canadian Charter of Rights and Freedoms; and

- s. 44 provides that the tribunal has no jurisdiction over any constitutional questions which may arise before it.

Of all the administrative tribunals in the province, only the Labour Relations Board has now been given the jurisdiction to determine all constitutional questions which may arise
before it (s. 43). As I understand it, when the Securities Commission is given powers under the Act it will also be given that power. But those tribunals will be the only two.

The Employment Standards Tribunal, Farm Industry Review Board and Human Rights Tribunal have been given the jurisdiction to determine all constitutional questions which may arise before them other than those relating to the Charter (s. 45).

The rest of the province’s administrative tribunals have not been given any jurisdiction over constitutional or Charter questions.

**Other Menu Powers**

The next section of this paper is a brief review of the less controversial procedural powers in the *Administrative Tribunals Act’s* menu.

Sections 11 through 13 of the Act give a tribunal powers to control its own processes. The tribunal may make rules respecting its practice and procedure, which it must make accessible to the public. The tribunal must issue practice directives respecting the usual time period for completing a proceeding and procedural steps within it, and the usual time for releasing its decision and reasons. The tribunal may issue other practice directives. The tribunal must also make these practice directives accessible to the public. But, interestingly, it is not bound by them.

Sections 14 through 16 give a tribunal powers to make orders, including interim orders, consent orders and any order it considers necessary to control its proceedings.

Section 17 requires a tribunal to order that a withdrawn proceeding be dismissed, and enables it to make an order giving effect to a settlement.

Section 18 gives a tribunal the power to sanction failure to comply with its procedures by scheduling a hearing, continuing with a proceeding and making a decision based on the information before it, and dismissing a proceeding.

Sections 19 through 21 deal with notice and service by tribunals, including permitting a tribunal to notify numerous parties by public advertisement. They do not deal with
service of documents by parties. That is governed by the tribunals’ enabling legislation or rules, or the common law.

Sections 22 through 25 deal with the exercise of existing rights of appeal from one tribunal to another. They do not create new rights of appeal, or deal with appeals to the courts. Section 24 provides a default period of 30 days from the decision being made to file a notice of appeal. None of the province’s major administrative tribunals have yet been given this power. This is a new provision, and one which administrative lawyers should obviously keep a careful eye on.

Section 25 provides that an appeal does not operate as a stay of the decision under appeal unless the tribunal so orders.

Sections 26 and 27 give a tribunal power over its own administrative organization.

Sections 28 and 29 give a tribunal the power to appoint someone (a member or staff of the tribunal, or someone else) to conduct a “dispute resolution process”, that is a confidential and without prejudice process to facilitate the settlement of one or more of the issues in dispute. Documents in evidence in such a process cannot be disclosed in any other proceeding (other than a criminal proceeding).

This provision is new. It provides an interesting opportunity to incorporate alternative dispute resolution processes in the administrative law process. However, of the province’s major administrative tribunals, only the Utilities Commission and Workers Compensation Appeal Tribunal now have this power.

Section 30 sets out the requirement that tribunal members faithfully, honestly and impartially perform their duties and not, except in the proper performance of them, disclose to any person any information obtained in their capacity as members.

Section 31 gives a tribunal power to dismiss all or part of a proceeding for various reasons, including that it is frivolous, vexatious, trivial or gives rise to an abuse of process, that the applicant failed to diligently pursue the proceeding, that the applicant failed to comply with an order of the tribunal (this is in addition to the sanctions in s. 18),
and that there is no reasonable prospect the proceeding will succeed. This gives the tribunal both the ultimate sanction of dismissing a proceeding for failure to comply with its procedural orders and the ability to summarily dismiss claims with no reasonable prospect of success.

Section 32 gives parties to an administrative proceeding the right to be represented by counsel or an agent.

Section 33 permits a tribunal to allow interveners under certain conditions, and to limit their participation.

Section 34 gives a tribunal power to summon witnesses to give evidence and produce documents.

Section 35 gives a tribunal power to transcribe or tape record its proceedings. The Act is silent about the parties’ (and the public’s) access to such recordings.

Section 36 gives a tribunal power to hold any combination of written, electronic and oral hearings.

Section 37 gives a tribunal power to consolidate proceedings, hear proceedings at the same time, hear proceedings one after another and stay one proceeding until the determination of another.

Section 38 gives parties the power to call, examine and cross examine witnesses and to present evidence and submissions, and a tribunal the power to limit examination or cross-examination of a witness, and to question a witness itself.

Section 39 gives a tribunal power to adjourn proceedings, and sets out five non-controversial factors to which it must have regard in doing so.

Section 40 gives a tribunal power to receive evidence. It can receive any evidence it considers relevant, necessary and appropriate, whether or not admissible in court. It
may not receive evidence which would be inadmissible in court because of an evidentiary privilege.

Sections 40 and 41 provide that, while a tribunal’s oral hearing must generally be open to the public, it may, in certain situations, exclude the public or direct that evidence be received in confidence.

Section 47 gives a tribunal power to award costs of a proceeding.

Section 48 gives a tribunal power to make orders necessary for the maintenance of order at a hearing.

Section 49 gives a tribunal power to apply to court to have the court hold in contempt a witness who refuses to give evidence or a person who does not comply with an order to maintain order at a hearing.

Sections 50 through 53 require a tribunal to make its final decisions in writing, to give reasons for them and to make them accessible to the public.

Section 54 provides that a party may file a certified copy of a tribunal’s final decision in court, giving it the same effect as a judgment of the court.

Sections 55 and 56 provide that tribunal members, persons acting under their direction and persons conducting the dispute resolution processes referred to above, cannot be required to testify about the discharge of their duties, and that tribunals cannot be sued for damages arising from anything done or omitted in the performance of their duties, unless done in bad faith.

Section 60 (referred to above) permits the provincial cabinet to make regulations prescribing a tribunal’s rules of practice and procedure, repealing or amending rules made by the tribunal, prescribing tariffs of fees with respect to proceedings, prescribing the circumstances in which the tribunal may award costs, and prescribing tariffs of costs.
Section 61 provides that the British Columbia *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165, does not apply to personal notes, communications or draft decisions of tribunal members or persons conducting dispute resolution processes, or to information received by the tribunal while the public was excluded, transcripts and tape recordings of proceedings, documents submitted in hearings, and decisions of tribunals, to which the public has access.

**CONCLUSION**

It remains to be seen whether the *Administrative Tribunals Act* will accomplish the attorney general’s goals of an administrative justice system which provides high quality services, reflects the government’s core values and principles, and achieves the “right” balance between independence and accountability, so that it is an effective alternative to the courts.

After about a year, reviews appear mixed. British Columbia’s larger administrative tribunals seem to be the view of the Act will make little significant difference to their procedures. Some of the province’s smaller tribunals may see much greater change.

The concern has been expressed by counsel that the Act has actually increased the complexity of tribunal powers and procedures which was perceived as part of the problem, by adding another enactment which must be reviewed to get the full picture of any given tribunal’s powers and procedures.

**ADMINISTRATIVE ARBITRATION DESIGN CONSIDERATIONS**

**Introduction**

This portion of this paper is neither a comprehensive discussion of arbitration nor a detailed consideration of when it might be appropriate in an administrative law context. Rather, it is a discussion about the factors one should consider in designing an arbitration to fit the administrative law context and to achieve arbitration’s potential benefits.
Potential Benefits

Why would an administrative tribunal consider including arbitration in its procedures, or a lawyer using it to resolve an administrative dispute? What are the potential benefits of arbitration?

Because arbitration generally is, or at least can be, a much simplified version of litigation, even administrative litigation, it has the potential to resolve disputes relatively quickly.

For the same reasons, arbitration also has the potential to be more cost effective than litigation. However, depending on the economics of the dispute, it may be important to remember that in arbitration the parties must pay directly the fees of the arbitrator and the logistical costs of whatever space, reporting agency, etc. they require, rather than having those sorts of costs paid by the taxpayers at large as in litigation.

Generally speaking, rights of appeal from arbitral awards are much more limited than appeals from trial decisions and even decisions of administrative tribunals. This can provide an element of increased finality, which may be desirable.

Because it is generally possible for parties to choose, or at least influence the choice of, an arbitrator, they may be able to ensure their arbitrator possesses expertise they consider necessary to fairly resolve their dispute. That expertise may be legal. It may be industry specific. This tends to result in arbitral awards which are more predictable, or at least more acceptable.

Unlike litigation and administrative proceedings, which are generally open to the public, arbitrations are generally private and confidential. This may be generally important to business parties. It may have particular importance where sensitive financial information or strategies, or trade secrets, are involved.

In considering the possibility of arbitration in an administrative law context, the parties or the tribunals should consider those potential benefits. They should consider which are important to them. They should determine whether they warrant an arbitration. If so,
they should consider how to design that arbitration to ensure that those potential benefits are realized.

Preliminary Points

Two preliminary points, before addressing the “design” issues. First, an agreement to arbitrate a dispute, whether an arbitration clause in an existing contract or a stand-alone submission to arbitration, is itself a contract. It is a separate contract from whatever contract may have given rise to the dispute itself. As a contract, it carries with it all the usual potential issues of contractual interpretation, performance and breach.

Second, unless the parties agree otherwise, an arbitration will likely be governed by the laws of the place the arbitration is held. In an administrative law context, where disputes arise out of provincial regulation and arbitration is considered as part of the processes of a provincial administrative tribunal, this is not likely to frequently be an issue. It may be more of an issue where disputes arise out of federal regulation. In any event, it would be prudent for the parties to agree on what law governs the arbitration.

Pre-conditions to Arbitration

The parties should consider whether to require the satisfaction of any conditions precedent to an arbitration. They may wish to provide such pre-conditions. But they should do so carefully, fully aware of the potential difficulties that may cause.

For example, in a commercial arbitration context, it is common for arbitration agreements to require tiered dispute resolution procedures, beginning with executive negotiation, continuing through mediation or some other form of assisted negotiation, and culminating in arbitration if necessary. The same sort of process would not be out of place in many administrative law contexts. The benefits of such an approach, principally resolving disputes as consensually and with as little outside intervention as possible, are obvious.

However, there are also drawbacks. Such a process can establish unintended conditions precedent to the jurisdiction of an arbitrator (and if an arbitrator exceeds their
jurisdiction their award may be set aside by the courts or rendered unenforceable). Such a tiered dispute resolution process would likely require the parties to go through the processes preceding arbitration in the structure before arbitrating. The language creating the tiered process might also refer to the parties acting in good faith or using their best efforts to resolve the dispute.

Such conditions precedent can cause several problems. They can be superfluous. Generally speaking, if the parties want to settle, they will, whether or not they are required by some agreement to negotiate or mediate in good faith or at all. If the parties do not wish to settle, there is no real benefit to requiring them to go through the motions of negotiation or mediation before being entitled to arbitrate.

Such pre-conditions can give rise to delay and expense, and make the whole arbitration process uncertain. Generally speaking, a party wishing to take the position such pre-conditions had not been satisfied would object to the jurisdiction of the arbitrator. Although the arbitrator could usually make a preliminary ruling concerning their jurisdiction, that could be appealed to the courts. In any event, the issue might not practically be finally settled until it came time to enforce the arbitral award. There again the issue would likely be resolved in court. There is considerable jurisprudence about subjects such as negotiating in good faith and using best efforts. Resolving these sorts of issues would likely require considerable time and expense.

In addition, it is not uncommon for a party to an arbitration to require some form of interim relief: an injunction, a preservation order, an order prohibiting the disclosure of confidential information or to enforce intellectual property rights. But, if there were a dispute about the jurisdiction of the arbitrator, the arbitrator would not likely be able to grant such interim relief. The arbitrator’s jurisdiction would have to be clarified, again likely in court, before they could entertain an application for interim relief. By then the damage might have been done.

In addition, having to resolve any of these issues in court might well nullify one of the important potential advantages of arbitration: confidentiality.
Because of those potential drawbacks, if the parties are considering whether to establish conditions precedent for an administrative arbitration, they should do so very carefully. If they do decide to establish such pre-conditions they should draft them very carefully, to avoid, as far as possible, these sorts of difficulties.

Scope of Disputes to be Arbitrated

The next decision to be made is how to define the scope of the disputes which may be submitted to arbitration. In the commercial context this issue often arises in terms of whether such disputes are to be limited to claims of breach of a particular contract or to all claims, including things like tort claims, arising from a business relationship.

While the specific context may be different in an administrative law situation, the general issue remains the same. When the parties define the scope of the issues to be arbitrated, they define the jurisdiction of the arbitrator. If they use narrow language, the arbitrator may not have jurisdiction to deal with important aspects of the parties’ relationship. The parties may find themselves in the unenviable position of having to arbitrate and litigate different aspects of their situation at the same time. That would largely negate the potential economic advantages of arbitration.

If the parties define the scope of issues to be arbitrated in uncertain language, they invite preliminary objections to the jurisdiction of the arbitrator, which may again have to be resolved in court. This would give rise to delays and expenses, uncertainty and breach of confidentiality, in much the same way as described in the previous section.

To avoid these difficulties the parties should consider carefully in advance the kinds of disputes which might arise out of their relationship and make a conscious decision about which they wish to arbitrate. They must then reflect that decision in appropriate language. There is customary language, tested in court, for this purpose. Some of the most common examples are:

*Any controversy or claim arising out of or relation to this contract, or the breach thereof.*
All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated therewith or derived there from.

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims.

While these examples obviously arise from a commercial context, they give a good idea of the varying scopes of issues to be arbitrated which are possible.

Generally, it is preferable to use more comprehensive, rather than more limiting, language. The risk and expense of having to both arbitrate and litigate a dispute should be avoided. If there is a good reason to limit the scope of disputes to be arbitrated, that limitation should be stated in the clearest possible language.

**Number of Arbitrators**

Arbitrations are usually adjudicated either by a single arbitrator or a panel of three. In an administrative law context, the applicable arbitration legislation will likely provide a default choice, likely a single arbitrator. Nevertheless, it is always preferable for the parties to state clearly the number of arbitrators they wish to use.

Different factors favour a single arbitrator and a panel of three. Arbitrators must be paid by the parties. Preferably they will be experienced, and therefore in demand. The more people involved in the arbitration, the more calendars must be coordinated to schedule hearings. All these factors increase the cost and time, and decrease the efficiency, of an arbitration by a panel of three, and favour the appointment of a single arbitrator.

However, there is some logic to the proposition that three heads are better than one. With a panel of three arbitrators the risk of a fundamentally ill-conceived award is reduced. Where there is a panel of three, generally each party will appoint one and those two, or some designated institution, will appoint the third as chair. So each party will directly appoint one of the decision makers. That appointment can reflect the view of that party about the background and experience which are desirable in an arbitrator. A
panel of three arbitrators also permits a blend of experience, for example a chair with legal and arbitral experience, and arbitrators having relevant technical or business background.

Qualifications of Arbitrator(s)

One of the potential advantages of arbitration over litigation is that the parties have at least some input into the choice of their decision maker. To realize this potential advantage the parties should consider what, if anything, ought to be said in their arbitration agreement about the qualifications of their arbitrator(s).

Generally, arbitrators are required to be independent and impartial. Independence requires that arbitrators not have a financial, professional or personal connection with any of the parties. Impartiality requires that they have an open mind about the parties and the issues. Such requirements are likely to be found in the provincial legislation governing arbitrations or the rules of the relevant arbitral institution. But if not, the parties should ensure they adequately address these issues.

Arbitrators should have legal and arbitral training. Arbitration is an adversarial legal process. Except in extraordinary circumstances, arbitrators are required to adjudicate arbitrations according to the applicable law. They are not to adjudicate based on their perceptions of fairness, or their own experience or expertise. Their awards must be based on the application of the law to the evidence presented to them. Arbitrating a dispute therefore requires knowledge and experience in receiving evidence and dealing with objections and other procedural matters.

Again, if the parties do not agree on an arbitrator, the applicable arbitration legislation or the rules of the relevant arbitral institution will likely provide for the appointment of an arbitrator. The institutions involved in those processes normally recognize the importance of legal and arbitral experience. However, the parties should consider whether it is necessary to specify such qualifications.
At least in the commercial context, parties often believe it is essential that arbitrators have commercial, technical or scientific background relevant to the subject matter of the arbitration. That might well also be the case in an administrative context. In the author’s view, that belief is fundamentally misconceived.

Again, arbitrators must normally decide arbitrations by applying the relevant law to the evidence introduced before them. No matter what expertise they have, they cannot decide the arbitration according to their own experience, knowledge or opinions. To do so would be to decide the arbitration based on “evidence” which was not before them, and would make their award liable to being set aside. Rather than choosing an arbitrator with relevant business, technical or scientific experience, the parties should prove those sorts of facts through the opinion evidence of qualified experts.

The parties should also bear in mind that many arbitration rules permit arbitrators to appoint their own independent experts to advise them, if necessary. This may be particularly useful in technology-related disputes.

**Procedural Rules**

The parties must choose a set of procedural rules to govern the arbitration. There are numerous sets of rules drafted by Canadian and international arbitral institutions. The parties are also free to modify any of those sets of rules by agreement, or to draft their own rules from scratch. Likely the best way to proceed is to adopt a tested set of procedural rules from an arbitral institution, and to agree on any modifications required by the particular nature of the dispute.

It is in this area, designing the procedural rules for the arbitration, that many of the potential cost, time and efficiency benefits of arbitration can be realized. The parties should consider the following kinds of issues:

- Should they require the equivalent of court pleadings, and if so how minimal or elaborate should they be?

- What should be the scope of any required disclosure of documents?
• Should there be any form of pre-hearing “examination for discovery”?

• What should be the timeframes for the procedural steps leading to the hearing?

• Should the evidence of witnesses at the hearing be given by written statement or affidavit and cross-examination, rather than by viva voce testimony?

• Should the arbitrator be required to deliver their award within a specified time, say 60 days after the hearing?

• What limits should be placed on the parties’ rights to seek judicial intervention in the arbitration, and to appeal the award?

It is obvious from this list that arbitration can differ significantly from the cherished procedure of the common law litigation system, and indeed from administrative procedure. That is precisely the point. In arbitration the parties have the freedom to design a process which incorporates what is essential to fairly resolve a particular dispute, and so to realize the potential benefits of arbitration discussed above.

It should also be obvious that realizing many of those potential benefits will also depend on the willingness of the parties (and the arbitrator) to make themselves available to deal intensively with resolving the dispute, and to focus on what is essential to do so.

**Administered versus Ad Hoc**

Another choice the parties must make is whether their arbitration is to be administered by some arbitral institution or *ad hoc*. Arbitral institutions offer administrative services for a fee. Usually their procedural rules assume those services will be used. They usually include acting as a registry for the filing of “pleadings”, assisting in the appointment of arbitrators if necessary, preliminary consideration of challenges to the independence or impartiality of arbitrators, arranging for the deposit of money to secure the payment of
the arbitrator’s fees, receiving and formally issuing the arbitrator’s award, and the like. Some require that all communications between the parties and the arbitrator flow through them.

The parties will have to consider whether these services are worth their cost. For a factually or legally complex dispute, or one involving large amounts of money, they may well be. For simpler disputes, they may not. The economics of a dispute involving a relatively small amount of money may simply make them unaffordable. However, the parties should also remember that if the arbitration is to be ad hoc, the arbitrator (whom they must pay) will have to do whatever administrative work is necessary.

The parties must also remember that, even if their arbitration is to be ad hoc, they must still specify a set of procedural rules. There are sets of arbitration rules suitable to ad hoc arbitrations. Another option is to amend the rules of an arbitral institution to dispense with references to the institution’s administering the arbitration.

If the arbitration is to administered, the arbitration agreement should identify the administering institution and clearly state that it will have that responsibility.

Confidentiality

If preservation of the parties’ confidentiality is an important potential benefit of the particular arbitration, the parties should carefully consider how to realize that benefit. The applicable arbitral legislation and the arbitration rules may deal with confidentiality to some extent. The parties should consider whether their arbitration agreement should incorporate a confidentiality agreement to deal with the issue further.

Seat of Arbitration

In the commercial context choosing the place or “seat” of arbitration is important. This is because if it is necessary for the parties to seek recourse to the courts during the arbitration, then they will almost certainly have to do so in the courts of that place, and because the laws of that place will govern the arbitration. Issues like the circumstances under which the parties can go to court, the procedures for doing so, will be governed by
the law of that place. Depending on where the parties’ counsel are from, they may have
to retain local counsel to exercise those rights.

These sorts issues are less likely to arise in an administrative law context, because the
place or seat of arbitration will often be somewhere in the province over which an
administrative tribunal has jurisdiction. However, it will be important for the parties to
remember that it will be the laws of that place which will govern the arbitration and any
recourse they may require to the courts during it. In the case of a federal tribunal, most
of the same considerations as in a commercial context may arise.

CONCLUSION

It is interesting that, just as litigation and arbitration are often perceived to be
alternatives, one of the objectives of the *Administrative Tribunals Act* was to ensure that
administrative tribunals remain an effective alternative to the courts. The commercial
litigation experience has been that arbitration can indeed be an effective alternative to
litigation, if proper care is taken to design and implement an arbitration process which is
more than just compressed litigation. Perhaps arbitration can also be an effective
alternative to administrative tribunals, if the same care is taken.
## APPENDIX A
Current to BC Regs. Bull. June 20, 2005

### ADMINISTRATIVE TRIBUNALS ACT
SBC 2004, CHAPTER 45

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Definitions

1 In this Act:

“applicant” includes an appellant, a claimant or a complainant;

“application” includes an appeal, a review or a complaint but excludes any interim or preliminary matter or an application to the court;
"appointing authority" means the person or the Lieutenant Governor in Council who, under another Act, has the power to appoint the chair, vice chair and members, or any of them, to the tribunal;

"constitutional question" means any question that requires notice to be given under section 8 of the Constitutional Question Act;

"court" means the Supreme Court;

"decision" includes a determination, an order or other decision;

"dispute resolution process" means a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute;

"intervener" means a person who is permitted by the tribunal to participate as an intervenor in an application;

"member" means a person appointed to the tribunal to which a provision of this Act applies;

"privative clause" means provisions in the tribunal's enabling Act that give the tribunal exclusive and final jurisdiction to inquire into, hear and decide certain matters and questions and provide that a decision of the tribunal in respect of the matters within its jurisdiction is final and binding and not open to review in any court;

"tribunal" means a tribunal to which some or all of the provisions of this Act are made applicable under the tribunal's enabling Act;

"tribunal's enabling Act" means the Act under which the tribunal is established or continued.


Chair's initial term and reappointment

2 (1) The chair of the tribunal may be appointed by the appointing authority, after a merit based process, to hold office for an initial term of 3 to 5 years.

(2) The chair may be reappointed by the appointing authority for additional terms of up to 5 years.


Member's initial term and reappointment

3 (1) A member, other than the chair, may be appointed by the appointing authority, after a merit based process and consultation with the chair, to hold office for an initial term of 2 to 4 years.
(2) A member may be reappointed by the appointing authority as a member of the tribunal for additional terms of up to 5 years.


Appointment of acting chair

4 (1) If the chair expects to be absent or is absent, the chair may designate a vice chair as the acting chair for the period that the chair is absent.

(2) If the chair expects to be absent or is absent and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the chair may designate a member as the acting chair for the period that the chair is absent.

(3) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time, the appointing authority may designate a vice chair as the acting chair for the period that the chair is absent or incapacitated.

(4) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the appointing authority may designate a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for the period that the chair is absent or incapacitated.

(5) If the tribunal has no chair, the appointing authority may appoint an individual, who is a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for a term of up to 6 months.

(6) In exceptional circumstances an individual may be appointed as the acting chair under subsection (5) for an additional term of up to 6 months.

(7) Subsections (3), (4) and (5) apply whether or not an individual is designated, under the Act under which the chair is appointed, to act on behalf of the chair.

(8) An individual designated or appointed under any of subsections (1) to (5) has all the powers and may perform all the duties of the chair.

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Member’s absence or incapacitation

5 If a member is absent or incapacitated for an extended period of time or expects to be absent for an extended period of time, the appointing authority, after consultation with the chair, may appoint another person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to duty or the member's term expires, whichever comes first.

Temporary, non-renewable appointments

6 (1) If the tribunal requires additional members, the chair, after consultation with the minister responsible for the Act under which the tribunal is established, may appoint an individual, who would otherwise be qualified for appointment as a member, to be a member for up to 6 months.

(2) Under subsection (1), an individual may be appointed to the tribunal only once in any 2 year period.

(3) An appointing authority may establish conditions and qualifications for appointments under subsection (1).

Powers after resignation or expiry of term

7 (1) If a member resigns or their appointment expires, the chair may authorize that individual to continue to exercise powers as a member of the tribunal in any proceeding over which that individual had jurisdiction immediately before the end of their term.

(2) An authorization under subsection (1) continues until a final decision in that proceeding is made.

(3) If an individual performs duties under subsection (1), section 10 applies.

Termination for cause

8 The appointing authority may terminate the appointment of the chair, a vice chair or a member for cause.
Responsibilities of the chair

9 The chair is responsible for the effective management and operation of the tribunal and the organization and allocation of work among its members.


Remuneration and benefits for members

10 (1) In accordance with general directives of the Treasury Board, members must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in carrying out their duties.

(2) In accordance with general directives of the Treasury Board, the minister responsible for the tribunal's enabling Act must set the remuneration for those members who are to receive remuneration.


General power to make rules respecting practice and procedure

11 (1) Subject to this Act and the tribunal's enabling Act, the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.

(2) Without limiting subsection (1), the tribunal may make rules as follows:

(a) respecting the holding of pre-hearing conferences, including confidential pre-hearing conferences, and requiring the parties and any interveners to attend a pre-hearing conference;
(b) respecting dispute resolution processes;
(c) respecting receipt and disclosure of evidence, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a party on oath, affirmation or by affidavit;
(d) respecting the exchange of records and documents by parties;
(e) respecting the filing of written submissions by parties;
(f) respecting the filing of admissions by parties;
(g) specifying the form of notice to be given to a party by another party or by the tribunal requiring a party to diligently pursue an application and specifying the time within which and the manner in which the party must respond to the notice;
(h) respecting service and filing of notices, documents and orders, including substituted service;
(i) requiring a party to provide an address for service or delivery of notices, documents and orders;
(j) providing that a party's address of record is to be treated as an address for service;
(k) respecting procedures for preliminary or interim matters;
(l) respecting amendments to an application or responses to it;
(m) respecting the addition of parties to an application;
(n) respecting adjournments;
(o) respecting the extension or abridgement of time limits provided for in the rules;
(p) respecting the transcribing or tape recording of its proceedings and the process and fees for reproduction of a tape recording if requested by a party;
(q) establishing the forms it considers advisable;
(r) respecting the joining of applications;
(s) respecting exclusion of witnesses from proceedings;
(t) respecting the effect of a party's non-compliance with the tribunal's rules;
(u) respecting access to and restriction of access to tribunal documents by any person;
(v) respecting witness fees and expenses;
(w) respecting applications to set aside any summons served by a party.

(3) In an application, the tribunal may waive or modify one or more of its rules in exceptional circumstances.

(4) The tribunal must make accessible to the public any rules of practice and procedure made under this section.


Practice directives tribunal must make

12 (1) The tribunal must issue practice directives respecting

(a) the usual time period for completing an application and for completing the procedural steps within an application, and
(b) the usual time period within which the tribunal's final decision and reasons are to be released after the hearing of the application is completed.

(2) The tribunal is not bound by its practice directives in the exercise of its powers or the performance of its duties.

(3) Practice directives issued under subsection (1) must be consistent with this Act and with the tribunal's enabling Act, the regulations made under those Acts and any rules of practice and procedure made by the tribunal.

(4) The tribunal must make accessible to the public any practice directives made under this section.

Practice directives tribunal may make

13 (1) The tribunal may issue practice directives consistent with this Act and with the tribunal’s enabling Act, the regulations made under those Acts and any rules of practice and procedure made by the tribunal.

(2) The tribunal is not bound by its practice directives in the exercise of its powers or the performance of its duties.

(3) The tribunal must make accessible to the public any practice directives made under subsection (1).


General power to make orders

14 In order to facilitate the just and timely resolution of an application the tribunal, if requested by a party or an intervener, or on its own initiative, may make any order

(a) for which a rule is made by the tribunal under section 11,

(b) for which a rule is prescribed under section 60, or

(c) in relation to any matter that the tribunal considers necessary for purposes of controlling its own proceedings.


Interim orders

15 The tribunal may make an interim order in an application.


Consent orders

16 (1) On the request of the parties to an application, the tribunal may make a consent order if it is satisfied that the order is consistent with its enabling Act.

(2) If the tribunal declines to make a consent order under subsection (1), it must provide the parties with reasons for doing so.

Withdrawal or settlement of application

17 (1) If an applicant withdraws all or part of an application or the parties advise the tribunal that they have reached a settlement of all or part of an application, the tribunal must order that the application or the part of it is dismissed.

(2) If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with its enabling Act.

(3) If the tribunal declines to make an order under subsection (2), it must provide the parties with reasons.


Failure of party to comply with tribunal orders and rules

18 If a party fails to comply with an order of the tribunal or with the rules of practice and procedure of the tribunal, including any time limits specified for taking any actions, the tribunal, after giving notice to that party, may do one or more the following:

(a) schedule a written, electronic or oral hearing;
(b) continue with the application and make a decision based on the information before it, with or without providing an opportunity for submissions;
(c) dismiss the application.


Service of notice or documents

19 (1) If the tribunal is required to provide a notice or any document to a party or other person in an application, it may do so by personal service of a copy of the notice or document or by sending the copy to the person by any of the following means:

(a) ordinary mail;
(b) electronic transmission, including telephone transmission of a facsimile;
(c) if specified in the tribunal’s rules, another method that allows proof of receipt.

(2) If the copy is sent by ordinary mail, it must be sent to the most recent address known to the tribunal and must be considered to be received on the fifth day after the day it is mailed, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(3) If the copy is sent by electronic transmission it must be considered to be received on the day after it was sent, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.
(4) If the copy is sent by a method referred to in subsection (1) (c), the tribunal's rules govern the day on which the copy must be considered to be received.

(5) If through absence, accident, illness or other cause beyond the party's control a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2), (3) or (4), that subsection does not apply.


When failure to serve does not invalidate proceeding

20 If a notice or document is not served in accordance with section 19, the proceeding is not invalidated if

(a) the contents of the notice or document were known by the person to be served within the time allowed for service,
(b) the person to be served consents, or
(c) the failure to serve does not result in prejudice to the person, or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.


Notice of hearing by publication

21 If the tribunal is of the opinion that because there are so many parties to an application or for any other reason it is impracticable to give notice of a hearing to a party by a method referred to in section 19 (1) (a) to (c), the tribunal may give notice of a hearing by public advertisement or otherwise as the tribunal directs.

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Notice of appeal (inclusive of prescribed fee)

22 (1) A decision may be appealed by filing a notice of appeal with the appeal tribunal.

(2) A notice of appeal must

(a) be in writing or in another form authorized by the appeal tribunal's rules,
(b) identify the decision that is being appealed,
(c) state why the decision should be changed,
(d) state the outcome requested,
(e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,
(f) include an address for delivery of any notices in respect of the appeal, and
(g) be signed by the appellant or the appellant's agent.

(3) A notice of appeal must be accompanied by payment of the prescribed fee.

(4) Despite subsection (3), if a notice of appeal is deficient or if the prescribed fee is outstanding, the chair or the chair's delegate may allow a reasonable period of time within which the notice may be corrected or the fee is to be paid.


Notice of appeal (exclusive of prescribed fee)

23 (1) A decision may be appealed by filing a notice of appeal with the appeal tribunal.

(2) A notice of appeal must

(a) be in writing or in another form authorized by the appeal tribunal's rules,
(b) identify the decision that is being appealed,
(c) state why the decision should be changed,
(d) state the outcome requested,
(e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,
(f) include an address for delivery of any notices in respect of the appeal, and
(g) be signed by the appellant or the appellant's agent.

(3) If a notice of appeal is deficient the chair or the chair's delegate may allow a reasonable period of time within which the notice may be corrected.


Time limit for appeals

24 (1) A notice of appeal respecting a decision must be filed within 30 days of the decision being appealed, unless the tribunal's enabling Act provides otherwise.

(2) Despite subsection (1), the tribunal may extend the time to file a notice of appeal, even if the time to file has expired, if satisfied that special circumstances exist.
Appeal does not operate as stay

25 The commencement of an appeal does not operate as a stay or suspend the operation of the decision being appealed unless the tribunal orders otherwise.

Organization of tribunal

26 (1) The chair of the tribunal may organize the tribunal into panels, each comprised of one or more members.

(2) If the chair organizes a panel comprised of more than one member, the chair must designate one of those members as chair of the panel.

(3) The members of the tribunal may sit

(a) as the tribunal, or

(b) as a panel of the tribunal.

(4) Two or more panels may sit at the same time.

(5) If members of the tribunal sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the tribunal, and

(b) a decision of the panel is a decision of the tribunal.

(6) The decision of a majority of the members of a panel of the tribunal is a decision of the tribunal and, in the case of a tie, the decision of the chair of the panel governs.

(7) If a member of a panel is unable for any reason to complete the member's duties, the remaining members of that panel, with consent of the chair of the tribunal, may continue to hear and determine the matter, and the vacancy does not invalidate the proceeding.

(8) If a panel is comprised of one member and that member is unable for any reason to complete the member's duties, the chair of the tribunal, with the consent of all parties to the application, may organize a new panel to continue to hear and determine the matter on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

(9) The chair or the chair's delegate may hear and decide any interim or preliminary matter in an application, and for that purpose may exercise any of the powers of the tribunal necessary to decide the matter.
Staff of tribunal

27 (1) Employees necessary to carry out the powers, functions and duties of the tribunal may be appointed under the Public Service Act.

(2) The chair of the tribunal may engage or retain consultants, investigators, lawyers, expert witnesses or other persons the tribunal considers necessary to exercise its powers and carry out its duties under the tribunal's enabling Act and may determine their remuneration.

(3) The Public Service Act does not apply to a person retained under subsection (2) of this section.


Appointment of person to conduct dispute resolution process

28 (1) The chair of the tribunal may appoint a member or staff of the tribunal or other person to conduct a dispute resolution process.

(2) If a member of the tribunal is appointed under subsection (1), that member, in addition to assisting in a dispute resolution process, may make pre-hearing orders in respect of the application but must not hear the merits of the application unless all parties consent.


Disclosure protection

29 (1) In a proceeding, other than a criminal proceeding, unless the parties to an application consent, a person must not disclose or be compelled to disclose

(a) a document or other record created by a party specifically for the purposes of achieving a settlement of one or more issues through a dispute resolution process, or

(b) a statement made by a party in a dispute resolution process specifically for the purpose of achieving a settlement of one or more issues in dispute.

(2) Subsection (1) does not apply to a settlement agreement.


Tribunal duties

30 Tribunal members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

Summary dismissal

31 (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

(a) the application is not within the jurisdiction of the tribunal;
(b) the application was not filed within the applicable time limit;
(c) the application is frivolous, vexatious or trivial or gives rise to an abuse of process;
(d) the application was made in bad faith or filed for an improper purpose or motive;
(e) the applicant failed to diligently pursue the application or failed to comply with an order of the tribunal;
(f) there is no reasonable prospect the application will succeed;
(g) the substance of the application has been appropriately dealt with in another proceeding.

(2) Before dismissing all or part of an application under subsection (1), the tribunal must give the applicant an opportunity to make written submissions or otherwise be heard.

(3) If the tribunal dismisses all or part of an application under subsection (1), the tribunal must inform the parties and any interveners of its decision in writing and give reasons for that decision.


Representation of parties to an application

32 A party to an application may be represented by counsel or an agent and may make submissions as to facts, law and jurisdiction.


Interveners

33 (1) The tribunal may allow a person to intervene in an application if the tribunal is satisfied that

(a) the person can make a valuable contribution or bring a valuable perspective to the application, and
(b) the potential benefits of the intervention outweigh any prejudice to the parties caused by the intervention.

(2) The tribunal may limit the participation of an intervener in one or more of the following ways:

(a) in relation to cross examination of witnesses;
(b) in relation to the right to lead evidence;
(c) to one or more issues raised in the application;
(d) to written submissions;
(e) to time limited oral submissions.

(3) If 2 or more applicants for intervener status have the same or substantially similar views or expertise, the tribunal may require them to file joint submissions.


*Power to compel witnesses and order disclosure*

34 (1) A party to an application may prepare and serve a summons in the form established by the tribunal, requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in the application, or
(b) to produce for the tribunal, that party or another party a document or other thing in the person's possession or control that is admissible and relevant to an issue in the application.

(2) A party to an application may apply to the court for an order

(a) directing a person to comply with a summons served by a party under subsection (1), or
(b) directing any directors and officers of a person to cause the person to comply with a summons served by a party under subsection (1).

(3) Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or
(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.

(4) The tribunal may apply to the court for an order

(a) directing a person to comply with an order made by the tribunal under subsection (3), or
(b) directing any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (3).

Recording tribunal proceedings

35 (1) The tribunal may transcribe or tape record its proceedings.

(2) If the tribunal transcribes or tape records a proceeding, the transcription or tape recording must be considered to be correct and to constitute part of the record of the proceeding.

(3) If, by a mechanical or human failure or other accident, the transcription or tape recording of a proceeding is destroyed, interrupted or incomplete, the validity of the proceeding is not affected.


Form of hearing of application

36 In an application or an interim or preliminary matter, the tribunal may hold any combination of written, electronic and oral hearings.


Applications involving similar questions

37 (1) If 2 or more applications before the tribunal involve the same or similar questions, the tribunal may

(a) combine the applications or any part of them,
(b) hear the applications at the same time,
(c) hear the applications one immediately after the other, or
(d) stay one or more of the applications until after the determination of another one of them.

(2) The tribunal may make additional orders respecting the procedure to be followed with respect to applications under this section.


Examination of witnesses

38 (1) Subject to subsection (2), in an oral or electronic hearing a party to an application may call and examine witnesses, present evidence and submissions and conduct cross examination of witnesses as reasonably required by the tribunal for a full and fair disclosure of all matters relevant to the issues in the application.

(2) The tribunal may reasonably limit further examination or cross examination of a witness if it is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the application.
(3) The tribunal may question any witness who gives oral evidence in an oral or electronic hearing.


Adjournments

39 (1) An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

(2) In considering whether an application should be adjourned, the tribunal must have regard to the following factors:

(a) the reason for the adjournment;
(b) whether the adjournment would cause unreasonable delay;
(c) the impact of refusing the adjournment on the parties;
(d) the impact of granting the adjournment on the parties;
(e) the impact of the adjournment on the public interest.

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Information admissible in tribunal proceedings

40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.

(3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

(5) Notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application are inadmissible in tribunal proceedings.

Hearings open to public

41 (1) An oral hearing must be open to the public.

(2) Despite subsection (1), the tribunal may direct that all or part of the information be received to the exclusion of the public if the tribunal is of the opinion that

(a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or

(b) it is not practicable to hold the hearing in a manner that is open to the public.

(3) The tribunal must make a document submitted in a hearing accessible to the public unless the tribunal is of the opinion that subsection (2) (a) or section 42 applies to that document.


Discretion to receive evidence in confidence

42 The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.


Discretion to refer questions of law to court

43 (1) The tribunal has jurisdiction to determine all questions of fact, law or discretion that arise in any matter before it, including constitutional questions.

(2) If a question of law, including a constitutional question, is raised by a party in a tribunal proceeding, on the request of a party or on its own initiative, at any stage of an application the tribunal may refer that question to the court in the form of a stated case.

(3) If a constitutional question is raised by a party in an application, on the request of the Attorney General, the tribunal must refer that question to the court in the form of a stated case.

(4) The stated case under subsection (2) or (3) must

(a) be prepared by the tribunal,
(b) be in writing,
(c) be filed with the court registry, and
(d) include a statement of the facts and relevant evidence.

(5) Subject to the direction of the court, the tribunal must
(a) to the extent that it is practicable in light of the stated case, proceed to hear and decide all questions except the questions raised in the stated case,
(b) suspend the application as it relates to the stated case and reserve its decision until the opinion of the court has been given, and
(c) decide the application in accordance with the opinion.

(6) A stated case must be brought on for hearing as soon as practicable.

(7) Subject to subsection (8), the court must hear and determine the stated case and give its decision as soon as practicable.

(8) The court may refer the stated case back to the tribunal for amendment or clarification, and the tribunal must promptly amend and return the stated case for the opinion of the court.


Tribunal without jurisdiction over constitutional questions

44 (1) The tribunal does not have jurisdiction over constitutional questions.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

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Tribunal without jurisdiction over Canadian Charter of Rights and Freedoms issues

45 (1) The tribunal does not have jurisdiction over constitutional questions relating to the Canadian Charter of Rights and Freedoms.

(1.1) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

(2) If a constitutional question, other than one relating to the Canadian Charter of Rights and Freedoms, is raised by a party in a tribunal proceeding
(a) on the request of a party or on its own initiative, at any stage of an application the tribunal may refer that question to the court in the form of a stated case, or

(b) on the request of the Attorney General, the tribunal must refer that question to the court in the form of a stated case.

(3) The stated case must

(a) be prepared by the tribunal,
(b) be in writing,
(c) be filed with the court registry, and
(d) include a statement of the facts and relevant evidence.

(4) Subject to the direction of the court, the tribunal must

(a) to the extent that it is practicable in light of the stated case, proceed to hear and decide all questions except the questions raised in the stated case,
(b) suspend the application as it relates to the stated case and reserve its decision until the opinion of the court has been given, and
(c) decide the application in accordance with the opinion.

(5) A stated case must be brought on for hearing as soon as practicable.

(6) Subject to subsection (7), the court must hear and determine the stated case and give its decision as soon as practicable.

(7) The court may refer the stated case back to the tribunal for amendment or clarification, and the tribunal must promptly amend and return the stated case for the opinion of the court.

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Notice to Attorney General if constitutional question raised in application

46 If a constitutional question over which the tribunal has jurisdiction is raised in a tribunal proceeding, the party who raises the question must give notice in compliance with section 8 of the Constitutional Question Act.

Power to award costs

47 (1) Subject to the regulations, the tribunal may make orders for payment as follows:

(a) requiring a party to pay part of the costs of another party or an intervener in connection with the application;
(b) requiring an intervener to pay part of the costs of a party or another intervener in connection with the application;
(c) if the tribunal considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay part of the actual costs and expenses of the tribunal in connection with the application.

(2) An order under subsection (1), after filing in the court registry, has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken on it as if it were an order of the court.


Maintenance of order at hearings

48 (1) At an oral hearing, the tribunal may make orders or give directions that it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the tribunal may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the tribunal, by order, may

(a) impose restrictions on a person's continued participation in or attendance at a proceeding, and
(b) exclude a person from further participation in or attendance at a proceeding until the tribunal orders otherwise.


Contempt proceeding for uncooperative witness or other person

49 (1) The failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

(a) attend a hearing;
(b) take an oath or affirmation;
(c) answer questions;
(d) produce the records or things in their custody or possession.

(2) The failure or refusal of a person to comply with an order or direction under section 48 makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the court in respect of conduct by a person in a proceeding before the tribunal.


Decisions

50 (1) If the tribunal makes an order for the payment of money as part of its decision, it must set out in the order the principal sum, and if the tribunal has power to award interest and interest is payable, the rate of interest and the date from which it is to be calculated.

(2) The tribunal may attach terms or conditions to a decision.

(3) The tribunal's decision is effective on the date on which it is issued, unless otherwise specified by the tribunal.

(4) The tribunal must make its decisions accessible to the public.


Final decision

51 The tribunal must make its final decision in writing and give reasons for the decision.


Notice of decision

52 (1) Subject to subsection (2), the tribunal must send each party and any interveners in an application a copy of its final decision.

(2) If the tribunal is of the opinion that because there are so many parties to an application or for any other reason that it is impracticable to send its final decision to each party as provided in subsection (1), the tribunal may give reasonable notice of its decision by public advertisement or otherwise as the tribunal directs.

(3) A notice of a final decision given by the tribunal under subsection (2) must inform the parties of the place where copies of that decision may be obtained.

Amendment to final decision

53 (1) If a party applies or on the tribunal's own initiative, the tribunal may amend a final decision to correct any of the following:

(a) a clerical or typographical error;
(b) an accidental or inadvertent error, omission or other similar mistake;
(c) an arithmetical error made in a computation.

(2) Unless the tribunal determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.

(3) Within 30 days of being served with the final decision, a party may apply to the tribunal for clarification of the final decision and the tribunal may amend the final decision only if the tribunal considers that the amendment will clarify the final decision.

(4) The tribunal may not amend a final decision other than in those circumstances described in subsections (1) to (3).

(5) This section must not be construed as limiting the tribunal's ability, on request of a party, to reopen an application in order to cure a jurisdictional defect.


Enforcement of tribunal's final decision

54 (1) A party in whose favour the tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the court.

(2) A final decision filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court.


Compulsion protection

55 (1) A tribunal member, a person acting on behalf of or under the direction of a tribunal member or a person who conducts a dispute resolution process on behalf of or under the direction of the tribunal must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of duties under the tribunal's enabling Act or this Act.

(2) Despite subsection (1), the court may require the tribunal to produce the record of a proceeding that is the subject of an application for judicial review under the Judicial Review Procedure Act.

Immunity protection for tribunal and members

56 (1) In this section, "decision maker" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a dispute resolution process.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker, the tribunal or the government because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act or the tribunal's enabling Act, or

(b) in the exercise or intended exercise of any power under this Act or the tribunal's enabling Act.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.


Time limit for judicial review

57 (1) Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

(2) Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.


Standard of review if tribunal's enabling Act has privative clause

58 (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

(a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,

(b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
(c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

(3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,
(b) is exercised for an improper purpose,
(c) is based entirely or predominantly on irrelevant factors, or
(d) fails to take statutory requirements into account.


59 (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,
(b) is exercised for an improper purpose,
(c) is based entirely or predominantly on irrelevant factors, or
(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.


Power to make regulations

60 The Lieutenant Governor in Council may make regulations as follows:

(a) prescribing rules of practice and procedure for the tribunal;
(b) repealing or amending a rule made by the tribunal;
(c) prescribing tariffs of fees to be paid with respect to the filing of different types of applications, including preliminary and interim applications;
(d) prescribing the circumstances in which an award of costs may be made by the tribunal;
(e) prescribing a tariff of costs payable under a tribunal order to pay part of the costs of a party or intervener;
(f) prescribing limits and rates relating to a tribunal order to pay part of the actual costs and expenses of the tribunal.


Application of Freedom of Information and Protection of Privacy Act

61 (1) In this section, "decision maker" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a dispute resolution process.

(2) The Freedom of Information and Protection of Privacy Act, other than section 44 (2), (2.1) and (3), does not apply to any of the following:

(a) a personal note, communication or draft decision of a decision maker;
(b) notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application;
(c) any information received by the tribunal in a hearing or part of a hearing from which the public, a party or an intervener was excluded;
(d) a transcription or tape recording of a tribunal proceeding;
(e) a document submitted in a hearing for which public access is provided by the tribunal;
(f) a decision of the tribunal for which public access is provided by the tribunal.

(3) Subsection (2) does not apply to personal information, as defined in the Freedom of Information and Protection of Privacy Act, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.


Application of Act to appointments under Criminal Code

62 Sections 1 to 5, 8 to 10 and 61 apply to the review board established or designated under section 672.38 of the Criminal Code.

Consequential Amendments

Agricultural Land Commission Act

63 Section 5 of the Agricultural Land Commission Act, S.B.C. 2002, c. 36, is amended by adding the following subsection:

(6) Commission members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

64 Section 5.1 is repealed and the following substituted:

Application of Administrative Tribunals Act

5.1 Sections 1 to 10 of the Administrative Tribunals Act apply to the commission.

65 Section 55 (1) and (4) is repealed and the following substituted:

(1) A person who is the subject of a determination, a decision, an order or a penalty under section 50, 52 or 54 (1) may appeal the determination, decision, order or penalty to the commission by serving the commission with a notice of appeal.

(5) For the purposes of an appeal under this section, sections 11 to 15, 17 to 21, 23 to 25, 31 (1) (a) to (e) and (g), (2) and (3), 32, 33, 35 to 37, 39, 40, 44, 48, 50 to 55, 57, 58, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the commission.

66 The following sections are added:

Exclusive jurisdiction of commission

55.1 (1) The commission has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under section 55 and to make any order permitted to be made.

(2) Without limiting subsection (1), the commission has exclusive jurisdiction to hear and determine the following questions:

(a) whether an official acted in accordance with the regulations in issuing an order under section 50;

(b) whether the chief executive officer acted in accordance with the regulations in issuing a notice under section 52 (2) (a), issuing an order under section 52 (1), taking any action under section 52 (2) or levying a penalty under section 54 (1).

(3) A decision or order of the commission under this Act on a matter in respect of which the commission has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.
Immunity protection for commission, its members and officers

55.2 (1) In this section, "decision maker" includes a commission member or other officer who makes a decision in relation to an appeal under section 55.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker or the commission because of anything done or omitted

(a) in the performance or intended performance of any duty under section 55, or

(b) in the exercise or intended exercise of any power under section 55.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Assessment Act

67 Section 21 (8) of the Assessment Act, R.S.B.C. 1996, c. 20, is repealed and the following substituted:

(8) For the purposes of an appeal under this section, sections 50 (4) (b) to (g) and (5), 52 (2), 55, 56, and 59 to 62 and Part 7 apply with all necessary changes.

68 Section 31 (7) is repealed and the following substituted:

(7) Sections 1, 4, 6 to 8, 10, 18, 44, 48, 49, 55, 56 and 61 of the Administrative Tribunals Act apply to a review panel.

69 Section 39 is repealed and the following substituted:

Power to compel witnesses and order disclosure

39 (1) At any time before or during a hearing, but before its decision, a review panel may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or

(b) to produce for the review panel or a party a document or other thing in the person’s possession or control, as specified by the review panel, that is admissible and relevant to an issue in an application.

(2) A review panel may apply to the court for an order

(a) directing a person to comply with an order made by the review panel under subsection (1), or
(b) directing any directors and officers of a person to cause the person to comply with an order made by the review panel under subsection (1).

70 Section 43 (3) is repealed and the following substituted:

(3) Sections 1 to 11, 13 to 16, 17 (2), 18 to 20, 28, 29, 31 (1) (a), (b) and (e), (2) and (3), 32, 33, 34 (3) and (4), 35, 37 to 40, 44, 48, 49, 50 (2) to (4), 51, 53 to 56, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the property assessment appeal board.

71 Section 44 is amended by adding the following subsection:

(8) If the panel is a single member and that member is unable for any reason to complete the member's duties, with the consent of all parties to the application the chair of the board may organize a new panel to continue to hear and determine the matter on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

72 Sections 46 (1), 47, 52 (3) and (4), 53 and 54 are repealed.

73 Section 55 (1) is repealed and the following substituted:

(1) In a proceeding, the board may hold any combination of written, electronic and oral hearings.

74 Sections 56, 58 and 61 (2) are repealed.

75 Section 64 (1) is repealed and the following substituted:

(1) At any stage of a proceeding before it, the board, on its own initiative or at the request of one or more of the persons affected by the appeal, may refer a question of law in the proceeding to the Supreme Court in the form of a stated case.

(1.1) If the question of law that is referred under subsection (1) is a constitutional question, the party who raises the question must give notice in compliance with section 8 of the Constitutional Question Act.

76 Section 67 is amended by striking out "conference under section 54 (2) (f)," and substituting "conference,"

77 Section 74 (2) (t) is repealed and the following substituted:

(t) respecting orders that may be made by the board in its proceedings.

Business Practices and Consumer Protection Act

78 Section 175 of the Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2, is amended by adding the following subsection:
(4) In making a determination under this Act, sections 1, 11, 14 (a) and (c), 15, 18, 28, 29, 33, 35 to 37, 39, 40 (5) and 57 of the Administrative Tribunals Act apply to the director as if the director were a tribunal under that Act.

Community Care and Assisted Living Act

79 Section 29 (1), (1.2), (4), (6) to (10), (14) and (15) of the Community Care and Assisted Living Act, S.B.C. 2002, c. 75, is repealed and the following substituted:

(1) The Community Care and Assisted Living Appeal Board is continued consisting of individuals appointed after a merit based process as follows:

(a) a member appointed and designated by the Lieutenant Governor in Council as the chair;

(b) other members appointed by the Lieutenant Governor in Council after consultation with the chair.

(1.2) Sections 1 to 20, 22, 24 to 42, 44, 47 (1) (c) and (2), 48 to 55, 57, 58, 60 and 61 of the Administrative Tribunals Act apply to the board.

(4) A fee paid by an applicant to initiate an appeal under subsection (2) or (3) must be remitted to the applicant if the board grants the appeal.

(6) The board may not stay or suspend a decision unless it is satisfied, on summary application, that a stay or suspension would not risk the health or safety of a person in care.

80 Sections 30 and 31 are repealed.

81 The following section is added:

Exclusive jurisdiction of board

31.1 (1) The board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under section 29 and to make any order permitted to be made.

(2) A decision or order of the board on a matter in respect of which the board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

82 Section 34 (4) (c) is amended by striking out "under section 30" and substituting "of the board".

Employment and Assistance Act

83 Section 19 of the Employment and Assistance Act, S.B.C. 2002, c. 40, is amended by adding the following subsection:
(4) The chair and vice chair may be paid the remuneration specified by the Lieutenant Governor in Council in accordance with general directives of Treasury Board.

84 Section 19.1 is repealed and the following substituted:

Application of Administrative Tribunals Act

19.1 Sections 1 to 6, 7 (1) and (2), 8, 9, 30, 44, 55, 56, 58 and 61 of the Administrative Tribunals Act apply to the tribunal.

Maintenance of order at hearings

19.2 (1) At an oral hearing, the chair of a panel of the tribunal may make any orders or give any directions considered necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the chair of the panel may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use any force that is reasonably required for that purpose.

(3) Without limiting subsection (1), the chair of a panel of the tribunal, by order, may impose restrictions on the continued participation in or attendance of a person in a proceeding.

Time limit for judicial review

19.3 (1) An application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

(2) Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application, on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

85 Section 20 is amended

(a) in subsection (1) by striking out “has responsibility for the general administration and management of the tribunal and”, and

(b) by repealing subsection (2) (b).

86 Section 24 (5) is repealed and the following substituted:

(5) A decision of a majority of a panel is the decision of the tribunal.

(6) The tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under section 19 and to make any order permitted to be made.
(7) A decision or order of the tribunal under this Act on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

87 Section 26 is repealed.

Employment Standards Act

88 The Employment Standards Act, R.S.B.C. 1996, c. 113, is amended by adding the following section:

No jurisdiction to determine constitutional question

86.1 Nothing in this Act is to be construed as giving the director or any person acting for or on behalf of the director under this Act jurisdiction over constitutional questions relating to the Canadian Charter of Rights and Freedoms.

89 Section 103 is repealed and the following substituted:

Application of Administrative Tribunals Act

103 Sections 1 to 21, 28 to 30, 32, 34 (3) and (4), 35 to 40, 45, 46, 48, 49, 50 (2) to (4), 51 to 53, 55 to 58, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the tribunal.

90 Section 106 (6) is amended by striking out "under section 109 (1) (c)".

91 Sections 107, 108, 109 (1) (c), 110 and 111 are repealed and the following substituted:

Exclusive jurisdiction of tribunal

110 (1) The tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Parts 12 and 13 and to make any order permitted to be made.

(2) A decision or order of the tribunal on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

92 Section 114 is amended

(a) by repealing subsection (1) and substituting the following:

(1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:

(a) the appeal is not within the jurisdiction of the tribunal;

(b) the appeal was not filed within the applicable time limit;
(c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;

(d) the appeal was made in bad faith or filed for an improper purpose or motive;

(e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;

(f) there is no reasonable prospect that the appeal will succeed;

(g) the substance of the appeal has been appropriately dealt with in another proceeding;

(h) one or more of the requirements of section 112 (2) have not been met.

(b) by adding the following subsection:

(3) If the tribunal dismisses all or part of an appeal under subsection (1), the tribunal must inform the parties of its decision in writing and give reasons for that decision.

93 Section 115 (2) is repealed.

Expropriation Act

94 Sections 26 (2), (4) and (7), 27 (1) and (1.1) and 27.1 of the Expropriation Act, R.S.B.C. 1996, c. 125, are repealed.

95 Section 28 (1) is amended by striking out "with leave of a justice of the Court of Appeal".

96 Section 49 is repealed and the following substituted:

Service of notice or documents

49 (1) Subject to section 6 (5), if the board is required to provide a notice or any document to a party or other person in an application, it may do so by personal service of a copy or by sending a copy of the notice or document to the person by any of the following means:

(a) ordinary mail;

(b) electronic transmission, including telephone transmission of a facsimile;

(c) if specified in the board's rules, another method that allows proof of receipt.

(2) If the copy is sent by ordinary mail, it must be sent to the most recent address known to the board and must be considered to be received on the fifth day after the day it is mailed unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.
(3) If the copy is sent by electronic transmission it must be considered to be received on the day after it was sent, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(4) If the copy is sent by a method referred to in subsection (1) (c), the board's rules govern the day on which the copy must be considered to be received.

(5) If through absence, accident, illness or other cause beyond the party's control a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2), (3) or (4), the board may relieve the party from the consequences.

When failure to serve does not invalidate proceeding

49.1 If a notice or document is not served in accordance with section 49, the proceeding is not invalidated if

(a) the contents of the notice or document were known by the person to be served within the time allowed for service,

(b) the person to be served consents, or

(c) the failure to serve does not result in prejudice to the person or any resulting prejudice can be satisfactorily addressed by an adjournment or some other means.

97 Section 53 (4) and (6) is repealed.

98 Section 53.1 is repealed and the following substituted:

Application of Administrative Tribunals Act

53.1 Sections 1 to 16, 18, 26 to 32, 34 to 40, 44, 48 to 56, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the board.

Withdrawal of application

53.2 If an applicant withdraws all or part of an application or the parties advise the board that they have reached a settlement of all or part of an application, the board may order that the application or part of it is dismissed.

Hearings open to public

53.3 (1) An oral hearing must be open to the public.

(2) Despite subsection (1), the board may direct that all or part of the information be received to the exclusion of the public if the board is of the opinion that

(a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or
(b) it is not practicable to hold the hearing in a manner that is open to the public.

(3) The board must make a document submitted in a hearing accessible to the public unless the board is of the opinion that subsection (2) (a) applies to that document.

Financial Institutions Act

99 Section 242.1 of the Financial Institutions Act, R.S.B.C. 1996, c. 141, is amended

(a) by adding the following subsection:

(1.1) Tribunal members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

(b) subsection (4) is repealed and the following substituted:

(4) Sections 1, 3 to 7, 9 and 10 of the Administrative Tribunals Act apply to the tribunal.

(c) by repealing subsection (6) and adding the following subsection:

(7) Sections 11 to 16, 18 to 20, 22, 24, 32, 35, 37 to 42, 44, 47, 48 to 57 and 59 to 61 of the Administrative Tribunals Act apply to appeals conducted by the tribunal.

100 Section 242.2 is amended

(a) by repealing subsections (1) and (4) (c) and (d),

(b) by repealing subsection (9) (d) and substituting the following:

(d) require the party requesting the attendance of a witness to pay the costs in connection with the attendance of that witness, and,

(c) by repealing subsection (10) (b) and (d) and substituting the following:

(b) at any time before or during a hearing, but before its decision, the member hearing the appeal may make an order requiring a person

(i) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an appeal, or

(ii) to produce for the member hearing the appeal or a party a document or other thing in the person’s possession or control, as specified by the member hearing the appeal, that is admissible and relevant to an issue in an appeal,

(b.1) the member hearing the appeal may apply to the court for an order
(i) directing a person to comply with an order made by the member hearing the appeal under paragraph (b), or

(ii) directing any directors and officers of a person to cause the person to comply with an order made by the member hearing the appeal under paragraph (b), ,

(d) in subsection (10) by adding the following paragraph:

(e.1) if an appellant withdraws all or part of an appeal or the parties advise the member hearing the appeal that they have reached a settlement of all or part of an appeal, the member may order that the appeal or part of it is dismissed, , and

(e) by repealing subsection (13).

Forest and Range Practices Act

101 Section 136 (5) of the Forest and Range Practices Act, S.B.C. 2002, c. 69, is amended by striking out "The Administrative Tribunals Appointment and Administration Act" and substituting "The Administrative Tribunals Act".

Hospital Act

102 Section 46 (1.1), (1.2), (2), (3), (4.2), and (5) of the Hospital Act, R.S.B.C. 1996, c. 200, is repealed and the following substituted:

(2) A practitioner may appeal to the Hospital Appeal Board if

(a) the practitioner is dissatisfied with the decision of a hospital's board or

(b) a hospital's board fails to notify the practitioner of its decision within the prescribed time.

(2.1) A practitioner who wishes to appeal under subsection (2) is not required to first proceed by way of an application to the hospital's board.

(2.2) An appeal to the Hospital Appeal Board is a new hearing.

(3) The Hospital Appeal Board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under this section and to make any order permitted to be made.

(3.1) A decision order of the Hospital Appeal Board under this Act on a matter in respect of which the Hospital Appeal Board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

(3.2) A practitioner who wishes to appeal under subsection (2) must deliver the notice of appeal
(a) if the appeal concerns a board's decision under subsection (2) (a), not later than 90 days after the date that the board caused a notice of its decision to be sent to the practitioner, or

(b) if the appeal concerns a board's decision under subsection (2) (b), not later than 210 days after the date that the practitioner applied for a permit in the prescribed manner.

(3.3) A notice of appeal must

(a) be in writing or in another form authorized by the rules of the Hospital Appeal Board and directed to the chair of that board,

(b) set out the grounds for appeal,

(c) state whether or not the appellant waives an oral hearing of the matter,

(d) state the outcome requested,

(e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,

(f) include an address for delivery of notices in respect of the appeal,

(g) be signed by the appellant or the appellant's agent,

(h) include reference to any correspondence, documents and memoranda relating to the matter in issue, and

(i) if applicable, include a copy of the order or decision being appealed.

(3.4) Unless both parties have waived an oral hearing of an appeal, the Hospital Appeal Board must as soon as practicable set a time and place for the hearing and promptly notify the parties in writing.

(3.5) If the parties have waived an oral hearing of an appeal, or in an interim or preliminary matter, the Hospital Appeal Board may hold any combination of written, electronic or oral hearings.

(3.6) On written application by either party, the Hospital Appeal Board may extend the time for doing anything required under this section except the time for the bringing of an appeal under subsection (3.2).

(3.7) If a notice of appeal is deficient, the chair of the Hospital Appeal Board or the chair's delegate may allow a reasonable period of time within which the notice may be corrected.

(4.2) Sections 1 to 20, 25 to 35, 37 to 39, 42, 44, 47 to 56, 57, 58, 60 (a), (b) and (d) to (f) and 61 of the Administrative Tribunals Act apply to the Hospital Appeal Board.

103 The following section is added:
Information admissible in Hospital Appeal Board proceedings

46.1 (1) The Hospital Appeal Board may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the Hospital Appeal Board may exclude anything unduly repetitious.

(3) Subject to subsections (6) and (7), nothing is admissible before the Hospital Appeal Board that is inadmissible in a court because of a privilege under the law of evidence.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

(5) Notes or records kept by a person appointed by the Hospital Appeal Board to conduct a dispute resolution process in relation to a proceeding are inadmissible in Hospital Appeal Board proceedings.

(6) For the purposes of section 51 of the Evidence Act, a proceeding before the Hospital Appeal Board is a proceeding before a board of management.

(7) Information that is inadmissible before a court under section 51 of the Evidence Act is admissible in a proceeding before the Hospital Appeal Board.

Human Rights Code

104 Sections 27.1 (3) and 27.4 of the Human Rights Code, R.S.B.C. 1996, c. 210, are repealed.

105 Section 32 is repealed and the following substituted:

Application of Administrative Tribunals Act

32 Sections 1, 4 to 10, 17, 29, 30, 34 (3) and (4), 45, 46, 48 to 50, 55 to 57, 59 and 61 of the Administrative Tribunals Act apply to the tribunal.

106 Sections 34.1 and 40 (1), (3) and (4) are repealed.

Industry Training Authority Act

107 Section 10 (2) of the Industry Training Authority Act, S.B.C. 2003, c. 34, is repealed and the following substituted:

(2) Sections 1 to 10 of the Administrative Tribunals Act apply to the appeal board.

108 Section 11 is amended by adding the following subsections:
(6) Sections 11 to 20, 22, 24 to 33, 34 (3) and (4), 35 to 42, 44, 48 to 57, 58, 60 (a) to (c) and 61 of the *Administrative Tribunals Act* apply to an appeal to the appeal board.

(7) The appeal board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under subsection (4) and to make any order permitted to be made.

(8) A decision or order of the appeal board on a matter in respect of which the appeal board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

*Labour Relations Code*

109 Section 115.1 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244, is repealed and the following substituted:

Application of *Administrative Tribunals Act*

115.1 Sections 1 to 10, 43, 46, 47 (1) (c), 48, 49, 56, 57, 58 (1) and (2) and 61 of the *Administrative Tribunals Act* apply to the board.

110 Section 123 is repealed.

*Local Government Act*

111 Section 693 (9) of the *Local Government Act*, R.S.B.C. 1996, c. 323, is repealed and the following substituted:

(9) Sections 1 to 8 and 10 of the *Administrative Tribunals Act* apply to the appeal board.

(10) In subsections (11) and (12), "decision maker" includes a member of the appeal board or other officer who makes a decision in an application or a person who conducts a dispute resolution process in relation to an application.

(11) Subject to subsection (12), no legal proceeding for damages lies or may be commenced or maintained against a decision maker or the appeal board in a matter before the appeal board because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act.

(12) Subsection (11) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.
112 Part 6 of the Manufactured Home Park Tenancy Act, S.B.C. 2002, c. 77, is amended by adding the following Division:

Division 1.1 -- Application of Administrative Tribunals Act

71.1 Sections 1, 30, 44, 48, 56 to 58 and 61 of the Administrative Tribunals Act apply to an arbitration and an arbitrator.

113 The following section is added:

Exclusive jurisdiction of arbitrator

77.1 (1) An arbitrator has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an arbitration proceeding under Division 1 of this Part or a review under Division 2 of this Part and to make any order permitted to be made.

(2) A decision or order of an arbitrator under this Act on a matter in respect of which the arbitrator has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

114 Section 80 is repealed and the following substituted:

Compulsion protection

80 (1) An arbitrator must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of duties under this Act.

(2) Despite subsection (1), the court may require the director to produce the record of a proceeding that is the subject of an application for judicial review under the Judicial Review Procedure Act.

Mental Health Act

115 Section 1 of the Mental Health Act, R.S.B.C. 1996, c. 288, is amended by adding the following definitions:

"chair" means the chair appointed under section 24.1 (1) (a);

"review panel" means a review panel established under section 24.1 (2); .

116 Section 16 (g) is repealed.
The following sections are added:

Board and review panels

24.1 (1) The minister may establish a board consisting of the following members appointed after a merit based process:

(a) a chair appointed by the minister;

(b) members appointed by the minister after consultation with the chair.

(2) From among the members of the board, the chair may establish one or more review panels to conduct hearings and for each review panel may

(a) specify the number of its members,

(b) appoint its members, and

(c) designate a member to chair the panel.

(3) A review panel must include

(a) a medical practitioner,

(b) a member in good standing of the Law Society of British Columbia or a person with equivalent training, and

(c) a person who is not a medical practitioner or a lawyer.

(4) For matters heard under this Act by review panels, the chair may

(a) schedule the times the matters will be heard,

(b) assign a matter for hearing to a review panel,

(c) reassign a matter for hearing from one review panel to another review panel, or

(d) schedule 2 or more review panels to hear separate matters at the same time.

Application of Administrative Tribunals Act

24.2 Sections 1 to 10, 11, 13 to 15, 18 to 20, 26 (5) to (7) and (9), 27, 30, 32, 35, 36, 38, 39, 40 (1) and (2), 44, 48, 49, 55 to 57, 59, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the board and members of review panels.
Power to compel witnesses and order disclosure

24.3 (1) At any time before or during a hearing, but before its decision, a review panel may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or

(b) to produce for the review panel or a party a document or other thing in the person’s possession or control, as specified by the review panel, that is admissible and relevant to an issue in an application.

(2) The review panel may apply to the court for an order

(a) directing a person to comply with an order made by the review panel under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the review panel under subsection (1).

118 Section 25 is amended

(a) in subsection (1.1) by striking out "a chair appointed under subsection (7)" and substituting "the chair appointed under section 24.1 (1) (a),"

(b) by adding the following subsections:

(2.3) A review panel may proceed with a hearing

(a) despite a defect or apparent defect in any form required under this Act, and

(b) whether or not the patient has been transferred under section 22 (7) of this Act.

(2.4) A person who satisfies the review panel that he or she has a material interest in or knowledge of matters relevant to the hearing may give evidence or make submissions at the hearing.

(2.5) Unless the review panel orders otherwise, the hearing must be held in private.

(2.6) The chair of a review panel may

(a) exclude the patient from attendance at the hearing or any part of it, but only if the chair of the review panel is satisfied that the exclusion is in the best interests of the patient, or

(b) make orders respecting the taking, hearing or reproduction of evidence as the chair of the review panel considers necessary to protect the interests of the patient or any witness.

(2.7) At any time before a hearing begins, a patient may withdraw the request for the hearing.
(2.8) The review panel must issue a determination described in subsection (2) no later than 48 hours after the hearing is completed and must issue its reasons no later than 14 days after the determination has been issued.

(2.9) After a review panel has made a determination referred to in subsection (2.8), the chair of the review panel must, without delay, deliver a copy of the determination to the director and to the patient or the patient's counsel or agent, and if the patient is to be discharged the director must discharge the patient.

(c) in subsection (3) by striking out "A chair appointed under subsection (7)" and substituting "The chair appointed under section 24.1 (1) (a)".

(d) by repealing subsections (4) and (5) to (8) and by adding the following subsection:

(9) Records of the proceedings of a hearing must be kept by the review panel office for at least one year.

119 The following section is added:

Amendment to final decision

25.1 (1) If a party applies or on the review panel's own initiative, the review panel may amend a final decision to correct any of the following:

(a) a clerical or typographical error;

(b) an accidental or inadvertent error, omission or other similar mistake;

(c) an arithmetical error made in a computation.

(2) Unless the review panel determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.

(3) Within 30 days of being served with the final decision, a party may apply to the review panel for clarification of the final decision and the review panel may amend the final decision only if the review panel considers that the amendment will clarify the final decision.

(4) The review panel may not amend a final decision other than in the circumstances described in subsections (1) to (3).

(5) This section must not be construed as limiting the review panel's ability, on its own initiative or at the request of a party, to reopen an application in order to cure a jurisdictional defect.

Natural Products Marketing (BC) Act

120 Section 3 (3), (5) and (7) of the Natural Products Marketing (BC) Act, R.S.B.C. 1996, c. 330, is repealed.
121 Section 3.1 is repealed and the following substituted:

Application of Administrative Tribunals Act to the board

3.1 Sections 1 to 10, 27 to 30, 45, 46, 48, 57, 58 and 61 of the Administrative Tribunals Act apply to the Provincial board.

122 The following section is added:

Supervisory power

7.1 (1) The Provincial board

(a) has general supervision over all marketing boards or commissions established under this Act, and

(b) must perform the other duties and functions and exercise the authority the Lieutenant Governor in Council prescribes in order to carry out the purposes of this Act.

(2) The Provincial board may exercise its powers under this section at any time, with or without a hearing, and in the manner it considers appropriate to the circumstances.

(3) In the exercise of its powers under this section, the Provincial board may make an order requiring a person to do one or more of the following:

(a) attend as required;

(b) take an oath or affirmation;

(c) answer questions;

(d) produce records or things in their custody or possession.

(4) If a person fails to comply with an order under subsection (3), the Provincial board may apply to the Supreme Court for one or both of the following orders:

(a) directing the person to comply with the order of the Provincial board;

(b) directing any director or officer of the person to cause that person to comply with the order of the Provincial board.

(5) Subsections (3) and (4) do not limit the conduct for which a finding of contempt may be made by the court in respect of conduct by a person in a proceeding before the Provincial board.

(6) The failure or refusal of a person to comply with an order under subsection (4) makes the person, on application to the court by the Provincial board, liable to be committed for contempt as if in breach of an order or judgment of the court.
(7) In the exercise of its powers under this section the Provincial board may make rules governing its procedure and the quorum in supervisory matters, including its meetings, and may make rules and issue orders governing the procedure for any exercise of its supervisory powers.

123 Section 8 (1) to (3), (7) to (8.3), (10) and (11) is repealed and the following substituted:

(1) A person aggrieved by or dissatisfied with an order, decision or determination of a marketing board or commission may appeal the order, decision or determination to the Provincial board.

(8) If, after an appeal is filed, an appeal panel considers that all or part of the subject matter of the appeal is more appropriately dealt with in a supervisory process under its supervisory power, the appeal panel, after giving the appellant and the commodity board or commission an opportunity to be heard, may defer further consideration of the appeal until after the supervisory process is completed.

(8.4) If an appeal is deferred under subsection (8) and the supervisory process has been completed, the appellant may give notice that it intends to proceed with the appeal, and the Provincial board must proceed with and decide the appeal.

124 The following sections are added:

Application of Administrative Tribunals Act to board for purpose of appeals

8.1 (1) For the purposes of an appeal under section 8 of this Act, sections 11 to 20, 22, 24 to 26, 31 to 33, 34 (3) and (4), 35 to 42, 47, 49 to 52, 55 and 60 of the Administrative Tribunals Act apply to the Provincial board.

(2) A power of the Provincial board to make an order or require a person to do something under this section applies to a commodity board or commission and to a member of the commodity board or commission.

Rules about participation of commodity board or commission in an appeal

8.2 The Provincial board may make rules respecting the participation of a commodity board or commission in an appeal under section 8.

Power to correct errors and omissions and to clarify decision

8.3 (1) On its own initiative or on the application of a party, the Provincial board may amend a final decision to correct any of the following:

(a) a clerical or typographical error;

(b) an accidental or inadvertent error, omission or other similar mistake;

(c) an arithmetical error made in a computation.
(2) Unless the Provincial board determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.

(3) Within 30 days after being served with the final decision, a party may apply to the Provincial board for clarification of the final decision and the Provincial board may amend the final decision only if the Provincial board considers that the amendment will clarify the final decision.

(4) The Provincial board may not amend a final decision other than in the circumstances described in subsections (1) to (3).

(5) This section must not be construed as limiting the Provincial board's ability on its own initiative to reopen an application in order to cure a jurisdictional defect.

Enforcement of Provincial board's final decision

8.4 (1) The Provincial board, a party in whose favour the Provincial board makes a final decision or a person designated in the final decision may file a certified copy of the final decision with the Supreme Court.

(2) A final decision filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

125 Section 9 is repealed and the following substituted:

Review of an order, decision or determination

9 (1) The Provincial board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined by the Provincial board under this Act or a federal Act and to make any order permitted to be made.

(2) Without limiting subsection (1), the Provincial board has exclusive jurisdiction to inquire into, hear and determine whether a decision, order or determination of a marketing board or commission accords with either or both of the following:

(a) sound marketing policy;

(b) a scheme or the orders of the marketing board or commission.

(3) A decision, order or determination of the Provincial board under this Act on a matter in respect of which the Provincial board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

126 Section 19 is repealed and the following substituted:

Immunity protection for Provincial board, its members and others

19 (1) In this section, "decision maker" includes the Provincial board, a member of the Provincial board or a staff officer of the Provincial board who participates in a dispute resolution process.
(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker, a marketing board, a commission or an agency or their members appointed under the federal Act or under this Act, because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

127 Section 22 (4) is repealed.

Parole Act

128 Section 2 (3) of the Parole Act, R.S.B.C. 1996, c. 346, is repealed and the following substituted:

(3) Sections 1 to 6, 8 to 10, 36, 39, 44, 56, 57, 58 and 61 of the Administrative Tribunals Act apply to the board.

129 The following section is added:

Compulsion protection

10.1 (1) A member of the board or person acting on behalf of or under the direction of a member of the board is not required to testify or produce evidence, in any civil, administrative or regulatory action or proceeding, about records or information obtained in the discharge of duties under this Act.

(2) Despite subsection (1), the Supreme Court may require the board to produce the record of a proceeding that is the subject of an application for judicial review under the Judicial Review Procedure Act.

130 Section 13 is repealed.

Passenger Transportation Act

131 Section 6 (3) of the Passenger Transportation Act, S.B.C 2004, is repealed and the following substituted:

(3) The definitions of "appointing authority", "member", "privative clause", "tribunal" and "tribunal's enabling Act" in section 1 of the Administrative Tribunals Act and sections 2 to 10, 26, 30, 31, 41, 42, 44, 57, 58 and 61 of that Act apply to the board.
(3.1) A person who participates in a hearing may be represented by counsel or by an agent and may make submissions as to facts, law and jurisdiction.

132 Section 7 is amended

(a) by repealing subsection (1) (h), and

(b) by adding the following subsections:

(1.1) Subject to the regulations, if the board considers that the conduct of a participant in a proceeding has been improper, vexatious, frivolous or abusive, the board may order the participant to pay part of the actual costs and expenses of the board in connection with the proceeding.

(1.2) An order under subsection (1.1), after filing in the court registry, has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken on the order as if it were an order of the court.

133 Sections 8 and 9 are repealed.

134 Section 12 (2) and (3) is repealed and the following substituted:

(2) At any time during a proceeding, but before its decision, the board may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in a proceeding, or

(b) to produce for the board a document or other thing in the person's possession or control, as specified by the board, that is admissible and relevant to an issue in a proceeding.

(2.1) The board may apply to the Supreme Court for an order

(a) directing a person to comply with an order made by the board under subsection (2), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the board under subsection (2).

135 Section 16 (2) is amended by striking out "is deemed" and substituting "must be considered".

136 Section 18 is repealed.

137 Section 20 (3) is amended by striking out "must" and substituting "may".

138 Section 22 is repealed and the following substituted:
Exclusive jurisdiction of board

22 (1) The board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under this Act and to make any order permitted to be made.

(2) A decision or order of the board under this Act on a matter in respect of which the board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

139 Section 27 (6) is amended by striking out "under section 7 (1) (h)".

140 Section 55 is amended by adding the following subsection:

(6) If a notice or document is not served in accordance with this section, the proceeding is not invalidated if

(a) the contents of the notice or document were known by the person to be served within the time allowed for service,

(b) the person to be served consents, or

(c) the failure to serve does not result in prejudice to the person or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

141 Section 59 (2) (h) is repealed and the following substituted:

(h) prescribing limits and rates respecting the costs that may be recovered by the board under section 7 (1.1);

Petroleum and Natural Gas Act

142 Section 13 (5) and (6) of the Petroleum and Natural Gas Act, R.S.B.C 1996, c. 361, is repealed and the following substituted:

(6) Sections 1 to 11, 14, 17, 19 to 21, 29, 30, 32, 34 (3) and (4), 36, 38 to 42, 44, 47 to 49, 55 to 57, 59, 60 (a), (b) and (d) to (f) and 61 of the Administrative Tribunals Act apply to the board.

143 Section 14 is repealed.

144 Section 15 is amended by adding the following subsections:

(2.1) If the board transcribes or tape records a proceeding, the transcription or tape recording constitutes part of the record of the proceeding and is deemed to be correct.

(2.2) If, because of a mechanical or human failure or other accident, the transcription or tape recording is destroyed, interrupted or incomplete, the validity of the proceeding is not affected.

145 Section 16 (2) (a) is amended by adding "directly" before "affected" in both places.
146 Section 17 is amended

(a) in subsection (1) by adding "directly" before "affected" and by striking out "the other" and substituting "those",

(b) in subsection (2) by adding "directly affected" after "persons", and

(c) in subsection (3) by adding "directly" before "affected".

147 Section 18 (1) and (5) is amended by adding "directly" before "affected".

148 Section 20 (1) is amended by adding "directly" before "affected" in both places.

149 Section 22 (3), (4) and (5) is amended by adding "directly" before "affected".

150 Sections 23 and 24 are repealed.

151 Section 25 is amended

(a) by repealing subsection (1) and substituting the following:

(1) If an order is made by the board, the board must provide notice of the order to the applicant and to any other persons directly affected by that order. , and

(b) by adding the following subsections:

(4) An order made by the board is effective on the date it is issued by the board unless the order specifies otherwise.

(5) If the board is of the opinion that because there are so many parties to an application or for any other reason it is impracticable to give notice of its final order to all or any of the parties individually, the board may give notice of its final order by public advertisement or otherwise as the board directs.

(6) If the board gives notice under subsection (5) of a final order, the notice must inform the parties where copies of the final order may be obtained.

(7) The board must provide for public access to its orders.

152 Section 27 is repealed.

Residential Tenancy Act

153 Part 5 of the Residential Tenancy Act, S.B.C 2002, c. 78, is amended by adding the following Division:
Division 1.1 -- Application of Administrative Tribunals Act

Application of Administrative Tribunals Act

78.1 Sections 1, 30, 44, 48, 56 to 58 and 61 of the Administrative Tribunals Act apply to an arbitration and an arbitrator.

154 The following section is added:

Exclusive jurisdiction of arbitrator

84.1 (1) An arbitrator has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an arbitration proceeding under Division 1 of this Part or a review under Division 2 of this Part and to make any order permitted to be made.

(2) A decision or order of an arbitrator under this Act on a matter in respect of which the arbitrator has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

155 Section 87 is repealed and the following substituted:

Compulsion protection

87 (1) An arbitrator must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of duties under this Act.

(2) Despite subsection (1), the court may require the director to produce the record of a proceeding that is the subject of an application for judicial review under the Judicial Review Procedure Act.

Safety Standards Act

156 Section 44 of the Safety Standards Act, S.B.C. 2003, c. 39, is repealed and the following substituted:

Application of Administrative Tribunals Act

44 Sections 1 to 22, 24, 26 to 30, 31 (1) (a) to (e), (2) and (3), 32, 33, 34 (3) and (4), 35 to 42, 44, 47 to 58, 60 and 61 of the Administrative Tribunals Act apply to the appeal board.

157 Sections 46, 48 and 51 (1) and (3) are repealed.

158 Section 51 (4) is amended

(a) in paragraph (a) by striking out "the appeal, and" and substituting "the appeal.", and
159 Sections 54 to 61 are repealed and the following substituted:

Appeal does not operate as a stay unless appeal board otherwise orders

54 (1) The commencement of an appeal does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

(2) On application, the appeal board, a panel or a member of the board may order that the decision being appealed is stayed for a period of time or subject to conditions, or both.

(3) Subsection (2) does not apply if an application under section 39 to the Supreme Court to enforce an order for compliance has been made in respect of the decision under appeal.

Appeal board's hearing

59 The appeal board must decide the matter by confirming, varying or reversing the decision or by dismissing the appeal.

Decision of appeal board is final

60 (1) The appeal board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under this Act and to make any order permitted to be made.

(2) A decision or order of the appeal board on a matter in respect of which the appeal board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

160 Section 89 (d) is repealed.

Securities Act

161 Section 65 (4) of the Securities Act, S.B.C. 2004, is repealed.

162 Section 136 is repealed and the following substituted:

Application of Administrative Tribunals Act

136 Sections 1 to 6, 7 (1) and (2), 8, 43, 46 and 55 of the Administrative Tribunals Act apply to the commission.

Utilities Commission Act

163 Section 2 (4) of the Utilities Commission Act, R.S.B.C. 1996, c. 473, is repealed and the following substituted:
(4) Sections 1 to 3 and 5 to 13, 15, 18 to 21, 28 to 30, 32, 34 (3) and (4), 35 to 42, 44, 48, 49, 54, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the commission, and for that purpose a reference to a deputy chair in this Act is a reference to a vice chair under that Act.

164 Section 4 is amended

(a) in subsection (1) (a) by striking out ", and",

(b) by repealing subsection (1) (b), and

(c) by adding the following subsections:

(10) In the case of a tie vote at a sitting of the commission or a division of the commission, the decision of the chair of the commission or the division governs.

(11) If a division is comprised of one member and that member is unable for any reason to complete the member's duties, the chair of the commission, with the consent of all parties to the application, may organize a new division to continue to hear and determine the matter on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

165 Section 6 is repealed.

166 Section 12 (2) is repealed and the following substituted:

(2) A commissioner, officer or employee of the commission must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of duties under this Act.

(3) Despite subsection (2), the Supreme Court may require the commission to produce the record of a proceeding that is the subject of an application for judicial review under the Judicial Review Procedure Act.

167 Section 74 is repealed and the following substituted:

Inspections and depositions

74 For the purposes of this Act, the commission may

(a) enter on and inspect property, and

(b) require the taking of depositions inside or outside of British Columbia.

168 Section 75 is amended by striking out "to follow legal precedent" and substituting "to follow its own decisions".

169 Section 78 is amended

(a) by repealing subsection (1), and
(b) in subsection (3) by adding "of this Act and section 34 (3) and (4) of the Administrative Tribunals Act" after "section 74".

170 Sections 86.1, 93 and 94 are repealed.

171 The following section is added:

Withdrawal of application

88.1 If an applicant withdraws all or part of an application or the parties advise the commission that they have reached a settlement of all or part of an application, the commission may order that the application or part of it is dismissed.

172 Section 122 is repealed.

173 Section 124 is amended by adding the following subsection:

(5) A decision of the commission is effective on the date on which it is issued, unless otherwise specified by the commission.

Workers Compensation Act

174 Section 221 of the Workers Compensation Act, R.S.B.C. 1996, c. 492, is amended by adding the following subsections:

(4) If, through absence, accident, illness or other cause beyond the party's control, a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2) or (3), that subsection does not apply.

(5) If a notice or document is not served in accordance with this section, the proceeding is not invalidated if

(a) the contents of the notice or document were known by the person to be served within the time allowed for service,

(b) the person to be served consents, or

(c) the failure to serve does not result in prejudice to the person or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

(6) If the appeal tribunal is of the opinion that because there are so many parties to a proceeding or for any other reason it is impracticable to give notice of a hearing to a party by a method referred to in subsection (1) (a) to (c), the appeal tribunal may give notice of a hearing by public advertisement or otherwise as the appeal tribunal directs.

175 Section 232 (7) is repealed.

176 Section 234 (2) (d) and (e) is repealed and the following substituted:
(d) establishing any forms, practices and procedures required for the efficient and cost effective conduct of appeals to the appeal tribunal, including

(i) the time periods within which steps must be taken,

(ii) requiring pre-hearing conferences, and

(iii) employing voluntary alternate dispute resolution processes;

(e) making any forms, practices and procedures established under paragraph (d) accessible to the public;

177 Section 235 (2) is repealed and the following substituted:

(2) The Public Sector Pension Plans Act and the Public Service Benefit Plan Act apply to the employees of the appeal tribunal.

178 Section 236 is repealed and the following substituted:

Compensation and expenses of members

236 (1) In accordance with general directives of the Treasury Board, members must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in carrying out their duties.

(2) In accordance with general directives of the Treasury Board, the minister must set the remuneration for those members who are to receive remuneration.

(3) For the purposes of subsection (2), Treasury Board may specify different rates of remuneration for different classes of members.

(4) The chair of the appeal tribunal must determine the class to which a member is assigned for the purposes of remuneration.

(5) The Public Sector Pension Plans Act and the Public Service Benefit Plan Act apply to the members of the appeal tribunal.

179 Section 238 is amended by adding the following subsection:

(11) If a panel is comprised of one member and that member is unable for any reason to complete the member's duties, the chair of the appeal tribunal, with the consent of all parties to the appeal, may appoint a new panel to continue to hear and determine the appeal on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

180 Section 242 (2) is repealed and the following substituted:

(2) A notice of appeal must

(a) be made in writing or in another form authorized by the appeal tribunal’s rules,
(b) identify the decision or order that is being appealed,

(c) state why the decision or order is incorrect or why it should be changed,

(d) state the outcome requested,

(e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,

(f) include an address for delivery of any notices in respect of the appeal, and

(g) be signed by the appellant or the appellant's agent.

(3) If a notice of appeal is deficient the appeal tribunal may allow a reasonable period of time within which the notice may be corrected.

181 Section 244 is amended by striking out "the chair directs" and substituting "the appeal tribunal orders".

182 The following section is added:

Application of Administrative Tribunals Act to appeal tribunal proceedings

245.1 Sections 1, 11, 13 to 15, 28 to 32, 35 (1) to (3), 37, 38, 42, 44, 48, 49, 52, 55 to 58, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the appeal tribunal.

183 Section 246 is amended

(a) in subsection (1) by striking out "in person or by means of teleconference or videoconference facilities," and substituting "in person, by means of teleconference or videoconference facilities or by other electronic means," and

(b) by repealing subsections (2) (a) and (b) and (5) and substituting the following:

(5) If a party fails to comply with an order of the appeal tribunal or with the rules of practice and procedure of the appeal tribunal, including any time limits specified for taking any actions, after giving notice to that party the appeal tribunal may do one or more the following:

(a) schedule a written, electronic or oral hearing;

(b) continue with the appeal and make a decision based on the evidence before it, with or without providing an opportunity for submissions;

(c) dismiss the application.
184 The following section is added:

Evidence admissible in appeal tribunal proceedings

246.1 (1) The appeal tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the appeal tribunal may exclude anything unduly repetitious.

(3) Nothing is admissible before the appeal tribunal that is inadmissible in a court because of a privilege under the law of evidence.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

(5) Notes or records kept by a person appointed by the appeal tribunal to conduct a dispute resolution process in relation to an appeal are inadmissible in appeal tribunal proceedings.

185 Section 247 is amended

(a) by repealing subsection (1) and substituting the following:

(1) At any time before or during a hearing, but before its decision, the appeal tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an appeal, or

(b) to produce for the appeal tribunal or a party a document or other thing in the person's possession or control, as specified by the appeal tribunal, that is admissible and relevant to an issue in an appeal.

(1.1) The appeal tribunal may apply to the Supreme Court for an order

(a) directing a person to comply with an order made by the appeal tribunal under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the appeal tribunal under subsection (1).

(b) in subsections (3) and (4) by striking out "Despite subsections (1) and (2)," and substituting "Despite subsections (1) to (2),".
186 The following section is added:

Amendment to final decision

253.1 (1) If a party applies or on the appeal tribunal's own initiative, the appeal tribunal may amend a final decision to correct any of the following:

(a) a clerical or typographical error;

(b) an accidental or inadvertent error, omission or other similar mistake;

(c) an arithmetical error made in a computation.

(2) Unless the appeal tribunal determines otherwise, an amendment under subsection (1) must not be made more than 90 days after all parties have been served with the final decision.

(3) Within 90 days after being served with the final decision, a party may apply to the appeal tribunal for clarification of the final decision and the appeal tribunal may amend the final decision only if the appeal tribunal considers that the amendment will clarify the final decision.

(4) The appeal tribunal may not amend a final decision other than in those circumstances described in subsections (1) to (3).

(5) This section must not be construed as limiting the appeal tribunal's ability, on request of a party, to reopen an appeal in order to cure a jurisdictional defect.

187 Section 254 is amended by striking out "fact and law arising or required to be determined under this Part," and substituting "fact, law and discretion arising or required to be determined under this Part and to make any order permitted to be made,.".

188 Section 255 is amended by adding the following subsections:

(4) A party in whose favour the appeal tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the Supreme Court.

(5) A final decision filed under subsection (4) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.
Transitional Provision

Transitional: existing appointments

189 (1) Existing designations, made before February 13, 2004, of members of the British Columbia Securities Commission as the chair and vice chairs of the commission and the appointments of those members are continued as expressed in the orders by which they were appointed.

(2) This section is repealed on a date set by regulation of the Lieutenant Governor in Council.

Repeal

190 The Administrative Tribunals Appointment and Administration Act, S.B.C. 2003, c. 47, is repealed.

Commencement

191 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

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<th>Item</th>
<th>Column 1 Provisions of Act</th>
<th>Column 2 Commencement</th>
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<td>Anything not elsewhere covered by this table</td>
<td>The date of Royal Assent</td>
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<td>2</td>
<td>Sections 1 to 176</td>
<td>By regulation of the Lieutenant Governor in Council</td>
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<td>3</td>
<td>Section 177</td>
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<td>4</td>
<td>That part of Section 178 enacting 236 (5) of the Workers Compensation Act</td>
<td>March 3, 2003</td>
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<td>5</td>
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<td>Sections 179 to 190</td>
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