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Administrative Tribunals Act

[SBC 2004] CHAPTER 45

Assented to May 20, 2004

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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 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.

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.

Member's absence or incapacitation

5 (1) 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 full duty or the member's term expires, whichever comes first.

(2) The appointment of a person to replace a member under subsection (1) is not affected by the member returning to less than full duty.

Member's temporary appointment

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 twice 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.

Notice of appeal (inclusive of prescribed fee)

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

(2) A notice of appeal must

- (a) be in writing or in another form authorized by the 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 tribunal.

(2) A notice of appeal must

- (a) be in writing or in another form authorized by the 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.

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.

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.

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*.

Discretion to decline jurisdiction to apply the *Human Rights Code*

46.1 (1) The tribunal may decline jurisdiction to apply the *Human Rights Code* in any matter before it.

(2) Without limiting the matters the tribunal may consider when determining whether to decline jurisdiction under subsection (1), the tribunal may consider whether, in the circumstances, there is a more appropriate forum in which the *Human Rights Code* may be applied.

(3) If, in an application before the tribunal, a party or an intervener raises the question of whether there is a conflict between the *Human Rights Code* and any other enactment, the party or intervener must serve notice on the Attorney General in accordance with this section.

(4) The notice must contain the following information:

(a) the names and addresses for delivery of the parties and

interveners to the application;

(b) the name of the tribunal and address of the tribunal's registry;

(c) any identification numbers assigned by the tribunal to the application;

(d) the section of the enactment and the section of the *Human Rights Code* that may conflict and the basis on which the question of a conflict arises;

(e) the date, time and location of any hearing scheduled by the tribunal to consider the question.

(5) The notice must be served on the Attorney General at least 14 days before the date of any hearing scheduled by the tribunal to consider the question, unless the Attorney General, in writing, waives this requirement.

(6) The tribunal may not hear the question of whether there is a conflict between the *Human Rights Code* and any other enactment until after the Attorney General has been served with notice in accordance with this section.

(7) If the party or intervener required to serve notice on the Attorney General does not provide proof of service satisfactory to the tribunal, the tribunal may

(a) adjourn the hearing of the question until the party or intervener provides proof of service satisfactory to the tribunal, or

(b) decline to consider the question and proceed to hear the remainder of the application.

(8) If the Attorney General has been served with notice in accordance with this section and intends to appear at the hearing scheduled to consider the question, the Attorney General

(a) must give notice to the tribunal and the parties and interveners to the application at least 3 days before the date of the hearing, and

(b) has the same rights as any other party to the hearing.

(9) Subsections (3) to (8) do not apply if the Attorney General is representing a party or intervener in the application before the tribunal.

(10) This section applies to all applications made before, on or after the date that this section applies to a tribunal.

Limited jurisdiction and discretion to decline jurisdiction to apply the *Human Rights Code*

46.2 (1) Subject to subsection (2), the tribunal may decline jurisdiction to apply the *Human Rights Code* in any matter before it.

(2) The tribunal does not have jurisdiction over a question of whether there is a conflict between the *Human Rights Code* and any other enactment.

(3) Without limiting the matters the tribunal may consider when determining whether to decline jurisdiction under subsection (1), the tribunal may consider whether, in the circumstances, there is a more appropriate forum in which the *Human Rights Code* may be applied.

(4) This section applies to all applications made before, on or after the date that this section applies to a tribunal.

Tribunal without jurisdiction to apply the *Human Rights Code*

46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

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

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.

Standard of review if tribunal's enabling Act has no privative clause

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 (1) (b), (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

[Note: See Table of Legislative Changes for the status of sections 63 to 188.]

Section(s)	Affected Act
63–66	<i>Agricultural Land Commission Act</i>
67–77	<i>Assessment Act</i>
78	<i>Business Practices and Consumer Protection Act</i>
79–82	<i>Community Care and Assisted Living Act</i>
83–87	<i>Employment and Assistance Act</i>
88–93	<i>Employment Standards Act</i>
94–98	<i>Expropriation Act</i>
99–100	<i>Financial Institutions Act</i>
101	<i>Forest and Range Practices Act</i>
102–103	<i>Hospital Act</i>
104–106	<i>Human Rights Code</i>
107–108	<i>Industry Training Authority Act</i>

109–110	<i>Labour Relations Code</i>
111	<i>Local Government Act</i>
112–114	<i>Manufactured Home Park Tenancy Act</i>
115–119	<i>Mental Health Act</i>
120–127	<i>Natural Products Marketing (BC) Act</i>
128–130	<i>Parole Act</i>
131–141	<i>Passenger Transportation Act</i>
142–152	<i>Petroleum and Natural Gas Act</i>
153–155	<i>Residential Tenancy Act</i>
156–160	<i>Safety Standards Act</i>
161–162	<i>Securities Act</i>
163–173	<i>Utilities Commission Act</i>
174–188	<i>Workers Compensation Act</i>

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:

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