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**HONOURABLE GEOFF PLANT
ATTORNEY GENERAL AND MINISTER
RESPONSIBLE FOR TREATY NEGOTIATIONS**

ADMINISTRATIVE TRIBUNALS ACT (BILL 56 - 2004)

as amended by

ATTORNEY GENERAL STATUTES AMENDMENT ACT (BILL 62 - 2004)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

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;

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"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 intervener 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.

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;

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- (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;

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(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 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.

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.

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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.

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(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.

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.

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.

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(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.

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.

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.

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:

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- (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.

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.

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.

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(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

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- (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.

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;

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.