

*Workers Compensation Act (Part IV), as per the
Administrative Tribunals Act (Bill 56, 5th Session, 37th Parliament)*

Passed third reading on May 19, 2004

subsequent to the changes as per the

Administrative Tribunals Appointment and Administration Act (Bill 68, 4th Session, 37th Parliament)

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*changes by Bill 56 are shown in shading

*changes by Bill 68 are shown in underline

PREQUEL:

The only section of the *Workers Compensation Act* (other than those in Part IV) that is directly amended by the transitional provisions of the *Administrative Tribunals Act* is s.221, which 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.

**WORKERS COMPENSATION ACT
[RSBC 1996] CHAPTER 492**

Part 4 — Appeals

Division 1 — Appeal Tribunal

Definitions

231 In this Part:

"chair" means the chair of the appeal tribunal appointed under section 232 (2) (a);

"extraordinary member" means a member of the appeal tribunal appointed under section 232 (2) (c);

"members of the appeal tribunal" means the chair, vice chairs and extraordinary members appointed under section 232 (2) and temporary substitute members appointed under section 232 (10);

"presiding member" means the member of the appeal tribunal chairing a panel of the tribunal;

"vice chair" means a vice chair of the appeal tribunal appointed under section 232 (2) (b).

Appeal tribunal established

232 (1) The Workers' Compensation Appeal Tribunal is established.

(2) The appeal tribunal consists of the following members appointed after a merit based process:

(a) the chair appointed by the Lieutenant Governor in Council;

(b) one or more vice chairs appointed by the chair, after consultation with the minister;

(c) any extraordinary members appointed by the chair, after consultation with the minister, with representation from individuals with experience in employers' interests and from individuals with experience in workers' interests.

(3) The chair holds office for an initial term of 3 to 5 years and may be reappointed for one or more successive terms of up to 5 years each.

(4) The vice chairs hold office for an initial term of 2 to 4 years and may be reappointed for additional terms of up to 5 years.

(5) An extraordinary member holds office for the period of time required to discharge his or her duties as a member of a panel appointed by the chair under section 238 (5) (b) or (6) (b).

(6) Individuals are not eligible for appointment as vice chairs unless they have successfully completed a merit based process established or approved by the chair.

(7) *Repealed.*

(8) Before beginning their duties, members of the appeal tribunal must take an oath of office in the form and manner prescribed by the Lieutenant Governor in Council.

(9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to members or officers of the appeal tribunal.

(10) Despite subsections (3) to (5), if a member of the appeal tribunal is absent or incapacitated,

(a) the Lieutenant Governor in Council, if the member is the chair, or

(b) the chair, if the member is a vice chair or extraordinary member,

may appoint a person, who would otherwise be qualified for appointment as a member, as a temporary substitute member to act during the absence or incapacity.

End of appointment

233 (1) A member of the appeal tribunal may resign at any time by giving written notice to the chair or, in the case of the chair, to the minister.

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

Role of chair

234 (1) The chair is responsible for the general operation of the appeal tribunal.

(2) Without restricting subsection (1), the chair is responsible for the following:

(a) appointing vice chairs and extraordinary members in accordance with any procedures or requirements prescribed by the Lieutenant Governor in Council;

(b) establishing quality adjudication, performance and productivity standards for members of the appeal tribunal and regularly evaluating the members according to those standards;

(c) developing a 3 year strategic plan and an annual operations plan for the appeal tribunal;

(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;
- (f) establishing administrative practices and procedures for the effective operation of the appeal tribunal;
- (g) providing for public access to decisions of the appeal tribunal in a manner that protects the privacy of the parties to the proceedings;
- (h) for the purposes of section 249, establishing a list of health professionals;
- (i) presiding over meetings of the appeal tribunal;
- (j) establishing panels;
- (k) ordering the consideration of related matters in one hearing before the appeal tribunal;
- (l) establishing a code of conduct, including conflict of interest provisions, that governs the conduct of the members, officers, employees and contractors of the appeal tribunal;
- (m) preparing the annual report of the appeal tribunal;
- (n) appointing officers of the appeal tribunal;
- (o) for the purpose of judicial proceedings, preparing a certificate attaching the record of the appeal tribunal in the matter of a particular appeal or decision of the tribunal, including any practices and procedures applied by the tribunal.

(3) The chair may exercise any power and perform any duty or function of the appeal tribunal or of a member of the appeal tribunal.

(4) Subject to section 251 (9), the chair may delegate in writing to another member of the appeal tribunal or to an officer of the appeal tribunal a power or duty of the chair and may impose limitations or conditions on the exercise of that power or performance of that duty.

(5) If the chair has delegated a power or duty of the chair and subsequently ceases to hold office, the delegation continues in effect

- (a) so long as the delegate continues in office, or
- (b) until the delegation is revoked by a new chair.

(6) The chair may designate another member of the appeal tribunal to act in the chair's place during the chair's temporary absence, and while acting in the chair's place the designated member has the power and authority of the chair.

(7) The chair must attend not fewer than 4 meetings of the board of directors each calendar year to exchange information on matters of common interest and importance to the workers' compensation system.

(8) On or before March 25 of each year, the chair must make a report to the minister respecting the appeal tribunal's operations for the preceding calendar year.

(9) The minister may require the annual report referred to in subsection (8) to address specified matters and to be in a specified form.

Appeal tribunal staff

235 (1) Employees necessary to exercise the powers and perform the duties of the appeal tribunal may be appointed under the *Public Service Act*.

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

(3) Despite the *Public Service Act*, the appeal tribunal may engage or retain consultants and contractors that the appeal tribunal considers necessary to exercise its powers and perform its duties, and may determine the functions and remuneration of those consultants and contractors.

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.

Finances

237 (1) All money required for the administration and operation of the appeal tribunal must be paid by the government, but on request of the minister the Board must reimburse the government for all amounts so paid.

(2) On receipt of a request from the minister under subsection (1), the Board must pay the amount requested to the Minister of Finance out of the accident fund.

Panels

- 238** (1) All appeals to the appeal tribunal must be heard by panels appointed under this section.
- (2) The chair must establish the panels of the appeal tribunal.
- (3) The chair may
- (a) terminate an appointment to a panel,
 - (b) fill a vacancy on a panel, and
 - (c) refer an appeal that is before one panel to another panel.
- (4) Subject to subsections (5) and (6), panels must consist of the chair sitting alone or a vice chair sitting alone.
- (5) If the chair determines that a matter under appeal requires consideration by a 3 member panel, the chair may appoint a panel with either of the following memberships:
- (a) the chair or a vice chair, acting as presiding member, plus 2 additional vice chairs;
 - (b) the chair or a vice chair, acting as presiding member, plus one extraordinary member with experience in employers' interests and one extraordinary member with experience in workers' interests.
- (6) If the chair determines that the matters in an appeal are of special interest or significance to the workers' compensation system as a whole, the chair may appoint a panel of up to 7 members with either of the following memberships:
- (a) the chair or a vice chair, acting as presiding member, plus additional vice chairs;
 - (b) the chair or a vice chair, acting as presiding member, plus additional vice chairs and extraordinary members.
- (7) If a panel is constituted under subsection (6) (b),
- (a) there must be an equal number of extraordinary members appointed who have experience in employers' interests and who have experience in workers' interests, and
 - (b) the extraordinary members must not constitute a majority of the membership of the panel.
- (8) A panel has the power and authority of the appeal tribunal in an appeal assigned to the panel under this section.
- (9) If a panel consists of more than one member, the decision of the majority is the appeal tribunal's decision, but if there is no majority the decision of the presiding member is the appeal tribunal's decision.

(10) Despite subsections (6) and (7), if a member of a panel constituted under subsection (6) is unable to complete an appeal, the chair may direct the remaining members of the panel to complete the appeal and make the decision of the appeal tribunal

(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.

Division 2 — Appeal Rights

Appeal of review decisions

239 (1) Subject to subsection (2), a final decision made by a review officer in a review under section 96.2, including a decision declining to conduct a review under that section, may be appealed to the appeal tribunal.

(2) The following decisions made by a review officer may not be appealed to the appeal tribunal:

- (a) a decision in a prescribed class of decisions respecting the conduct of a review;
- (b) a decision respecting matters referred to in section 16;
- (c) a decision respecting the application under section 23 (1) of rating schedules compiled under section 23 (2) where the specified percentage of impairment has no range or has a range that does not exceed 5%;
- (d) a decision respecting commutations under section 35;
- (e) a decision respecting an order under Part 3, other than an order
 - (i) relied upon to impose an administrative penalty under section 196 (1),
 - (ii) imposing an administrative penalty under section 196 (1), or
 - (iii) made under section 195 to cancel or suspend a certificate.

Appeal of other Board decisions

240 (1) A determination, an order, a refusal to make an order or a cancellation of an order made under section 153 may be appealed to the appeal tribunal.

(2) A decision to reopen or not to reopen a matter on an application under section 96 (2) may be appealed to the appeal tribunal.

Who may appeal

241 (1) For the purposes of section 239, any of the following persons who is directly affected by a decision of the review officer in respect of a matter referred to in section 96.2 (1) (a) may appeal that decision:

- (a) a worker;
- (b) a deceased worker's dependant;
- (c) an employer.

(2) For the purposes of section 239, an employer or an independent operator who is directly affected by a decision of the review officer in respect of a matter referred to in section 96.2 (1) (b) may appeal that decision.

(3) For the purposes of section 239, any of the following persons who is directly affected by a decision of the review officer in respect of a matter referred to in section 96.2 (1) (c) may appeal that decision:

- (a) a worker;
- (b) an employer within the meaning of Part 3;
- (c) an owner as defined in section 106;
- (d) a supplier as defined in section 106;
- (e) a union as defined in section 106;
- (f) a member of a deceased worker's family.

(4) For the purposes of section 240 (1), any of the following persons who is directly affected by a decision or an order referred to in section 240 (1) may appeal that decision or order:

- (a) a worker;
- (b) an employer within the meaning of Part 3;
- (c) a union as defined in section 106.

(5) For the purposes of section 240 (2), a worker or an employer who is directly affected by a decision referred to in section 240 (2) may appeal that decision.

How to appeal

242 (1) A person referred to in section 241 may appeal the decision or order to the appeal tribunal by filing a notice of appeal with the tribunal.

(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.

Time limit for appeal

243 (1) A notice of appeal respecting a decision referred to in section 239 must be filed within 30 days after the decision being appealed was made.

(2) A notice of appeal respecting a decision referred to in section 240 must be filed within 90 days after the decision or order being appealed was made.

(3) On application, and where the chair is satisfied that

- (a) special circumstances existed which precluded the filing of a notice of appeal within the time period required in subsection (1) or (2), and
- (b) an injustice would otherwise result,

the chair may extend the time to file a notice of appeal even if the time to file has expired.

No stay of appealed decision

244 Unless the appeal tribunal orders otherwise, the filing of a notice of appeal under section 242 does not operate as a stay or affect the operation of the decision or order under appeal.

Division 3 — Appeal Procedure

Board records and policies

245 (1) The Board must provide the appeal tribunal with copies of all current policies of the board of directors.

(2) As soon as practicable, the appeal tribunal must notify the Board of an appeal filed under this Part.

(3) As soon as practicable after being given notice under subsection (2), the Board must provide the appeal tribunal and the parties to the appeal with a copy of its records respecting the matter under appeal.

(4) On request of the appeal tribunal and as soon as practicable, the Board must advise the appeal tribunal of a policy of the board of directors that is applicable to the matter under appeal.

(5) As soon as practicable after receiving advice under subsection (4), the appeal tribunal must advise the parties to the appeal of a policy of the board of directors that the Board has advised the appeal tribunal is applicable to the matter under appeal.

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.

Proceedings

246 (1) Subject to any rules, practices or procedures established by the chair, the appeal tribunal may conduct an appeal in the manner it considers necessary, including conducting hearings in writing or orally with the parties present in person, by means of teleconference or videoconference facilities or by other electronic means;

(2) Without restricting subsection (1), the appeal tribunal may do one or more of the following:

(a) *Repealed.*

(b) *Repealed.*

(c) inquire into the matter under appeal and consider all information obtained;

(d) request the Board to investigate further into a matter relating to a specific appeal and report in writing to the appeal tribunal;

(e) require the parties to the appeal to attend a pre-hearing conference to discuss procedural and substantive issues relating to the conduct of the appeal;

(f) require the parties to the appeal to make a pre-hearing disclosure of their evidence, including requiring the pre-hearing examination of a party on oath or by affidavit;

(g) recommend to the parties to the appeal that an alternate dispute resolution process be used to assist in the resolution of a matter under appeal;

(h) require an employer who is a party to an appeal respecting a matter referred to in section 96.2 (1) (c) to post a notice in the specified form and manner bringing the appeal to the attention of the employees of the employer;

(i) request any person or representative group to participate in an appeal if the tribunal considers that this participation will assist the tribunal to fully consider the merits of the appeal.

(3) If, in an appeal, the appeal tribunal considers there to be a matter that should have been determined but that was not determined by the Board, the appeal tribunal may refer that matter back to the Board for determination and suspend the appeal proceedings until the Board provides the appeal tribunal with that determination.

(4) If the appeal tribunal refers a matter back to the Board for determination under subsection (3), the appeal tribunal must consider the Board's determination in the context of the appeal and no review of that determination may be requested under section 96.2.

(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.

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.

Witnesses

247 (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).

(2) On an appeal, the appeal tribunal may cause depositions of witnesses residing in or out of the Province to be taken before a person appointed by the appeal tribunal in a similar manner to that prescribed by the Rules of Court for the taking of like depositions in the Supreme Court before a commissioner.

(3) Despite subsections (1) to (2), an officer, an employee or a contractor of the Board may only be compelled to give evidence or produce books, papers, documents and things that

(a) relate to the issues in a specific appeal, and

(b) are necessary for the appeal tribunal to address those issues and to make a decision in the appeal.

(4) Despite subsections (1) to (2), a member of the board of directors or an officer, an employee or a contractor of the Board may not be compelled to give evidence or produce books, papers, documents and things respecting the development or adoption of the policies of the board of directors.

Deemed employer

248 (1) Subject to subsections (2) and (3), for the purposes of a specific appeal, if the employer has ceased to be an employer within the meaning of Part 1, the appeal tribunal may deem an employers' adviser within the meaning of section 94 or an organized group of employers to be the employer.

(2) An organized group of employers may be recognized by the appeal tribunal for the purposes of subsection (1) only if the organized group includes among its members employers in the subclass of industry to which the employer who has ceased to be an employer belonged.

(3) If, for the purposes of the review under section 96.2 of a decision respecting a specific matter, an organized group of employers or an employers' adviser was deemed to be the employer, the group or employers' adviser, as the case may be, is deemed to be the employer for the purposes of appealing the review officer's decision in that matter and participating in the appeal.

Health professional assistance

249 (1) In this section, "**health professional**" means a medical practitioner, a person entitled to practise medicine under the laws of another jurisdiction or any other person with prescribed qualifications.

(2) The chair must establish a list of health professionals who may be retained to provide independent assistance or advice on the request of the appeal tribunal in an appeal.

(3) The list established by the chair under subsection (2) must not include any person who is employed by the Board.

(4) After taking into account any fee schedule established by the Board for services provided by health professionals, the chair may determine the terms and conditions, including remuneration and reimbursement of expenses, under which a health professional may be retained by the appeal tribunal under this section.

(5) Except with the written consent of the parties to the appeal, the appeal tribunal must not retain a health professional to provide independent assistance or advice in respect of a specific appeal if the health professional

- (a) has previously examined the worker whose claim is the subject of the appeal,
- (b) is treating or has previously treated the worker or a member of the worker's family,
- (c) has been consulted in the treatment of the worker,
- (d) has acted as a consultant to the employer,
- (e) is a partner of or practises with a health professional described in this subsection, or
- (f) is otherwise in circumstances that could result in a reasonable apprehension of bias.

(6) If the appeal tribunal determines that independent assistance or advice from a health professional would assist in reaching a decision on an appeal, the presiding member may retain a health professional from the list described in subsection (2) to provide such assistance or advice.

(7) When a health professional is retained under subsection (6), the presiding member must set the terms of reference for the advice, including requiring a written report, setting any time periods for providing the report and specifying any questions to be answered in the report.

(8) If the health professional retained under subsection (6) considers it necessary to examine a worker in order to provide the independent assistance or advice set out in the terms of reference under subsection (7), the health professional may require the worker to attend for an examination by giving the worker written notice.

(9) If the worker fails to present himself or herself for the examination required under subsection (8) or obstructs that examination without reasonable cause, the appeal tribunal may, after giving notice to the worker, do one or more of the following:

- (a) direct the health professional to reschedule the examination of the worker and give the worker notice of the rescheduled examination;
 - (b) direct the health professional to provide a report without examining the worker;
 - (c) make a determination that the worker has abandoned the appeal.
- (10) The appeal tribunal must give a copy of the health professional's written report to the parties to the appeal.
- (11) The parties to an appeal may make submissions to the appeal tribunal in respect of the report provided to them under subsection (10).
- (12) The appeal tribunal may suspend an appeal until a health professional's report to be provided under this section in respect of that appeal is received by the appeal tribunal.
- (13) Subsection (5) does not prohibit the appeal tribunal in an appeal
- (a) from requesting a health professional to provide it with medical evidence or to clarify or interpret medical evidence previously provided by the health professional, or
 - (b) from compensating the health professional for the services described in paragraph (a).
- (14) Evidence or advice given under subsection (13) is not independent assistance or advice within the meaning of this section.

Appeal tribunal decision-making

- 250** (1) The appeal tribunal may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent.
- (2) The appeal tribunal must make its decision based on the merits and justice of the case, but in so doing the appeal tribunal must apply a policy of the board of directors that is applicable in that case.
- (3) The appeal tribunal is bound by a decision of a panel appointed under section 238 (6) unless
- (a) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the panel's decision, or
 - (b) subsequent to the panel's decision, a policy of the board of directors relied upon in the panel's decision was repealed, replaced or revised.
- (4) If the appeal tribunal is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker.

Application of policies of board of directors

251 (1) The appeal tribunal may refuse to apply a policy of the board of directors only if the policy is so patently unreasonable that it is not capable of being supported by the Act and its regulations.

(2) If, in an appeal, the appeal tribunal considers that a policy of the board of directors should not be applied, that issue must be referred to the chair and the appeal proceedings must be suspended until the chair makes a determination under subsection (4) or the board of directors makes a determination under subsection (6), as the case may be.

(3) As soon as practicable after an issue is referred under subsection (2), the chair must determine whether the policy should be applied.

(4) If the chair determines under subsection (3) that the policy should be applied, the chair must refer the matter back to the appeal tribunal and the tribunal is bound by that determination.

(5) If the chair determines under subsection (3) that the policy should not be applied, the chair must

(a) send a notice of this determination, including the chair's written reasons, to the board of directors, and

(b) suspend any other appeal proceedings that are pending before the appeal tribunal and that the chair considers to be affected by the same policy until the board of directors makes a determination under subsection (6).

(6) Within 90 days after receipt of a notice under subsection (5) (a), the board of directors must review the policy and determine whether the appeal tribunal may refuse to apply it under subsection (1).

(7) On a review under subsection (6), the board of directors must provide the following with an opportunity to make written submissions:

(a) the parties to the appeal referred to in subsection (2);

(b) the parties to any appeals that were pending before the appeal tribunal on the date the chair sent a notice under subsection (5) (a) and that were suspended under subsection (5) (b).

(8) After the board of directors makes a determination under subsection (6), the board of directors must refer the matter back to the appeal tribunal, and the appeal tribunal is bound by that determination.

(9) The chair must not make a general delegation of his or her authority under subsection (3), (4) or (5), but if the chair believes there may be a reasonable apprehension of bias the chair may delegate this authority to a vice chair or to a panel of the appeal tribunal for the purposes of a specific appeal.

Suspension of appeal proceedings

252 (1) On application of the appellant or on the chair's own initiative, the chair may suspend appeal proceedings if a Board's decision respecting a matter that is related to the appeal is pending.

(2) Within 30 days after the Board's decision referred to in subsection (1) is made, the appellant may request the appeal tribunal to continue the appeal proceedings and, on receipt of that request, the appeal tribunal must continue the proceedings.

(3) If the appellant requests the appeal tribunal to continue the appeal proceedings before the Board's decision referred to in subsection (1) is made, the chair may

(a) direct the appeal tribunal to continue the proceedings, or

(b) continue the suspension until the Board's decision is made.

(4) On application, and where the chair is satisfied that

(a) special circumstances existed which precluded the making of a request within the time required in subsection (2), and

(b) an injustice would otherwise result,

the chair may extend the time to make a request under subsection (2) even if the time to make the request has expired.

Decision

253 (1) On an appeal, the appeal tribunal may confirm, vary or cancel the appealed decision or order.

(2) Despite subsection (1), on an appeal under section 240 (2), the appeal tribunal may make one of the following decisions:

(a) the matter that is the subject of the application under section 96 (2) must be reopened;

(b) the matter that is the subject of the application under section 96 (2) may not be reopened.

(3) The appeal tribunal's final decision on an appeal must be made in writing with reasons.

(4) Subject to any suspensions of the appeal proceedings permitted under this Part, the appeal tribunal must make its final decision on an appeal

(a) within 180 days after the appeal tribunal receives a copy of the records provided under section 245 (3) respecting the matter under appeal, or

(b) if a shorter time period is prescribed by the Lieutenant Governor in Council, within that shorter time period.

(5) The chair may extend the applicable time period under subsection (4) if

(a) the complexity of the proceedings in the appeal or of the matter under appeal makes the time period impractical, or

(b) the appellant requests a delay in the proceedings to submit new evidence or make additional submissions.

(6) If the appellant has requested a delay for a reason referred to in subsection (5) (b), the chair may extend the time for not more than 45 days.

(7) If the time is extended under subsection (6), the chair, on application, must extend the time for an additional period not exceeding that granted under subsection (6) to allow the other parties to the appeal to submit new evidence or to make additional submissions.

(8) The chair may extend the time under this section even if the applicable time period under subsection (4) has expired.

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.

Division 4 — General

Exclusive jurisdiction

254 The appeal 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 under this Part and to make any order permitted to be made, including the following:

- (a) all appeals from review officers' decisions as permitted under section 239;
- (b) all appeals from Board decisions or orders as permitted under section 240;
- (c) all matters that the appeal tribunal is requested to determine under section 257;
- (d) all other matters for which the Lieutenant Governor in Council by regulation permits an appeal to the appeal tribunal under this Part.

Appeal tribunal decision or action final

255 (1) Any decision or action of the chair or the appeal tribunal under this Part is final and conclusive and is not open to question or review in any court.

(2) Proceedings by or before the chair or appeal tribunal under this Part must not

- (a) be restrained by injunction, prohibition or other process or proceeding in any court, or
- (b) be removed by certiorari or otherwise into any court.

(3) The Board must comply with a final decision of the appeal tribunal made in an appeal under this Part.

(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.

Reconsideration of appeal decision

256 (1) This section applies to a decision in

- (a) a completed appeal by the appeal tribunal under this Part or under Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*, and
- (b) a completed appeal by the appeal division under a former enactment or under Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*.

(2) A party to a completed appeal may apply to the chair for reconsideration of the decision in that appeal if new evidence has become available or been discovered.

(3) On receipt of an application under subsection (2), the chair may refer the decision to the appeal tribunal for reconsideration if the chair is satisfied that the evidence referred to in the application

- (a) is substantial and material to the decision, and
- (b) did not exist at the time of the appeal hearing or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

(4) Each party to a completed appeal may apply for reconsideration of a decision under this section on one occasion only.

Certification to court

257 (1) Where an action is commenced based on

- (a) a disability caused by occupational disease,
- (b) a personal injury, or
- (c) death,

the court or a party to the action may request the appeal tribunal to make a determination under subsection (2) and to certify that determination to the court.

(2) For the purposes of subsection (1), the appeal tribunal may determine any matter that is relevant to the action and within the Board's jurisdiction under this Act, including determining whether

- (a) a person was, at the time the cause of action arose, a worker within the meaning of Part 1,
- (b) the injury, disability or death of a worker arose out of, and in the course of, the worker's employment,
- (c) an employer or the employer's servant or agent was, at the time the cause of action arose, employed by another employer, or
- (d) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of Part 1.

(3) This Part, except section 253 (4), applies to proceedings under this section as if the proceedings were an appeal under this Part.

Payment of compensation

258 (1) If, following a review under section 96.2, a review officer's decision requires payments to be made to a worker or a deceased worker's dependants, the Board must

- (a) begin any periodic payments, and
- (b) pay any lump sum due under section 17 (13).

(2) In the absence of fraud or misrepresentation, an amount paid under subsection (1) to a worker or a deceased worker's dependants is not recoverable.

(3) If a review officer has made a decision described under subsection (1), the Board must defer the payment of any compensation applicable to the time period before that decision

- (a) for a period of 40 days following the review officer's decision, and

(b) if the review officer's decision is appealed under section 239, for a further period until the appeal tribunal has made a final decision or the appeal has been withdrawn, as the case may be.

(4) Subsection (3) applies despite section 19.1, 22 (1), 23 (1) or (3), 29 (1) or 30 (1).

(5) If the appeal tribunal's decision on an appeal requires the payment of compensation, all or part of which was deferred under subsection (3), interest must be paid on the deferred amount of that compensation as specified in subsection (6).

(6) Interest payable under subsection (5) must be calculated in accordance with the policies of the board of directors and begins

(a) 41 days after the review officer made his or her decision, or

(b) on an earlier day determined in accordance with the policies of the board of directors.

Payment of interest

259 (1) The commencement of a review under section 96.2 or of an appeal under this Part respecting a matter described in section 96.2 (1) (b) does not relieve an employer from paying an amount in respect of a matter that is the subject of the review or appeal.

(2) If the decision on a review or an appeal referred to in subsection (1) requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.

Confidentiality obligation

260 (1) Members of the appeal tribunal and officers, employees and contractors of the appeal tribunal must not disclose any information obtained by them or of which they have been informed while performing their duties and functions under this Part, except as may be necessary to discharge their obligations under this Part.

(2) If information in a claim file or in any other material pertaining to the claim of an injured or a disabled worker is disclosed for purposes of this Part to a person other than the worker, that person must not disclose the information except as permitted in circumstances described in section 95 (1.1).

(3) Every person who violates subsection (1) or (2) commits an offence.