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T H E S I S

A DRAFT ADMINISTRATIVE PROCEDURE CODE
FOR FEDERAL ADJUDICATORY HEARINGS

Submitted by:

TERRENCE HAMILTON HALL

To the School of Graduate Studies
in partial fulfillment of degree
requirements for Master of Common
Laws at the University of Ottawa.

TABLE of CONTENTS

Table of Statutes	i
Table of Subordinate Legislation	xiii
Table of Cases	xviii
Introduction	1
footnotes	8
Chapter I: Federal Administrative Tribunals Included in Study	11
footnotes	18
Chapter II: Courts of Record	22
1. Historical Analysis	25
(a) Record of Proceedings	25
(b) Incontestability of Record	25
(c) Power to Fine and to Imprison	26
2. Modern Analysis	29
(a) Record of Proceedings	29
(b) Incontestability of Record	30
(c) Power to Fine and to Imprison	30
(d) Judicial Immunity	33
3. Implications of Court of Record Status for Federal Administrative Tribunals	34
(a) Record of Proceedings	35
(b) Incontestability of Record	41
(c) Power to Punish for Contempt	42
(d) Immunity	45
footnotes	47
Chapter III: Official Seals	52
footnotes	54
Chapter IV: Administrative Procedure	55
1. Hearings	57
2. Power to Determine Own Procedure	61
3. Evidence	64
4. Official Notice	73
5. Power to Summon Witnesses and Documents; Power to Administer Oaths and Affirmations	80

6. Power to Adjourn	89
7. Opportunity to Appear or to be Heard	91
8. Notice of Hearing	92
9. Notice of Case to be Met	98
10. Representation by Counsel or Agent	101
11. Presentation of Evidence and Argument	105
12. Rebuttal of Adverse Evidence; Cross-examination	109
13. Opportunity to be Present Throughout a Hearing	113
14. Decisions and Reasons	117
15. The Use of Evidence in a Decision	128
16. Decision-Makers to be at Hearing	129
17. Disqualification of Tribunal Members	133
18. Record of Proceedings	137
footnotes	141

Chapter V: Drafting the Proposed Code	159
---------------------------------------	-----

Chapter VI: The Draft Procedure Code	162
--------------------------------------	-----

Chapter VII: Conclusion	175
-------------------------	-----

Appendices	177
------------	-----

Appendix A	178
------------	-----

Appendix B	181
------------	-----

Bibliography	266
--------------	-----

i

TABLE of STATUTES

1. CANADA

Access to Information Act (proposed), Bill C-43, First Session, Thirty-Second Parliament, 29 Eliz.II, 1980:

ss.	13-19	.....	.....	60
s.	20			78
s.	21	.....	.....	78
s.	22			78
s.	23	.....	.....	60
subs.	65(1)			46

Anti-Dumping Act, R.S.C.1970, c. A-15, as am. by R.S.C. 1970(2nd Supp.), c. 1, ss: 2, 3, 7:

s.	13	.....	.....	11(n.1)
s.	16			11(n.1), 182
	(4)	.....	.....	182, 183
	(5)			125(n.169), 183
s.	16.1	.....	.....	11(n.1) 182
s.	19			16(n.51)
s.	21	.....	.....	11(n.1), 182
s.	24			182
subs.	25(1)	.....	.....	182
subs.	27(1)			11(n.2), 182
	(2)	.....	.....	182
subs.	29(1)			92(n.92), 182
	(2)	.....	.....	182
	(3)			114(n.153), 182
s.	31	.....	.....	182

Anti-Inflation Act, S.C.1974-75-76, c. 75 as am. by c. 98, ss. 8, 9, 10:

subs.	14(2)	.....	.....	184
s.	26			11(n.3)
	(1)	.....	.....	184
	(4)			12(n.4), 184
	(5)	.....	.....	184
subs.	27(2)			184
s.	30	.....	.....	11(n.3)
subs.	31(4)			65(n.28), 71(n.47), 184
subs.	32(1)	.....	.....	109(n.137), 112(n.147), 184
	(3)			185
subs.	33(1)	.....	.....	184
	(2)			184
subs.	34(1)	.....	.....	125(n.171), 185
	(2)			125(n.171), 185
	(4)	.....	.....	184

Atomic Energy Control Act, R.S.C.1970, c. A-19:

s.	3	.....	.....12(n.5), 186
s.	7	.....	.....12(n.5), 186
para.	8(a)	.....	.....63(n.25), 186
para.	9(b)	.....	.....12(n.6)
subs.	27(1)	.....	.....187
	(3)	.....	.....186
	(b)	.....	.....186
	(6)	.....	.....186
	(b)	.....	.....186

Broadcasting Act, R.S.C.1970, c. B-11:

s.	15	.....	.....13(n.14)
s.	19	.....	.....13(n.14)
	(1)	.....	.....200
	(4)	.....	.....200
	(7)	.....	.....200
subs.	20(1)	.....	.....200
s.	21	.....	.....200
para.	24(1) (b)	.....	.....200
subs.	24(2)	.....	.....201

Canada Corporations Act, R.S.C.1970, c. C-32 as am. by R.S.C.1970(1st Supp.), c. 10, s. 12:

s.	114	.....	.....16(n.48), 246
	(1)	.....	.....16(n.48), 246
	(2)	.....	.....16(n.48), 246
	(4)	.....	.....16(n.48), 246
	(10)	.....	.....16(n.48), 246
	(11)	.....	.....16(n.48), 246
	(13)	.....	.....16(n.48), 246
	(26)	.....	.....16(n.48), 246
	(28)	.....	.....16(n.48), 246
	(29)	.....	.....16(n.48), 246
	(31)	.....	.....16(n.48), 246

Canada Evidence Act, R.S.C.1970, c. E-10, s.2:

Canada Grain Act, S.C.1970-71-72, c. 7:

s.	3	.....	.....12(n.10), 194
s.	11	.....	.....12(n.10), 194
s.	74	.....	.....12(n.11)
s.	76	.....	.....12(n.12)
s.	77	.....	.....12(n.12)
	(2)	.....	.....196
subs.	80(1)	.....	.....12(n.11), 58(n.8), 194
	(2)	.....	.....12(n.12), 196
	(3)	.....	.....194
subs.	81(2)	.....	.....194, 196

Canada Labour Code, R.S.C.1970, c. L-1 as am. by
S.C.1972, c. 18, s.1; S.C.1977-78, c. 27, ss. 39, 40:

s. 111	.....	.....12(n.8)
(1)		190
s. 117	.....	.....12(n.8)
(a)		63(n.21), 190
para. 118(a)	.....	.....190
(b)		190
(c)	.....	.....72(n.48), 190
s. 121		12(n.8)

Canada Pension Plan Act, R.S.C.1970, c. C-5 as am. by
S.C.1974-75-76, c. 4, ss. 18, 41, 42; S.C.1976-77,
c. 36, ss. 16, 17:

s. 29	.....	.....15(n.36), 230
s. 84		12(n.9)
(2)	.....	.....134(n.191), 193
(4)		57(n.4), 192
s. 85	.....	.....12(n.9), 228
(1)		15(n.36,37), 192,238

Canadian Bill of Rights, R.S.C.1970(Appendix)

para. 2(d)	.....	.....103
(f)		32

Canadian Human Rights Act, S.C.1976-77, c. 33:

subs. 39(1)	.....	.....13(n.21), 210
s. 40		210
(1)	.....	.....109(n.125), 210
(3) (a), (b), (c)		210
(4)	.....	.....210
(6)		210

Canadian Radio-Television and Telecommunications
Commission Act, S.C.1974-75-76, c. 49:

subs. 3(1)	.....	.....13(n.14,15), 200,202
subs. 14(1)		13(n.14)
(2)	.....	.....13(n.15)
(3)		13(n.15),202

Combines Investigation Act, R.S.C.1970, c. C-23 as am.
by R.S.C.1970(1st Supp.), c.10, s.34; S.C.1974-75-76,
c.76, ss. 5, 6, 9, 12; S.C.1976-77, c.28, s. 9:

para. 12(2) (a)	.....	242,244
subs. 16(1)		16(n.46), 242,244,246
(9)	.....	242,244
subs. 17(1)		242,244
(3)	.....	42(n.53)
s. 18		16(n.46), 242
(1)	.....	108(n.130)
(2)		58(n.5), 108(n.130,131),242
s. 20	.....	242
s. 21		242,244
subs. 27(1)	.....	242
(2)		57(n.3), 244
ss. 31.2-31.7	.....	16(n.47)
subs. 31.8(1)		16(n.49), 244
(3)	.....	108(n.132), 113(n.148), 244
s. 47		16(n.46)

Copyright Act, R.S.C.1970, c. 30:

s. 50		13(n.19), 206
(4)	.....	81(n.67), 206
(6)		97(n.102), 100(n.110), 206

Crown Liability Act, R.S.C.1970, c. C-38:

s. 3		45
------	-------	----

Customs Act, R.S.C.1970, c. C-40:

s. 47		16(n.51)
-------	--	----------

Excise Tax Act, R.S.C.1970, c. E-13:

s. 59		16(n.51)
-------	--	----------

Farm Credit Act, R.S.C.1970, c. F-2:

para. 11(1) (d)		13(n.20), 208
-----------------	--	---------------

Farm Products Marketing Agencies Act, S.C.1970-71-72,
c. 65:

subs. 3(1)		14(n.28), 218,220
s. 6	.....	14(n.28;29)
para. 7(f)		220

subs. 8(1)	.....	.....	14(n.28), 218
(2)			14(n.29), 220
(3)	.....	.....	220
(5)			218,220
s. 9	.....	.....	218,220
s. 10			218,220

Federal Court Act, R.S.C.1970(1st Supp.), c. 10:

subs. 28(6)	138(n.197)
-------------	------------

Immigration Act, 1976, S.C.1976-77, c. 52:

subs. 59(1)	.....	.....	13(n.22), 212
subs. 65(1)			13(n.22), 212
(2)	.....	.....	212
(c)			212
(3)	.....	.....	212
s. 67			212
s. 72	.....	.....	212
s. 73			212
s. 79	.....	.....	212
s. 82			212

Inquiries Act, R.S.C.1970, c. I-13:

s. 4			70,84
s. 5	.....	.....	87
s. 7			70
s. 8	.....	.....	84
subs. 10(1)			84

Interpretation Act, R.S.C.1970, c. I-23:

s. 28	81
-------	----

Merchant Seamen Compensation Act, R.S.C.1970, c. M-11:

subs. 3(1)	.....	.....	14(n.24), 214
s. 11			14(m.24)
s. 14	.....	.....	214
s. 16			214
s. 47	.....	.....	214

National Energy Board Act, R.S.C.1970, c. N-6 as am. by
R.S.C.1970(1st Supp.), c. 27, ss. 2, 8, 13, 21, 28, 29;
R.S.C.1970(2nd Supp.), c. 10, s. 65; S.C.1973-74, c. 52,
s. 36:

subs. 3(1)	.....	14(n.25), 216
(5)		217
s. 7	.....	62(n.19)
(b)		216
subs. 10(1)	.....	14(n.26), 216
(2)		14(n.26)
(3)	.....	82(n.73), 216
s. 14		217
(1)	.....	132(n.185)
(2)		217
subs. 19(4)	.....	216
s. 20		14(n.27), 216
(1)	.....	216
(3)		216
s. 22	.....	14(n.25)
s. 44		71(n.45), 216
s. 45	.....	216
s. 47		216
(2)	.....	92(n.93), 216
s. 83	.....	71(n.45), 216
s. 84		216
(2)	.....	92(n.93), 216

National Transportation Act, R.S.C.1970, c. N-17:

subs. 6(1)	.....	13(n.16), 204
(2)		13(n.17), 204
s. 8	.....	205
s. 9		205
subs. 17(1)	.....	202, 204
(2)		58(n.6), 202, 204
s. 19	.....	205
s. 20		13(n.16, 18)
s. 21	.....	13(n.16, 18)
subs. 24(5)		204
subs. 45(3)	.....	202, 204
s. 65		204
subs. 75(1)	.....	71(n.46), 202, 204

Northern Inland Waters Act, R.S.C.1970(1st Supp.), c.28
as am. by R.S.C.1970(2nd Supp.), c. 10, s. 65:

s. 7	.....	14(n.32,33)
(1)		224,264
s. 9	.....	14(n.32,33)
s. 15		14(n.34)
(1)	.....	224,264
(2)		224,264
(3)	.....	224,264
s. 16		224,264
s. 17	.....	224,264
para. 18(b)		224,264
subs. 21(3)	.....	225,264

Official Languages Act, R.S.C.1970, c. O-2:

s. 14		12(n.7)
(1)	.....	188
s. 15		12(n.7), 188

Official Secrets Act, R.S.C.1970, c. O-3: 60

Parole Act, R.S.C.1970, c. P-2 as am. by S.C.1976-77,
c. 28, s. 33; c. 53, ss. 18, 23:

subs. 3(1)	.....	14(n.30), 222
(6)		63(n.23), 222
(8)	.....	14(n.31), 222
s. 6		14(n.30)
s. 8	.....	222
(2)		118(n.161), 222

Patent Act, R.S.C.1970, c. P-4:

s. 4		226
(2)		14(n.35), 226

Pension Act, R.S.C.1970, c. P-7 as am. by R.S.C.1970
(2nd Supp.), c. 22, s. 28; S.C.1976-77, c. 13, s.1
and c. 28, s. 34:

s. 60	.....	198, 232
s. 63		232
s. 68	.....	13(n.13)
s. 70		108(m.128), 198
s. 71	.....	13(n.13), 198
subs. 72(3)		198
subs. 73(2)	.....	108(n.128), 198
s. 74		199
(1)	.....	198
(2)		199

s. 75	.....	15(n.38), 232
s. 76	.....	15(n.38), 232
s. 77	.....	232
s. 78	.....	232
s. 79	.....	232, 233
s. 80	.....	232
(2)	.....	106(n.121), 232
(3)	.....	64(n.27), 106(n.121), 232
subs. 82(1)	.....	198, 232
s. 84	.....	198
para. 85(b)	.....	198

Pilotage Act, S.C.1970-71-72, c. 52:

subs. 3(1)	.....	15(n.39), 234
s. 12	.....	15(n.39)
s. 18	.....	234
(1)	.....	15(n.40), 234
(2)	.....	15(n.40), 234
(3)	.....	15(n.40), 234
(4)	.....	15(n.40), 234

Public Service Employment Act, R.S.C.1970, c.P-32:

subs.3(1)	.....	236, 238
s. 5	.....	15(n.41)
(d)	.....	15(n.43)
subs.7(2)	.....	236
s. 21	.....	236
subs.31(1)	.....	236
(3)	.....	236
s. 40	.....	236
s. 41	.....	15(n.42)

Public Service Staff Relations Act, R.S.C.1970, c.P-35
as am. by S.C.1973-74, c. 15, s. 2; S.C.1974-75-76,
c. 67, ss. 2, 9, 10:

s. 11	.....	16(n.44), 240
(1)	.....	16(n.44), 240
s. 18	.....	16(n.44, 45)
s. 19	.....	16(n.45)
(1)(g)	.....	240
s. 22	.....	240
(a), (b), (c)	.....	240

Tariff Board Act, R.S.C.1970, c. T-1 as am. by
S.C.1976-77, c. 28, s.43:

subs. 3(1)	16(n.50), 248, 250
s. 4	16(n.50), 248
subs. 5(1)	248
(2)	248
(5)	248
(6)	16(n.52), 248
(8)	248
(9)	248
(10)	248
(12)	248

Tax Review Board Act, S.C.1970-71-72, c. 11 as am. by
S.C.1977-78, c. 22, s. 23:

subs. 3(1)	16(n.53), 252
s. 7	16(n.53), 252
subs. 8(1)	16(n.54), 252
(2)	83(n.74), 252
subs. 9(2)	65(n.28), 252
subs. 10(1)	102(n.114), 252
(2)	252
(3)	118(n.162), 125(n.170), 252
subs. 11(1)	252
(2)	252

Textile and Clothing Board Act, S.C.1970-71-72, c. 39:

s. 3	254
(1)	17(n.55)
s. 9	17(m.55), 254
s. 10	254
s. 11	254
subs. 12(1)	254
s. 13	254
para. 18(a)	129(n.177), 254
s. 22	254
s. 23	254

Unemployment Insurance Act, 1971, S.C.1970-71-72,
c. 48 as am. by S.C.1974-75-76, c. 80, s. 27 and
S.C.1976-77, c. 54, ss. 54- 56, 60.1:

s.	75	.....	.....	260
s.	84			17(n.58), 260
	(2)	.....	.....	125(n.172), 260
subs.	91(1)			17(n.56), 256
s.	92	.....	.....	17(n.57)
	(1)			258, 260
subs.	93(1)	.....	.....	260
s.	94			258
	(1)	.....	.....	17(n.56)
	(2)			258
s.	95	.....	.....	17(n.57), 26-
s.	114			258, 260

War Veterans Allowance Act, R.S.C.1970, c. W-5:

subs.	25(1)			17(n.59), 262
s.	26	.....	.....	262
s.	29			262
	(1)	.....	.....	17(n.59)

2. Alberta

Administrative Procedure Act, R.S.A.1970, c. 2: 2(n.6), 6(n.24)

3. British Columbia

Judicial Review Procedure Act, R.S.B.C.1979, c. 209,

s. 1:

37

4. Ontario

Statutory Powers Procedure Act, S.O. 1971, c. 47:

s. 4	.....	121
s. 6	.....	93
subs. 9(1)	.....	60
para. 10(a)	.....	101
(b)	.....	106
(c)	.....	111
subs. 12(1)	.....	81
s. 13	.....	44
s. 15	.....	68
s. 16	.....	76
s. 17	.....	122
s. 18	.....	122
s. 20	.....	36
s. 21	.....	90
subs. 23(2)	.....	112
para. 24(1)(a)	.....	93
(b)	.....	122
subs. 24(2)	.....	122

5. U.K.

Tribunals and Inquiries Act, 1958, 6&7 Eliz.II, c.66 (U.K.)
 now the Tribunals and Inquiries Act 1971, 1971, c. 62
 (U.K.): 2(n.5)

6. U.S.A.

Administrative Procedure Act, 5 U.S.C. § 551 (1976):

s. 552b	.....	60
subs. 554(b)	.....	94
(3)	.....	99
(c)	.....	107

6. U.S.A. (cont'd.):

subs. 555(b)	.....	91,101,104
(d)		44
s. 556	.....	37
(b)		135
(c) (1)	.....	82
(2)		82
(5)	.....	62
(d)		66,111,128
(e)	.....	76,128
subs. 557(b)		131
(c)	.....	38,131

Model State Administrative Procedure Act, U.L.A. Civil
Proc. and Rem. Laws 341 (Revised 1961):

subs. 9(a)	.....	94
(b)		94
(4)	.....	99
(c)		107
(d)	.....	123
(e), (f)		37
(g)	.....	128
		67
para. 10(1), (2)	.....	111
(3)		75
(4)	.....	130
s. 11		
s. 12	.....	123

TABLE of SUBORDINATE LEGISLATION

1. Canada

Anti-Dumping Tribunal Rules of Procedure, C.R.C./78,
c. 300:

s.	8	.....	182
s.	12		182
	(4)	.....	182
s.	18		182
s.	20	.....	182
s.	22		182
s.	23	.....	182
s.	24		116(n.157)
s.	25	.....	182
s.	32		182
s.	33	.....	182

Anti-Inflation Appeal Tribunal Rules of Procedure,
C.R.C./78, c. 301:

subs.	8(3)		184
	(4)		184

Atomic Energy Control Regulations, C.R.C./78, c. 365:

s.	27		12(n.6)
	(3)(a)		100(n.109)

Canada Labour Relations Board Regulations, 1978,
S.O.R./78-499:

s.	13	.....	190
subs.	19(2)		190
s.	20	.....	190
s.	22		90(n.87)

CRTC Rules of Procedure, C.R.C./78, c. 375:

subs.	4(2)	.....	200
s.	5		200
s.	11	.....	200
s.	20		200
s.	26	.....	200
s.	27		200
s.	31	.....	200
ss.	32- 34		200
s.	35	.....	200
s.	40		200
s.	41	.....	201

CRTC Telecommunications Rules of Procedure, S.O.R./79-554:

s.	8	.....	.....	202
subs.	19(1)			115(n.155)
	(11)	.....	.....	202
s.	20			202
s.	21	.....	.....	202
s.	24			202
s.	25	.....	.....	202
s.	28			202
subs.	39(1)	.....	.....	202
subs.	43(2)			202
	(6)	.....	.....	202

Canadian Transport Commission General Rules, C.R.C./78,

c. 1142:

s.	43	.....	.....	204
s.	48			204
s.	57- 59	.....	.....	204
s.	60			204
s.	64	.....	.....	204
s.	69			204
s.	70	.....	.....	205
s.	71			205

General Pilotage Regulations, C.R.C./78, c. 1263:

subs.	17(1)	.....	.....	234
s.	18			234
	(1)	.....	.....	234
subs.	19(1)			234
subs.	24(1)	.....	.....	234
	(2)			234
s.	25	.....	.....	234
s.	26			235

Immigration Appeal Board Rules, 1978, S.O.R./78-311 as
am. by S.O.R./79-80 and S.O.R./79-530.

subs.	6(2)	.....	.....	212
s.	24			212
ss.	28- 30	.....	.....	212
s.	31			212
	(1)	.....	.....	212
	(2)			212
s.	39	.....	.....	213
s.	40			213

National Energy Board Rules of Practice and Procedure,
C.R.C./78, c. 1057:

para. 4(2)(c).....	216
subs. 10(2)	216
s. 14	216
s. 16	216
s. 20	216
ss. 21- 23	216
s. 26	43(n.54)

P.S.S.R.B. Regulations and Rules of Procedure, C.R.C./78,
c. 1353:

subs. 8(1)	240
s. 13	240

Parole Regulations, S.O.R./78-1528:

subs. 15(1)	222
subs. 17(1)	222
s. 19	118(n.161), 223
s. 23	223

Pension Appeals Board Rules of Procedure (Benefits),

C.R.C./78, c. 390:

subs. 12(3)	228
(14)	228
subs. 16(1)	228
s. 18	228
subs. 20(1)	229

Pension Appeals Board Rules of Procedure (Contributions
and Coverage), C.R.C./78, c. 389:

s. 4	58(n.7), 230
subs. 15(2)	96(n.101), 230
(3)	230
s. 17	230
s. 19	108(n.134), 230
s. 21	230
subs. 23(1)	231
subs. 25(2)	102(n.115), 108(n.135), 230
(3)	230

Public Service Employment Regulations, C.R.C./78,
c. 1337:

s.	46	238
s.	48	126(n.175), 239

Restrictive Trade Practices Commission Rules, C.R.C./78,
c. 416:

s.	4	.....	244
s.	6		244
s.	9	.....	244
subs.	11(2)		244
s.	15	.....	126(n.174), 244
s.	19		244
s.	20	.....	108(n.133), 244
s.	26		244

Review Committee Rules of Procedure, C.R.C./78, c. 392:

subs.	7(1)	.....	107(n.126), 192
subs.	8(1)		192
	(2)	.....	107(n.126), 192
	(3)		192
s.	9		193

Tax Review Board Rules, C.R.C./78, c. 1513:

s.	4	252
subs.	5(1)	 252
s.	10	252

Umpire Rules of Procedure, C.R.C./78 as am. by S.O.R./
81-166:

s.	12	.....	260
s.	18		260
s.	19	.....	260
s.	20		260
subs.	22(1)	.....	260
subs.	24(1)		126(n.173), 261
	(2)	.....	126(n.173), 261

Unemployment Insurance Regulations, C.R.C./78, c. 1576:

subs. 62(4)	.....	257
s. 64		256
(4)	.....	256
(5)		256
(6)	.....	256
subs. 66(1)		107(n.124), 256
(4)	.....	257
s. 69(1)		258
(2)	.....	258
(6)		258
(7)	.....	258
subs. 70(1)		258

Veterans Allowance Regulations, C.R.C./78, c. 1602:

subs. 18(3)		263
s. 19		263

Yukon Territory Water Board Rules of Procedure,
S.O.R./79-838:

s. 3	.....	264
s. 4		264
s. 5	.....	264
s. 7		264
s. 11	.....	264
(3)		115(n.154)
s. 18	.....	264
s. 23		264

TABLE of CASES

Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S.A. and Canada, local 488 and Foley (Re)	83(n.75)
Attorney General of Manitoba and the National Energy Board (Re)	34(n.46)
Attorney General of Québec v. Hebert	31(n.35)
Bergeron v. La Société de Publication Merlin Ltée.	32(n.39)
Board of Education v. Rice	61(n.17), 89(n.85)
Burnbrae Farms Ltd. v. Canadian Egg Marketing Agency	74(n.50)
C.N.R. v. Bell Telephone	74(n.50)
C.R.T.C. and London Cable TV Ltd. (In re)	78(n.63)
Canadian Airline Pilots Association v. C.P. Air Lines Ltd.	134(n.190)
Canadian Arsenal Ltd. v. Canada Labour Relations Board and Public Service Alliance of Canada	35(n.50), 118(n.159)
Canadian Broadcasting Corp. and Knapp v. Cordeau et al.	31(n.33)
Canadian Motorways Ltd. v. Laidlaw Motorways Ltd.	64(n.26)
Capital Cities Communications Inc. et al. v. C.R.T.C.	78(n.59)
Cathcart v. Public Service Commission	114(n.149), 134(n.189)
Chartrand v. The Queen	32(n.40)
City of Regina and Amalgamated Transit Union Division No. 588 (Re)	35(n.50)
Cluney and Registrar of Motor Vehicles of Nova Scotia	128(n.176)

Committee for Justice and Liberty v. National Energy Board	34(n.47), 134(n.187)
County of Strathcona No. 20 et al. and MacIab Enterprises Ltd. (Re)	64(n.26), 110(n.139)
Dallinga v. City of Calgary City Council	65(n.29)
Darnel and Pacific Pilotage Authority (Re)	96(n.98)
Davis and Newfoundland Pharmaceutical Association (Re)	96(n.98)
Dome Petroleum Ltd. v. Public Utilities Board of Alberta and Canadian Superior Oil Ltd.	118(n.160)
Ex parte Lunan	31(n.34)
Farrell v. Workmen's Compensation Board	35(n.50)
Fitzpatrick and City of Calgary (Re)	137(n.195)
George (Re)	134(n.186)
Griesley's Case	23(n.2), 26
Green, Michaels & Associates Ltd. et al. and Public Utilities Board (Re)	78(n.59)
Harelkin v. University of Regina	106(n.120)
Harvie et al. and Calgary Regional Planning Commission (Re)	93(n.94)
Hawkins and Halifax County Residential Tenancies Board (Re)	32(n.41)
Hopedale Developments Ltd. and Town of Oakville (Re)	78(n.59)
Jackson & Co. v. Napper, Re Schmidt's Trade Marks	101(n.111)
Jennison v. Baker	31(n.30)
Jentleman's Case	26
L'Alliance des Professeurs Catholiques de Montréal v. Commission des Relations du Travail	93(n.94)

Kane v. Board of Governors of University of British Columbia	61(n.17), ...4(n.149)
McKendry (Re)	64(n.26)
McKeown v. The Queen	32(n.36)
Magnasonic Canada Ltd. v. Anti-Dumping Tribunal 114(n.149,150), 116(n.156), 118(n.158)	105(n.119), 110(n.138),
Majcenic v. Natale	84(n.77)
Mehr v. Law Society of Upper Canada	130(n.178)
Men's Clothing Manufacturer's Association of Ontario and Arthurs (Re)	101(n.111)
Minister of National Revenue v. Wright's Canadian Ropes Ltd.	118(n.159)
Murray and Municipal District of Rockyview(Re)	110(n.139)
Nanda v. Public Service Commission	114(n.149)
National Labour Relations Board v. Remington Rand	66(n.36)
National Labour Relations Board v. Sears, Roebuck, & Co.	78(n.62)
Northwestern Utilities Ltd. and Public Utilities Board of Alberta v. City of Edmonton	118(n.159)
Perry v. Heatherington	33(n.44)
The Queen v. Meyer	134(n.189)
R. v. Byles et al., ex p. Hollidge	134(190)
R. v. Committee on Works of Halifax City council, ex p. Johnston	130(n.178)
R. v. Gray	32 (n.37)
R. v. Northumberland Compensation Appeal Tribunal, ex p. Shaw	35(n.50)
R. v. Ontario Racing Commission, ex p. Morrissey	96(n.98), 98(n.103)
R. v. Ontario Racing Commission, ex p. Taylor	93(n.94)

R. v. Rival	32 (n.37)
R. v. Sommer	32 (n.40)
Radio Iberville Ltée. v. Board of Broadcast Governors	96 (n.98).
Re Ramm	130 (n.178)
Renegotiation Board v. Grumman Aircraft Engineering Co.	78 (n.62)
Samuel Moore & Co. v. Commissioner of Patents	59 (n.9)
Seafarer's International Union v. C.N.R.	74 (n.50)
Toronto Newspaper Guild v. Globe Printing Co.	110 (n.139)
Vapor Canada Ltd. v. John A. MacDonald, Railquip Enterprises Ltd., and Vapor Corp.	103 (n.116)
Wednesbury Corp. v. Minister of Housing and Local Government (No. 2)	111 (n.146)
Workmen's Compensation Board v. Rammell	98 (n.103)
Yarrows Ltd. v. Canadian National Steamship Co. Ltd.	35 (n.50)

INTRODUCTION

Administrative law is a branch of law by which a government implements its policies. If a policy requires a decision-making function to be handled impartially, a government traditionally relies on the law courts to fulfil it. However, where the context of the function requires mass justice (a great number of similar cases) or the handling of complex, essentially non-legal problems, the courts' slowness, expense, and lack of non-legal expertise render them inappropriate. The dilemma then confronting the government is to find another method of fulfilling the function quickly, cheaply, and expertly.

The dilemma is not new but has existed since the Renaissance began.¹ Approximately four hundred years ago, the English experimented with executive agencies, such as the Chancery and the Star Chamber, which were eventually either judicialized or abandoned.² One hundred years ago, the Americans resorted to the creation of independent tribunals, for instance, the Interstate Commerce Commission.³ Canadian governments have tended to follow the American example but their creation of tribunals has been with little forethought to organization, as exemplified by the variety of tribunal hearing procedures. The procedural problem is not uniquely Canadian but has plagued the administrative law of most modern governments.

The American solution to the procedural problem was to enact in 1946 a statute setting out basic procedural rules for federal administrative tribunals.⁴ The English solution avoided a uniform set of rules and, instead, created a Council on Tribunals to supervise each tribunal in the formulation of an individual procedural code, freely available to the public upon request.⁵ In Canada only the provinces of Ontario and Alberta have confronted the problem and their approach has been to adopt the American example of a uniform code of procedure.⁶

Although the procedural problem in the various jurisdictions has been identified and solutions have been offered, the federal situation in Canada has not proceeded beyond the identification stage. Concern over the federal problem was expressed by the Canadian Bar Association as early as 1960⁷ and discussion papers were presented then and in 1961,⁸ 1963,⁹ and lastly in 1965,¹⁰ all without further effect. The Royal Commission on the Organization of the Government of Canada (Glassco) also commented on the problem in 1963.¹¹ At the opening of Parliament in 1965, the speech from the Throne proposed the creation of a Royal Commission to study the problem.¹² In the same year, the Department of Justice of Canada said that it would examine the powers of federal tribunals.¹³ Nothing further was heard of the Royal Commission or of the departmental study. The Law Reform Commission of Canada has studied ten federal tribunals in depth,¹⁴ has released a working paper on tribunals in

general,¹⁵ and proposes to study the statutory powers of all federal tribunals; however, the conclusions to date have been only general in nature.

Reform of federal hearing procedures is obviously necessary, the question is what structure the reform should take. Until now, federal reform has come retrospectively and piecemeal from courts of law applying an antique classification of tribunal functions, inapplicable to modern reality and concentrated on a few cases subjected to judicial review. The courts have sensed their difficulty and have reached out for a new method, fairness, through which influence can be exerted more easily on the tribunals. As a tool of reform, however, fairness will probably have the same piecemeal approach as past methods of judicial review. Reform by the judiciary can only continue at its current snail-pace.

The alternative methods of reform are the prospective legislative approaches found in England and in the U.S.A. The English approach emphasizes flexibility and individuality of hearing procedure. The American approach stresses uniformity so that the public can rely on certain basic procedures. The advantage of one approach is the disadvantage of the other. The most desirable approach would combine uniformity with flexibility. The theory of this paper is that such a seemingly incongruous relationship can be achieved by designing a procedural code that creates different classes of tribunals. The hearing procedures can be organized

into a list and the classes of tribunals can be determined by the number of procedures possessed by each class. The classes create flexibility, and uniformity is achieved within each class.

Continuous supervision of the legislation could be performed by an existing Parliamentary committee, such as the Standing Joint Committee on Regulations and other Statutory Instruments.

A criticism of procedural legislation is its judicialization of hearings at the expense of the non-judicial nature of a tribunal or, to use the words of Professor John Willis, the legislation sacrifices "civil servants' values" for "lawyers' values."¹⁶ Although he did not elaborate on the values, the Law Reform Commission has mentioned that any reform of federal tribunal procedures has to consider the following eight values:¹⁷

- (1) accountability of a tribunal to Parliament, the courts, and to the public for the use or abuse of power delegated to it,
- (2) efficiency (effectiveness at minimum effort and expense),
- (3) fairness to the public to ensure confidence in the administrative process through the acceptability of decisions rendered,
- (4) integrity (no political interference in the functioning of the tribunal),
- (5) authoritativeness (the quality of finality of a decision),

- (6) principled decision-making so that a decision relates to the information and issues in a hearing,
- (7) comprehensibility (an understandable decision), and
- (8) openness and accessibility.

The first value, accountability, will not be considered because it generally arises outside a hearing. Civil servants would easily adopt the value of efficiency because they have policies requiring fast, cheap implementation. Lawyers would embrace the other values either because they are usually connected with court-like proceedings (fairness, openness, accessibility), or they prevent endless costly proceedings (authoritativeness), or they ensure that a sensible decision is rendered (principled decision-making, integrity, comprehensibility). The essential balance of values throughout this paper will occur between fairness and efficiency.

In drafting reform legislation, assistance can be obtained from studies done in other jurisdictions. Choices can be made from many studies but those of primary importance are the English Report of the Committee on Administrative Tribunals and Enquiries¹⁸ (hereafter, the "Franks Report"), the American Report of the Attorney General's Committee on Administrative Procedure¹⁹ (hereafter, the "Attorney General's Report"), and the Ontario Royal Commission Inquiry Into Civil Rights²⁰ (hereafter, the "McRuer Report") of which only volume

one of report one was consulted. Helpful also are the provisions of existing or model legislation of other jurisdictions. The primary reform statutes in the common law world have been the American federal Administrative Procedure Act²¹ (hereafter, the U.S. Federal Act), the American Model State Administrative Procedure Act²² (hereafter, the Model Act), and the Ontario Statutory Powers Procedure Act²³ (hereafter, the Ontario Act). The Alberta legislation²⁴ is less comprehensive than its Ontario counterpart and, consequently, will not be used. Interestingly, the U.S. Federal Act is based on the Attorney General's Report. The Ontario Act is rooted in the McRuer Report, which in turn relied on the Model Act and U.S. Federal Act. The reports and legislation will be consulted whenever a recommendation is made in the study.

The following format will be used for analysing an issue within a chapter. The values at stake will initially be set out and balanced. The more important value(s) will be determined by the trends in judicial and tribunal thinking. On the basis of the more important value(s), a recommendation will be made on the issue. The recommendation will be compared to the views of reports and legislation from other jurisdictions and, where necessary, it will be altered. The penultimate step is the examination of federal legislation to find a suitable base upon which to draft a provision for the proposed code. Lastly, a provision embodying the recommendation will be drafted.

Everyone involved in federal administrative law will be able to benefit from the proposed code. It will be a procedural guide to the draftsmen who create tribunals, to lawyers and laymen who appear before the tribunals, and to the judiciary which has to settle disputes concerning the rights and powers involved in tribunal hearings. As for the tribunals themselves, the Code will preserve their individuality while providing not only a detailed description of the hearing procedures of each tribunal but also a label for each type of tribunal. Hopefully, the Code will be a framework within which future tribunals may be created.

Footnotes

1. Schwartz, B., "The Administrative Agency in Historical Perspective" (1961), 36 Indiana L.J. 263, at 263.
2. Ibid., at 276-79.
3. Ibid., at 279.
4. Administrative Procedure Act, 5 U.S.C. § 551 (1976).
5. Tribunals and Inquiries Act, 1958, 6&7 Eliz.II, c. 66, (U.K.); now the Tribunals and Inquiries Act 1971, 1971, c. 62 (U.K.).
6. Statutory Powers Procedure Act, S.O.1971, c. 47.
The Administrative Procedures Act, R.S.A.1970, c. 2.
7. Cormie, D.M., "The Nature and Necessity of Administrative Law" in Can. B.A. Papers (1960), at 1.
8. Cormie, D.M., "The Nature and Necessity of Administrative Law" in Can. B.A. Papers (1961), at 1.
Williams, C.D., "Some Comments on a Model Administrative Procedures Act" in Can. B.A. Papers (1961), at 26.
Williams, C.D. and Mundell, D.W., "Notes on a Model Administrative Procedures Act" in Can. B.A. Papers (1961), at 31.
9. Reid, R.F., "Tribunals on Trial" in Can. B.A. Papers (1963), at 1.
10. Pearson, Rt. Hon. Lord, Panel Discussion, "Required for Canada: 1.An Administrative Procedure Act
2.A Council on Tribunals"
in Can. B.A. Papers (1965), at 8.
11. Report of the Royal Commission on Government Organization (Ottawa: Queen's Printer: 1962-63), vol. 5, at 72-75.
12. Speech from the Throne, House of Commons Debates, 3rd Session, 26th Parliament, 14 Eliz.II (Ottawa: Queen's Printer: 1965), vol. I, at 3.
13. Pearson, Rt.Hon. Lord, op. cit., footnote 10, at 13.

14. The publications of the Law Reform Commission of Canada are available from Supply and Services Canada in Ottawa. Their titles and years of publication are:

The Immigration Appeal Board: 1976
 The Atomic Energy Control Board: 1977
 Parole Process (National Parole Board): 1977
 Unemployment Insurance Benefits (Appeal Boards, Umpires): 1977
 National Energy Board: 1978
 The Regulatory Process of the Canadian Transport Commission: 1979
 The Pension Appeals Board: 1979
 The Anti-Dumping Tribunal: 1979
 Canada Labour Relations Board: 1980
 Canadian Radio-Television and Telecommunications Commission: 1980.

Related studies and reports are:

Evidence: 1977
 Commissions of Inquiry: 1978
 Federal Court: 1978
 Advisory and Investigatory Commissions: 1979
 Access to Information: Independent Administrative Agencies: 1979
 Political Control of Independent Administrative Agencies: 1979
 Public Participation in the Administrative Process: 1979
 Judicial Review and the Federal Court: 1980
 Council on Administration: 1980

15. Law Reform Commission of Canada, Independent Administrative Agencies: Working Paper 25 (Ottawa: Supply and Services Canada: 1980).
16. Willis, J., "The McRuer Report: Lawyers' Values and Civil Servants' Values" (1968), 18 U.T.L.J. 351, at 355-360.
17. Law Reform Commission of Canada, op.cit., footnote 15, at 13-15.
18. (1957) Cmd. 218 (London: Her Majesty's Stationery Office).
19. S. Doc.No. 8, 77th Cong., 1st Sess. (1941).
20. (Toronto: Queen's Printer: 1968).

21. Administrative Procedure Act, 5 U.S.C. § 551 (1976).
22. 13 U.L.A. Civil Proc. & Rem. Laws 341 (Revised 1961).
23. S.O. 1971, c. 47.
24. The Administrative Procedures Act, R.S.A.1970, c.2.

CHAPTER I

FEDERAL ADMINISTRATIVE TRIBUNALS
INCLUDED IN STUDY

The thesis examined ninety-one federal administrative agencies that have a domestic, permanent nature in federal administrative law. Fifty-seven of them, listed alphabetically in Appendix A, do not hold hearings. The remaining thirty-four tribunals, listed alphabetically in Appendix B, hold hearings and they form the basis of the study. Their purpose and nature will be outlined in the following discussion.

The Anti-Dumping Tribunal was created to investigate whether a dumping of imports into Canada has caused, is causing, or is likely to cause material injury to Canadians who produce things similar to the imports.¹ It is designated a court of record with an official seal.² The terms "court of record" and "official seal" frequently occur together in administrative law. They will be examined more fully in Chapters II and III.

The Anti-Inflation Appeal Tribunal was established to hear appeals from decisions of the Anti-Inflation Board.³

Although not a court of record, the Tribunal has an official seal.⁴ The members of the Tribunal are also members of the Tax Review Board.

The Atomic Energy Control Board was set up to regulate the development and use of atomic energy.⁵ The hearings studied are those held by the Board when considering the suspension or revocation of atomic energy licences.⁶

The Bilingual Districts Advisory Board is constituted after each census to inquire into the establishment of or alteration of bilingual districts.⁷ A hearing has a two-stage process in which public officials, and then the general public, of an area are heard.

Organized to promote efficient industrial relations in the federal jurisdiction, the Canada Labour Relations Board uses basically one type of hearing although the subject-matter of the hearings may vary from the determination of bargaining rights to the adjudication of complaints.⁸

The Canada Pension Plan Review Committee was established to hear appeals from decisions of the Minister of National Health and Welfare on the entitlement of persons to benefits under the Canada Pension Plan.⁹

The Canadian Grain Commission was created to regulate grain handling and to establish standards of quality for grain to ensure a dependable supply for domestic and export markets.¹⁰ Two, similar types of hearings are held, firstly, to set maximum tariffs for grain handling¹¹ and, secondly, to suspend or revoke grain licences.¹²

Canadian Pension Commission Entitlement Boards are set up to hear appeals by war veterans from decisions of the Canadian Pension Commission on the availability of pension benefits.¹³

The Canadian Radio-Television Commission exercises two jurisdictions. On the one hand, it regulates the broadcasting industry by holding hearings for the issue, revocation, and suspension of broadcasting licences.¹⁴ On the other hand, it supervises the telecommunications industry and hearings are held to set rates for the industry.¹⁵

The regulation of Canada's national transportation system is the function of the Canadian Transport Commission.¹⁶ It is a court of record and has an official seal.¹⁷ Although one basic type of hearing is used, the subject-matter of the hearing can vary substantially from the setting of carriage rates to the inter-acquisition of transportation companies.¹⁸

The Copyright Appeal Board was constituted to decide on the fees that performing rights societies may charge, and to hear objections to the proposed fees.¹⁹

Farm Credit Corporation Appeal Boards are created to hear appeals by farmers from decisions of the Farm Credit Corporation on the availability and amount of loans.²⁰

Human Rights Tribunals are appointed to inquire into complaints filed with the Canadian Human Rights Commission.²¹

Appeals from deportation and related orders of the Minister of Employment and Immigration are heard by the Immigration Appeal Board.²² It is designated a court of record with an official seal.²³

The Merchant Seamen Compensation Board was established to hear claims by seamen for wage compensation if they are injured in the course of their duties.²⁴

The National Energy Board regulates Canada's energy resources in the national interest and advises the federal government on the use and development of the resources.²⁵ The Board is a court of record and it has an official seal.²⁶ Of the various types of hearings held, the one studied concerns the revocation of energy licences.²⁷

The National Farm Products Marketing Council holds two types of hearings to carry out its functions. One type is used to decide on the desirability of establishing a marketing agency in an area for the promotion of an efficient agricultural industry.²⁸ The other type is used to inquire into complaints from the public about an established agency.²⁹

The National Parole Board exercises a discretion to grant, refuse, or revoke an inmate's parole.³⁰ Although the Board is not a court of record, it has an official seal.³¹

The Northwest Territories Water Board was created to conserve, develop, and utilize water resources in the Northwest Territories.³² The Yukon Territory Water Board was similarly set up for its respective territory.³³ Hearings are held when applications are made for licences to use water resources.³⁴

The purpose of the Patent Appeal Board is to review patent applications rejected by patent examiners of the Bureau of Intellectual Property.³⁵

The Pension Appeals Board conducts two types of hearings to carry out its functions in relation to the Canada Pension Plan. By one type, the Board hears appeals from decisions of the Minister of National Revenue on the coverage of employees under the Plan and the contributions required of them.³⁶ By the other type, the Board hears appeals from decisions of the Canada Pension Plan Review Committee, on a person's entitlement to benefits under the Plan.³⁷

The Pension Review Board was organized to hear appeals by war veterans from decisions of the Canadian Pension Commission Entitlement Boards.³⁸

The establishment and operation of an efficient pilotage service is the purpose of the four pilotage authorities -- the Atlantic, the Great Lakes, the Laurentian, and the Pacific.³⁹ Hearings are held by them for the cancellation or suspension of a pilotage licence or for the refusal to issue a licence.⁴⁰

The Public Service Commission was created to assist in the training, developing, and appointing of employees for the federal civil service.⁴¹ Hearings are held into allegations of fraud or wrongdoing in employment competitions.⁴²

In addition to its special inquiries, the Public Service Commission has set up Public Service Commission Appeal Boards to hear appeals on the appointment and demotion of federal government employees.⁴³

The purpose of the Public Service Staff Relations Board is to regulate the labour relations of the federal government

and its employees.⁴⁴ The subject-matter of hearings varies from certification proceedings to the adjudication of grievances.⁴⁵

The Restrictive Trade Practices Commission has the most diverse jurisdiction of the tribunals studied. Three different types of hearings are held by the Commission. By one type, ~~it~~⁴⁶ investigates business practices that interfere with the federal government's competition policy. By a second type, the Commission decides on the desirability of government imposition of methods to increase competition in Canada, such as the lowering of tariff barriers or the prohibition of consignment selling.⁴⁷ Lastly, the Commission investigates shareholder allegations of fraud or wrongful conduct by a corporation in which he owns shares.⁴⁸ For the second type of hearing, the Commission is made a court of record but, unusually, it has no official seal.⁴⁹

The Tariff Board was created to exercise two distinct functions. Firstly, it investigates questions referred to it by the Minister of Finance about the effects of tariffs on industrial production in Canada.⁵⁰ Secondly, the Board hears appeals under various federal statutes.⁵¹ It is designated a court of record with an official seal.⁵²

Another tribunal that hears appeals under various statutes is the Tax Review Board.⁵³ Although it is not a court of record, it does have an official seal.⁵⁴

The Textile and Clothing Board was set up to investigate complaints from textile producers alleging that imported

products threaten to seriously injure the production of
55
Canadian textiles.

The Unemployment Insurance Commission (hereafter
"U.I.C.") establishes Boards of Referees to hear appeals
from decisions of U.I.C. officers on the entitlement of
56
persons to unemployment insurance benefits. A further
57
appeal exists to the U.I.C. Umpires, who also exercise
an appellate jurisdiction for decisions of the Minister
of National Revenue on the coverage of certain employees
58
under the unemployment insurance scheme.

The War Veterans Allowance Board was created to hear
appeals from decisions of War Veterans Allowance District
Authorities on the entitlement of veterans to federal benefits
59
available to them.

The terms "court of record" and "official seal" recur
frequently in the above discussion and consequently, they
must be analysed to determine their importance for the federal
tribunals. Owing to the number of tribunals holding more
than one type of hearing, care should be taken when speaking
of tribunals and their hearings. A reference to "all"
tribunals does not necessarily cover "all" hearings.

Footnotes

1. Anti-Dumping Act, R.S.C.1970, c. A-15, ss. 13, 21; and ss. 16, 16.1 as am. by R.S.C.1970(2nd Supp.), c.1, ss.2, 3.
2. Anti-Dumping Act, R.S.C.1970, c. A-15, subs. 27(1).
3. Anti-Inflation Act, S.C.1974-75-76, c.75, ss. 26, 30 as respectively am. and rep. by c.98, ss. 8, 9.
4. Anti-Inflation Act, S.C.1974-75-76, c.75, subs. 26(4).
5. Atomic Energy Control Act, R.S.C.1970, c. A-19, preamble, ss. 3, 7.
6. Atomic Energy Control Act, R.S.C.1970, c. A-19, para. 9(b), and Atomic Energy Control Regulations, C.R.C./78, c. 365, s. 27.
7. Official Languages Act, R.S.C.1970, c. O-2, ss. 14, 15.
8. Canada Labour Code, R.S.C.1970, c. L-1, ss. 111, 117, 121 as re-en. by S.C.1972, c. 18, s.1; and ss. 111, 117 further am. by S.C.1977-78, c. 27, ss. 37, 39.
9. Canada Pension Plan Act, R.S.C.1970, c. C-5, ss. 84, 85 as re-en. by S.C.1974-75-76, c. 4, ss. 41, 42; and rep. by S.C.1976-77, c. 36, ss. 16, 17.
10. Canada Grain Act, S.C.1970-71-72, c. 7, ss. 3, 11.
11. Canada Grain Act, S.C.1970-71-72, c. 7, s.74, subs.80(1).
12. Canada Grain Act, S.C.1970-71-72, c. 7, ss. 76, 77, subs. 80(2).
13. Pension Act, R.S.C.1970, c. P-7, ss. 68, 71, as rep. by R.S.C.1970(2nd Supp.), c.22, s. 28.
14. Canadian Radio-Television and Telecommunications Commission Act, S.C.1974-75-76, c. 49, subss. 3(1), 14(1). Subs. 14(1) refers to the powers contained in the Broadcasting Act, R.S.C.1970, c. B-11, ss. 15, 19.
15. Canadian Radio-Television and Telecommunications Commission Act, S.C.1974-75-76, c. 49, subss. 3(1), 14(2), (3).

16. National Transportation Act, R.S.C.1970, c. N-17, subs. 6(1), s. 21.
17. National Transportation Act, R.S.C.1970, c. N-17, Subs. 6(2).
18. National Transportation Act, R.S.C.1970, c. N-17, s. 21.
19. Copyright Act, R.S.C. 1970, c. C-30, s. 50.
20. Farm Credit Act, R.S.C. 1970, c. F-2, para. 11(1)(d)..
21. Canadian Human Rights Act, S.C. 1976-77, c.33, subs. 39(1).
22. Immigration Act 1976, S.C. 1976-77, c.52, subs. 59(1).
23. Immigration Act 1976, S.C. 1976-77, c.52, subs. 65(1).
24. Merchant Seamen Compensation Act, R.S.C.1970, c. M-11, subs. 3(1), s.11.
25. National Energy Board Act, R.S.C. 1970, c. N-6, s.22; and subs. 3(1) as re-en. by R.S.C.1970(1st Supp.), c. 27, s.2 and rep. by S.C. 1973-74, c.52, subs. 36(1).
26. National Energy Board Act, R.S.C.1970, c. N-6, subss. 10(1), (2).
27. National Energy Board Act, R.S.C.1970, c. N-6, s.20 as am. by R.S.C.1970(1st Supp.), c. 27, s. 8.
28. Farm Products Marketing Agencies Act, S.C.1970-71-72, c.65, subss. 3(1), 8(1), s.6.
29. Farm Products Marketing Agencies Act, S.C.1970-71-72, c. 65, s. 6, subs. 8(2).
30. Parole Act, R.S.C.1970, c. P-2, subs. 3(1), s. 6 as rep. by S.C. 1976-77, c. 53, ss. 18, 23.
31. Parole Act, R.S.C.1970, c. P-2, subs. 3(8).
32. Northern Inland Waters Act, R.S.C.1970(1st Supp.), c. 28, ss. 7, 9.
33. Northern Inland Waters Act, R.S.C.1970(1st Supp.), c. 28, ss. 7, 9.
34. Northern Inland Waters Act, R.S.C.1970(1st Supp.), c. 28, s. 15.

35. Patent Act, R.S.C.1970, c. P-4, subs. 4(2).
36. Canada Pension Plan Act, R.S.C.1970, c. C-5, s. 29, subs. 85(1) as respectively rep. and re-en. by S.C.1974-75-76, c. 4, ss. 18, 42; subs. 85(1) further rep. by S.C.1976-77, c. 36, subs. 17(1).
37. Canada Pension Plan Act, R.S.C.1970, c. C-5, subs. 85(1) as re-en. by S.C.1974-75-76, c. 4, s. 42 and rep. by S.C.1976-77, c. 36, subs. 17(1).
38. Pension Act, R.S.C.1970, c. P-7, ss. 75, 76 as rep. by R.S.C.1970(2nd Supp.), c.22, s. 28; and s.75 am. by S.C.1976-77, c. 13, s. 1.
39. Pilotage Act, S.C.1970-71-72, c. 52, subs. 3(1), s. 12.
40. Pilotage Act, S.C.1970-71-72, c. 52, subss. 18(1), (2), (3).
41. Public Service Employment Act, R.S.C.1970, c. P-32, s. 5.
42. Public Service Employment Act, R.S.C.1970, c. P-32, s. 41.
43. Public Service Employment Act, R.S.C.1970, c. P-32, para. 5(d).
44. Public Service Staff Relations Act, R.S.C.1970, c. P-35, s. 18; and subs.11(1) as re-en. by S.C.1973-74, c.15, s. 2 and rep. by S.C.1974-75-76, c. 67, s. 2.
45. Public Service Staff Relations Act, R.S.C.1970, c. P-35, s. 18, and s. 19 as am. by S.C.1974-75-76, c. 67, s.9.
46. Combines Investigation Act, R.S.C.1970, c. C-23, subs. 16(1) as rep. by R.S.C.1970(1st Supp.), c. 10, subs. 34(1); and ss. 18, 47 as am. by S.C.1974-75-76, c. 76, ss. 6, 25.
47. Combines Investigation Act, R.S.C.1970, c. C-23, ss. 31.2 to 31.7 as added by S.C.1974-75-76, c.76, s. 12.
48. Canada Corporations Act, R.S.C.1970, c. C-32, s.114 as rep. by R.S.C.1970(1st Supp.), c. 10, s. 12.
49. Combines Investigation Act, R.S.C.1970, c. C-23, subs. 31.8(1), as added by S.C.1974-75-76, c. 76, s. 12.

50. Tariff Board Act, R.S.C.1970, c. T-1, subs. 3(1), s.4.
51. Anti-Dumping Act, R.S.C.1970, c. A-15, s. 19.
Customs Act, R.S.C.1970, c. C-40, s. 47.
Excise Tax Act, R.S.C.1970, c. E-13, s. 59.
52. Tariff Board Act, R.S.C.1970, c. T-1, subs. 5(6).
53. Tax Review Board Act, S.C. 1970-71-72, c. 11, subs.
3(1), s. 7.
54. Tax Review Board Act, S.C. 1970-71-72, c. 11, subs.
8(1).
55. Textile and Clothing Board Act, S.C.1970-71-72, c. 39,
subs. 3(1), s. 9.
56. Unemployment Insurance Act, 1971, S.C.1970-71-72, c. 48,
subss. 91(1), 94(1).
57. Unemployment Insurance Act, 1971, S.C.1970-71-72, c.
48, ss. 92, 95 as respectively am. and rep. by
S.C.1976-77, c. 54, ss. 55, 56.
58. Unemployment Insurance Act, 1971, S.C.1970-71-72, c.
48, s. 84.
59. War Veterans Allowance Act, R.S.C.1970, c. W-5,
subss. 25(1), 29(1).

CHAPTER II

COURTS OF RECORD

Sir Edward Coke originated the modern definition of a court of record. In his comments on the works of Littleton, he wrote at paragraph 260a: ¹

"Record." *Recordum*, is a memoriall of remembrance in rolles of parchement, of the proceedings and acts of a court of justice which hath power to hold plea according to the course of the common law, of reall or mixt actions, or of actions *quare vi et armis*, or of personall actions, whereof the debt or damage amounts to fortie shillings or above, which wee call Courts of Record, and are created by parliament, letters patents, or prescription.

It is aptly derived of *recordari*, which is to keepe in memorie of record, as it is said, *quod dicere nihil aliud est quam recordari*; and in the same sense the poet useth it, *si rite audita recordor*. But legally records are restrained to the rolles of such only as are courts of record, and not the rolles of inferiour, nor of any other courts of record, and not the rolles of inferior, nor of any other courts which proceed not *secundum legem et consuetudinem Anglia*. And the rolles being the records or memorialls of the judges of the courts of record, import in them such incontrollable credit and veritie, as they admit no averment, plea, or prooffe to the contrarie. And if such a record be alleaged, and it be pleaded that there is no such record, it shall be tried only by it selfe; and the reason hereof is apparent, for otherwise (as our old authors say, and that truly) there should never be any end of controversies, which should be inconvenient. Of courts of record you may read in my Reports: but yet during the terme wherein any judicial act is done, the record remaineth in the brest of the judges of the court, and in their remembrance, and therefore

the roll is alterable during that terme, as the judges shall direct; but when that terme is past, then the record is the roll, and admitteth no alteration, averment, or prooffe to the contrarie.

and at paragraph 118a:

"In a court of record." Record is derived of the Latine word *recorder*, that is, to keepe in mind, as the poet saith, *Si rite aidota recorder*. And therefore a record or inrolment is a memoriall or monument of so high a nature, as it importeth in it selfe such an absolute verity, as if it be pleaded that there is no such record, it shall not receive any triall by witnesse, jury, or otherwise, but only by itselfe. And every court of record is the king's court, albeit another may have the profit, wherein if the judges do erre, a writ of error, deth lye. But the county court, the hundred court, the court baron, and such like, are no courts of record; and therefore the proceedings therein may be denied, and tryed by jury, and upon their judgements a writ of error lyeth not, but a writ of false judgement, for that they are no courts of record, because they cannot hold plea of debt or trespasse,

In his reports of cases, Coke emphasized the further characteristic that only a court of record could fine or imprison a person.² The whole of his view was later summarized by Sir William Blackstone in his Commentaries³ on the Laws of England:

For the more speedy, universal and impartial administration of justice between subject and subject, the law hath appointed a prodigious variety of courts, some with a more limited, others with a more extensive jurisdiction; some constituted to inquire only, others to hear and determine; some to determine in the first instance, others upon appeal and by way of review. All these in their turns will be taken notice of in their respective places: and I shall therefore here only mention one distinction, that runs throughout them all; viz. that some of them are courts of record, others not of record. A court of record is that,

where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony: which rolls are called the records of the court, and are of such high and super-eminent authority, that their truth is not to be called in question. For it is a settled rule and maxim that nothing shall be averred against a record, nor shall any plea, or even proof, be admitted to the contrary. And if the existence of a record be denied, it shall be tried by nothing but itself; that is, upon bare inspection whether there be any such record or no; else there would be no end of disputes. But, if there appear any mistake of the clerk in making up such record, the court will direct him to amend it. All courts of record are the king's courts, in right of his crown and royal dignity, and therefore no other court hath authority to fine or imprison; so that the very erection of a new jurisdiction with the power of fine or imprisonment makes it instantly a court of record. A court not of record is the court of a private man; whom the law will not intrust with any discretionary power over the fortune or liberty of his fellow-subjects. Such are the courts-baron incident to every manor, and other inferior jurisdictions: where the proceedings are not enrolled or recorded; but as well their existence as the truth of the matters therein contained shall, if disputed, be tried and determined by a jury. These courts can hold no plea of matters cognizable or by the common law, unless under the value of 40s. nor of any forcible injury whatsoever, not having any process to arrest the person of the defendant.

The essential features of the definition are that a court keeps a record of its proceedings, the record is incontestable except to correct mistakes in it, and that the court has the power to fine and to imprison.

Most of the modern dictionary definitions of a court of record rely on the first and third characteristics⁴ while modern writers rely on only the third characteristic.⁵ However, historical analysis demonstrates that none nor all of the characteristics are exclusive to nor definitive of courts of record.

1. Historical Analysis

(a) A Record of Proceedings

In Glanville's time, long before Coke, records of courts were kept but only in oral form. A judge testified to four knights about any proceedings before him and they carried the testimony to the king's court. This oral record was considered authoritative in subsequent proceedings. In the twelfth century a trend in western Europe towards keeping written judicial records took hold in England.⁶ By Coke's time several courts, especially the Chancery and the county court, both of which he did not consider to be courts of record,⁷ were keeping records of proceedings.

Therefore, the mere fact that a court kept a record could not be determinative of whether the court was a court of record.

(b) Incontestability of a Record

The concept of the incontestability of a court record originated from the ancient rule that the king's word, as to all that had transpired in his presence, was incontestable.⁸ If the king's word could not be questioned, then the record of his court, administering his justice, was incontestable. Supposedly, the concept was of Frankish origin and was imported into England by the Normans, although there is some dispute on this point.⁹

The concept could not have been limited only to courts that Coke considered to be courts of record. For example, the Chancery originated from the king's court, which had had an indisputable record.¹⁰ When persons petitioned the king to redress wrongs that the common law courts were powerless to deal with, the king referred the petitions to the Chancery, which administered his equity.¹¹ Although none of the writers on English legal history state specifically that a record of the Chancery was incontestable, surely the close relationship of the king and his Chancery would attach that quality to the record. Yet, the Chancery was not considered by Coke to be a court of record.¹² The incontestability of a court record could not have been a characteristic limited solely to courts of record.

(c) Power to Fine and to Imprison

The power to fine and to imprison, as a characteristic belonging solely to courts of record, was wholly an invention of Coke.¹³ In his earlier law reports, such as in Jentleman's Case,¹⁴ he relied on the existence of and incontestability of a court record to define a court of record. However, in the eighth volume of his law reports, notably in Griesley's Case,¹⁵ he began adding a further characteristic to a court of record, namely, the power to fine and to imprison.

Even in Coke's time the power was not limited to courts that he considered to be courts of record. Other courts such as the Council, Chancery, Star Chamber, Admiralty and the High Commission exercised the power, although none of them were courts of record in Coke's view.¹⁶ Until Coke's time, no court "imposed a fine" in the modern sense of punishing an accused. The courts that could imprison an accused allowed him to bargain away his imprisonment by offering a sum of money. An accused was said "to make a fine," and as the practice became more common, Coke decided to alter the phrase so that he could say a court had power "to impose a fine" or "to fine."¹⁷ The act of an accused was transformed into an act of a court.

As if these facts were not enough to dispel the importance of the power to fine, and to imprison, Thorne ably demonstrated that none of the cases on which Coke relied as authority for his proposition clearly support it on close analysis.¹⁸

The important point is that the power to fine and to imprison was not limited to courts of record and therefore, it could not be a determining factor of a court of record.

Lastly, the question remains whether the whole of the three characteristics mentioned in parts (a), (b) and (c) is greater than the sum of the individual characteristics. The answer is in the negative because the Chancery possessed all three characteristics; yet, Coke did not consider it to be a court of record.¹⁹

If the characteristics described by Coke are not definitive of a court of record,²⁰ then one wonders why he argued so strenuously in their favour. The reason was his political struggle with King James I of England. Coke and many others felt that James' rule was bordering on tyranny. James was interfering openly with the independence of the judiciary. He coerced judges into having extra-judicial consultations with him and he imprisoned lawyers who dared to question his prerogative power in court. When Coke asserted that James should not decide cases in person because he was not knowledgeable in the law, James replied in fury, stating that he could personally question a judgment of any court and that a judge who disobeyed him should be hanged. Rumours spread that James intended to introduce the Civil Law system from Scotland into England to undermine the authority of the common law judges, of whom Coke was one.

Coke's strategy was to attack the jurisdiction of courts created by the king's council, especially the Chancery, Admiralty, and the Star Chamber. If their jurisdiction could be restricted, then the jurisdiction of the common law courts would be assured and James' use of his prerogative power could be curtailed. Coke's device was the creation of an elevated status for courts that possessed certain characteristics, namely, the existence of a court record, the incontestability of the record, and the power to fine and to imprison. He called courts that possessed all of the characteristics "courts of record" and he argued that

only common law courts fitted the description of a court of record. Therefore, the common law courts were imagined to be more powerful and more important than the courts created by the king's council. Although in the end James' overruled Coke's view, Coke did succeed in maintaining a jurisdiction for the common law courts.²¹

The label "court of record" has in English law long outlived the political reasons for its creation. Holdsworth concluded that the label has little practical importance in modern times.²² Nevertheless, Parliament continues to use the label as a "catch-phrase" to describe a body possessing the three characteristics discussed above and an additional fourth characteristic discussed below, judicial immunity, which developed out of the first two characteristics. In a modern analysis, the characteristics are now based on policy reasons, which filled the void left by the extinct political reasons.

2. Modern Analysis

(a) A Record of Proceedings

The modern policies behind having a record of proceedings are to aid a judge's memory,²³ to assist appeal courts in discharging their functions,²⁴ and to provide a permanent memorial of what was decided in the proceedings.²⁵

(b) Incontestability of a Record

The policy behind the incontestability of a court record is to provide a finiteness to proceedings; otherwise, litigation could continue infinitely with no final conclusion.²⁶ An incontestable record that finally decides a dispute cannot be re-opened and therefore, the final decision stands unchallenged, preventing re-litigation of the dispute unless otherwise directed by an appeal court. The incontestability of a record has never been absolute because courts of law have always had the power to correct²⁷ their records to make them speak the truth.

(c) Power to Fine and to Imprison

The emphasis is no longer on whether a court has the power to fine or to imprison but on whether it has the power to hold persons in contempt of court -- a power which involves punishment by fine or imprisonment. The contempt power is granted to courts that hold proceedings in which the dignity and independence of the administration of justice must be preserved. The power protects not the judge but the right of a citizen to an administration of justice free from²⁸ influence or intimidation.

There are two types of contempt. Criminal contempt is the obstruction of the fair administration of justice and

civil contempt is the disobedience of a judgment, order, or other process of a court.²⁹ The distinction between criminal and civil contempt is now almost meaningless,³⁰ with the more important distinction being made between contempts in and not in the face of a court. Contempts in the face of a court consist of noisy behaviour, refusal to answer questions when properly subpoenaed, and abusive comments directed towards the judge.³¹ Contempts not in the face of the court consist of the publication of evidence before a case is heard, the making of comments about a trial while it is in progress or after its completion, and criticism of the administration of justice.³²

The distinction between courts of record and courts not of record is very important in the law of contempt. Courts not of record have no power to commit a person for contempt unless the power is expressly given by statute. An inferior court of record -- a court of record with a limited jurisdiction -- can only punish for contempt committed in its face. A superior court of record -- a traditional superior court with an unlimited jurisdiction -- can punish for contempt whether committed in or not in its face.³³ The power of a court of record to punish for contempt is inherent.³⁴

The determination of guilt in a contempt situation can be made either by the ordinary trial process or by a summary process. In the former process, an accused has a right to a full and fair trial, he cannot be compelled to testify, and he is presumed innocent until proven guilty. In the

latter process, an accused must stand before the court that alleges the contempt and show cause why he should not be condemned and punished. The accused's traditional rights of presumption of innocence and non-compellability to testify are abridged.³⁵ Mr. Justice Laskin (as he then was), in a strong dissenting opinion, considered the use of the summary process as a violation of the following three fundamental legal principles:

- (1) no person may be penalized or punished without a fair hearing,
- (2) no person may be convicted by another who acts as both prosecutor and judge, and
- (3) no judgment may be rendered where a reasonable apprehension of bias exists.³⁶

Many courts have stated that this power to punish by summary process should be used sparingly,³⁷ and at least one court has held that it violates paragraph 2(f) of the Canadian Bill of Rights³⁸ because the power abridges an accused's presumption of innocence.³⁹ Despite the criticism, the power continues to exist and to be used.⁴⁰ The greatest fear is that a judge might use the summary contempt power to vindicate criticism of him as a person as opposed to criticism of him in his official capacity as a judge; in the former situation, a judge must use the law of defamation and not the law of contempt.⁴¹ Certainly, the ordinary trial process is the more desirable method of determining whether contempt has occurred.

(d) Judicial Immunity

The immunity of a judge from liability for acts done in his official capacity was an outgrowth of the concept of a court of record. In the desire for finality in judicial proceedings, it was decided not only that a court record must be incontestable, but also that an unsuccessful litigant must not be able to frivolously sue the judge in his trial, and then sue the judge in his second trial and so on, ad infinitum.⁴² Another policy reason for the rule is that judicial immunity fosters an independent judiciary,⁴³ free to decide disputes without fear of being sued.

Prior to the seventeenth century the judges of all courts of record were granted judicial immunity but judges of courts not of record could be sued. During that century, the immunity was diminished and restricted to judges of only superior courts of record. The modern rule has abandoned the importance of the court of record status and has concentrated on the policy consideration of the independence of the judiciary as a whole. Generally, all judges are now immune⁴⁴ from liability for acts done in their official capacity.

In conclusion, policy has indeed replaced politics as the basis for the importance of the characteristics of a court of record.*

3. Implications of a Court of Record Status
for Federal Administrative Tribunals

As stated in Chapter I, six tribunals are designated courts of record, namely, the Anti-Dumping Tribunal, the Canadian Transport Commission, the Immigration Appeal Board, the National Energy Board, the Restrictive Trade Practices Commission when holding hearings on methods to increase competition, and the Tariff Board. Many of the other tribunals have certain court of record powers.

The "court of record" label should not be used in administrative law to describe tribunals because the label is an anachronism and because it deceives chairmen of tribunals into thinking that their "court of record" tribunals are courts of law.⁴⁵ Both the Federal Court⁴⁶ and the Supreme Court of Canada⁴⁷ have stated that calling a tribunal a "court of record" does not make the tribunal a court of law. If Parliament wants to create a tribunal possessing certain characteristics normally associated with a court of record, then the more desirable approach is to avoid using the label "court of record" and to simply list the desired characteristics when creating the tribunal. The Law Reform Commission has reached a similar conclusion.⁴⁸ If a label is desired, perhaps the tribunals could be called "tribunals of record." They will be so identified in the rest of the study.

The four characteristics now associated with a court of record are the keeping of a record of proceedings, the incontestability of the record, the power to punish for contempt, and judicial immunity. The applicability of each of these characteristics to administrative tribunals must be examined.

(a) A Record of Proceedings

A record promotes the values of both efficiency and fairness. In terms of efficiency, a record aids the memory of tribunal members and assists a tribunal in developing a system of its own jurisprudence. In terms of fairness, a record acts as a permanent memorial of a proceeding, which greatly assists a party in an appeal or review of a decision. Parliament undoubtedly intended the tribunals of record to maintain records but it failed to inform them of what the record contents⁴ should be.

In Blackstone's time, a record of a court of record was a complete package containing the original writ and summons in a case, the pleadings, declarations, the view or oyer prayed, imparlances, plea, replication, continuances, issue, demurer, joinder, and rejoinder.⁴⁹

Modern jurisprudence seems to have narrowed Blackstone's definition so that a record must contain an initiatory document, pleadings, and a decision but need not contain evidence, party briefs, supporting documents, and reasons.⁵⁰

Of past studies, only the McRuer Report considered tribunal records and it recommended that a record should contain:

- (1) the notice of hearing;
- (2) any intermediate rulings or orders made in the course of the proceedings by the tribunal;
- (3) documentary evidence received or considered;
- (4) a transcript of oral evidence received, where such evidence is reported, or the notes of the tribunal where the evidence is not reported;
- (5) the decision and the reasons for it.

51

The recommendation was altered and enacted in section 20 of the Ontario Act, as follows:

A tribunal shall compile a record of any proceedings in which a hearing has been held which shall include,

- (a) any application, complaint, reference or other document, if any, by which the proceedings were commenced;
- (b) the notice of any hearing;
- (c) any intermediate orders made by the tribunal;
- (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceedings;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the decision of the tribunal and the reasons therefor, where reasons have been given.

Section 20 expands on the jurisprudential contents and includes evidence, supporting documents, and reasons where given. Interestingly, the section was adopted by the British Columbian legislature in section 1 of its Judicial Review Procedure Act.⁵² Section 20 is rooted in subsections 9(e) and (f) of the Model Act, which state:

- (e) The record in a contested case shall include:
 - (1) all pleadings, motions, intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings thereon;
 - (5) proposed findings and exceptions;
 - (6) any decision, opinion, or report by the officer presiding at the hearing;
 - (7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.
- (f) Oral proceedings or any part thereof shall be transcribed on request of any party.

Mention is not made of an initiatory document, a notice of hearing, and reasons but inclusion is made of a statement of matters officially noticed, objections and questions, proposed findings and exceptions, and staff memoranda and data.

Section 556 of the U.S. Federal Act is less descriptive and mentions only that a record is to contain a "transcript of testimony and exhibits, together with all papers and

requests filed in the proceeding" while subsection 557(c) states:

... The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of --

- (A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and
- (B) the appropriate rule, order, sanction, relief or denial thereof.

A summary of the various legislation above produces the following list of record contents:

- (1) the initiatory document,
- (2) pleadings,
- (3) the notice of hearing,
- (4) motions and the rulings thereon,
- (5) oral and documentary evidence presented at the hearing, subject to any legal restrictions on the use of evidence,
- (6) a statement of matters officially noticed,
- (7) objections to the admission of evidence and the taking of official notice, and the rulings on the objections,
- (8) staff memoranda or data submitted to the decision-maker, and
- (9) the decision with reasons, if any, rendered on the hearing.

The summary of contents supplements the jurisprudential requirements for record contents. Many of the contents will be individually discussed in Chapter IV.

The contents tell the story of a proceeding's events, with a beginning, a body, and a conclusion. The beginning consists of an initiatory document, pleadings, and the notice of hearing. They disclose the purpose of a proceeding and prevent a party from later alleging that his interests were affected without his knowledge.

The body is composed of motions and rulings, evidence, and objections to admissibility. They disclose the occurrences at the hearing stage of a proceeding and reveal potential grounds for appeal or judicial review. The disclosure of matters officially noticed and of staff memoranda and data is a controversial area of administrative law and will not be discussed until Chapter IV.

The decision and reasons, if any, form the conclusion and act as a permanent memorial of a tribunal's efforts.

A recommendation is made to require a tribunal of record to compile a record of proceedings containing:

- (1) the initiatory document,
- (2) the pleadings,
- (3) the notice of hearing,
- (4) motions and rulings thereon,
- (5) oral and documentary evidence presented at the hearing, subject to any legal restrictions on the use of the evidence,

- (6) objections to the admission of evidence and rulings thereon, and
- (7) the decision with reasons, if any.

The recommendation will not pose any problems to the tribunals of record because, commendably, each of them currently compiles such a record.

The draft provisions based on the recommendation are:

- (1) A tribunal must keep a record, in accordance with subsection (2), of each of its proceedings.
- (2) A record of a proceeding must contain, where applicable,
 - (a) the initiatory document,
 - (b) the pleadings of parties to the proceeding,
 - (c) the notice of hearing,
 - (d) the motions and rulings thereon,
 - (e) the oral and documentary evidence presented at the hearing, subject to any limitation expressly imposed by law on the extent to or the purposes for which any such evidence may be used in any proceedings,
 - (f) objections to the admission of evidence and the rulings thereon, and
 - (g) the decision of the tribunal and the reasons, if any, for the decision.

(b) Incontestability of Record

The policy reason behind the incontestability of a record is to provide a finiteness to proceedings. The reason advances both the values of efficiency and of fairness. Endless rehearings would waste the time of and cause great inconvenience to a tribunal of record and to parties before it.

A recommendation is made to require a record of a tribunal of record to be incontestable. The tribunal should be allowed, in a fashion similar to a court of law, to correct the record to make it speak the truth. The corrections should be made by the tribunal on its own ~~or~~ on motion of a party to the proceeding with notice to all parties unaware of the correction to be made. The motion should be heard in a summary manner to prevent undue hindrance of tribunal efficiency in conducting its main hearings.

No report or legislation of other jurisdictions and no federal legislation deals with the incontestability of a record.

The provisions for inclusion in the proposed code will be drafted from basics, as follows:

- (1) A record of a tribunal is, in the absence of information to the contrary, conclusive proof of the statements contained therein, without proof of the signature or official character

of the maker of the record.

- (2) A tribunal may correct its record, by itself or on motion of a party to a proceeding and after notice of the proposed correction has been sent to all other parties, in order to make the record speak the truth of the proceeding.

(c) Power to Punish for Contempt

A power to punish for contempt is used to preserve the orderliness of a proceeding so that a tribunal's efficiency is not unduly impaired. The power also promotes fairness to the common interest of all parties because disorderliness wastes their time and effort. However, superior courts distrust the use of the power by lower courts, especially when the power is exercised summarily. A superior court would have a greater distrust of a tribunal exercising the power, especially since a tribunal cannot exercise it by means of a traditional trial process but only summarily. Any advantage to tribunal efficiency is far outweighed by the unfairness caused to a party accused of contempt.

Parliament has expressly granted the power to two tribunals -- the Restrictive Trade Practices Commission and the National Energy Board. The Commission can exercise its power only on approval of a federal judge:

A member of the Commission shall not exercise power to penalize any person pursuant to this Act, whether for contempt or otherwise, unless, on the application of the member, a judge of the Federal Court of Canada or of a superior or county court has certified, as such judge may, that the power may be exercised in the manner disclosed in the application, and the member has given to such person twenty-four hours notice of the hearing of the application or such shorter notice as the judge deems reasonable.

The power of the National Energy Board is equivalent to that of a superior court of record—the ability to punish for contempts both in and not in its face: ⁵⁴

- (1). Any person who is guilty of contempt of the Board in the presence of a Board member conducting a public hearing may, after he has been called on to justify his behaviour, be condemned at once.
- (2) No person may be condemned for contempt committed outside a public hearing unless he has been served with a show cause order ordering him to appear before the Board on the day and at the hour fixed to hear proof of the acts with which he is charged and to urge any grounds of defence that he may have.

Both provisions of the Board rely on the undesirable summary procedure, which has been condemned even when possessed by legally-skilled judges of inferior courts. Although the provisions cannot be condoned, some method is required to punish for contempts of tribunal procedure. The safest approach is to entrust the power to the Federal Court of Canada for exercise on behalf of the tribunals.

A recommendation is made to expressly empower the Federal Court of Canada to punish a contempt of tribunal

procedure, upon application of the tribunal.

Of past studies, only the McRuer Report considered the power and the same recommendation as above was made. Based on the Report, section 13 of the Ontario Act was enacted, as follows:

... the tribunal may, of its own motion or on application of a party to the proceedings, state a case to the Divisional Court setting out the facts and that court may, on application on behalf of and in the name of the tribunal or by such party, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

Punishment for contempt is entrusted by the section to a court of law. Either a tribunal or a party can commence the contempt procedure before the Divisional Court, which holds a hearing to determine if contempt has occurred.

The Model Act does not deal with the power but subsection 555(d) of the U.S. Federal Act requires the enforcement of a tribunal's subpoena to be left to a court of law:

... In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

Thus, the legislation of other jurisdictions supports the recommendation made above. The Ontario provision is clearest and will consequently be used as a drafting base

after a few changes are made in it. A simple application by a tribunal alleging contempt should suffice in lieu of a stated case. A party's prompting of an application is unnecessarily stated. The draft provision for inclusion in the proposed code is:

A tribunal may apply to the Federal Court of Canada alleging that a person has committed a contempt of tribunal procedure; and the Court may consider any information supporting or rebutting the allegation and may treat the non-compliance as though it were a contempt of the Court.

(d) Immunity

Immunity from liability serves both the values of efficiency and fairness. Continuous lawsuits would prevent a tribunal from functioning. An intimidated tribunal would be unfair to the parties if its impartiality were threatened. Ultimately, immunity protects the integrity of the tribunal and preserves public confidence in the administrative process.

A recommendation is made to grant to members of a tribunal of record an immunity from liability for acts done in their official capacity.

No report or legislation of other jurisdictions and none of the legislation governing the tribunals of record, deal directly with the issue of immunity. Section 3 of the Crown Liability Act⁵⁶ renders the Crown liable for the official acts of its servants, such as tribunal members; however, no immunity of the members is specifically set out. Provisions

for immunity can be found in other statutes, of which the most recent example is subsection 65(1) of the proposed ⁵⁷
Access to Information Act, which states:

No criminal or civil proceedings lie against the Information Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

The subsection will form the basis of the draft provision, as follows:

No criminal or civil proceedings lie against a member of a tribunal or any person acting on his behalf or under his direction, for anything done, reported or said in good faith in the course of the actual, or purported, exercise or performance of his powers, duties, or functions.

Footnotes

1. Coke Upon Littleton, 19th ed. by Hargrave & Butler (London: Hansard & Son: 1832), vol. 2, at para. 260a.
2. Griesley's Case, 8 Co. Rep. 38a, 77 E.R. 530.
3. Blackstone's Commentaries on the Laws of England (New York: Dean: 1846), vol. 2, at 21-22 (Book III, para.'s 24-25).
4. Osborn's Concise Law Dictionary, 6th ed. by Burke, J. (London: Sweet & Maxwell: 1976), at 101.
Bouvier's Law Dictionary, 12th ed. (Philadelphia: Childs: 1868), at 384-85.
Jowitt's Dictionary of English Law, 2nd ed. by Burke, J. (London: Sweet & Maxwell: 1977), at 501.
5. Halsbury's Laws of England, 4th ed., vol. 10, at 319, para. 709 (hereafter cited as Halsbury).
6. Harding, A., The Law Courts of Mediaeval England (London: George Allen: 1973), at 71.
7. Pollock, F. and Maitland, F., The History of the English Law (Cambridge: University Press: 1895), vol. 2, at 666.
 Thorne, S.E., "Notes on Courts of Record in England" (1934), 40 W. Va. L.Q. 347, at 351, n. 13 (hereafter cited as "Thorne (1934)").
 Holdsworth, W., History of the English Law (London: Methuen: 1938), vol. 5, at 159-160.
 Note: Coke emphasized the fact that the records of courts record were written in Latin whereas the records of non-courts of record, such as the Chancery and the Star Chamber, were written in English. Holdsworth states that the distinction was of little or of no consequence because the records in English were just as useful, if not more useful, than the Latin records.
8. Pollock, F. and Maitland, F., op.cit., footnote 7, at 666, 669-670.
 Thorne (1934), op. cit., footnote 7, at 350.
9. Thorne (1934), op. cit., footnote 7, at 347, 349, 351.
10. Pollock, F. and Maitland, F., op.cit., footnote 7, at 666.
11. Holdsworth, W., op.cit., footnote 7, vol. 2, at 596.

12. Ibid., vol. 5, at 159-160.
13. Thorne, S.E., "Courts of Record and Sir Edward Coke" (1937-38), 2 U.T.L.J. 24, at 37-42 (hereafter cited as "Thorne (1937-38)").
14. 6 Co. Rep. 11b, 77 E.R. 269.
15. 8 Co. Rep. 38a, 77 E.R. 530.
16. Holdsworth, W., op.cit., footnote 7, vol. 5, at 159-160. Commons Debates 1621 (Newhaven: 1935), vol.2 at 259, cited in Thorne (1937-38), op.cit., footnote 13, at 47, n. 84.
17. Thorne (1937-38), op.cit., footnote 13, at 37-40.
18. Ibid., at 46.
19. Holdsworth, W., op.cit., footnote 7, vol. 5, at 159-160.
20. Baker, J.H., "The Common Lawyers and the Chancery: 1616" (1969), 4 Irish Jurist 368, at 368-371.
21. Thorne (1937-38), op.cit., footnote 13, at 48-49.
22. Holdsworth, W., op.cit., footnote 7, vol. 5, at 160.
23. Odgers, W.B. and Odgers, W.B., The Common Law of England, 2nd ed. (London: Sweet & Maxwell: 1920), vol. 1, at 1028.
24. Reeve's History of the English Law, ed. by Finlayson, W.F., (London: Reeves & Turner: 1869), vol. 1, at 148.
25. Halsbury, op.cit., footnote 5, vol. 10, at 319, para. 709. Coke Upon Littleton, loc. cit., footnote 1. Blackstone's Commentaries on the Laws of England, loc.cit., footnote 3.
26. Reeve's History of the English Law, loc.cit., footnote 24. Coke Upon Littleton, loc.cit., footnote 1. Blackstone's Commentaries on the Laws of England, loc.cit., footnote 3.
27. Coke Upon Littleton, loc.cit., footnote 1. Blackstone's Commentaries on the Laws of England, loc.cit., footnote 3. Corpus Juris Secundum, vol. 21, § 226, at 432-433.
28. McRuer, J.C., "Criminal Contempt of Court Procedure" (1952), 30 Can. B. Rev. 225, at 226.
29. Halsbury, op.cit., footnote 5, vol.9, at 3, para. 2.
30. Jennison v. Baker, [1972] 2 Q.B. 52 at 61, [1972] 1 All E.R. 997 at 1002 (C.A.).

31. McRuer, J.C., loc.cit., footnote 28.
Halsbury, op.cit., footnote 5, vol. 9, at 5, para. 6.
32. McRuer, J.C., loc.cit., footnote 28.
Halsbury, op.cit., footnote 5, vol. 9, at 7, para. 7.
33. Canadian Broadcasting Corporation and Knapp v. Cordeau et al., [1979] 2 S.C.R. 618, at 627-638.
34. Ex. p. Lunan (1951), 99 C.C.C. 136 at 138, 2 D.L.R. 589 (Ont.H.C.).
35. A.G. Québec v. Hebert, [1967] 2 C.C.C. 111 at 153, 50 C.R. 88 (Que.Q.B., App. Div.).
36. McKeown v. The Queen, [1971] S.C.R. 446 at 456-58, 16 D.L.R.(3d) 390.
37. R.v. Rival, [1971] 1 W.W.R. 223 at 227, 13 C.R.N.S. 100 (Man.Q.B.).
R.v. Gray, [1900] 2 Q.B. 36, at 40.
38. R.S.C.1970 (Appendix), at 457.
39. Bergeron v. La Société de Publication Merlin Ltée. (1970), 14 C.R.N.S. 52, at 61-62 (Que.Q.B.).
40. R.v. Sommer, [1965] 1 C.C.C. 42 at 60, 74, 40 C.R. 417, 46 D.L.R.(2d) 49 (Que.Q.B., App. Div.).
Chartrand v. The Queen (1971), 21 C.R.N.S. 49 at 59, 60, 66 (Que.C.A.).
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Perry v. Heatherington, [1971] 5 W.W.R. 670 at 24 D.L.R.(3d) 127 (B.C.S.C.).

45. Scott, J.V., "Immigration Inquiries and Appeals from Orders of Deportation" in Law Society of Upper Canada Special Lectures (1971) (Toronto:DeBoo), at 117-118.
Audette, L.C., "The Functions of the Tariff Board and its Methods of Operation", speech to Canadian Industrial Traffic League, Sept. 24, 1968, at 7 (available from Board).
46. Re A.G. Manitoba and National Energy Board, [1974] 2 F.C. 502 at 524, 48 D.L.R.(3d) 73 (T.D.).
47. The Committee for Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369 at 385, 68 D.L.R.(3d) 716.
48. Law Reform Commission of Canada, Independent Administrative Agencies: Working Paper 25 (Ottawa: Supply and Services Canada: 1980), recommendation 3.9 at 57.
49. Blackstone's Commentaries on the Laws of England, op. cit., at 252, para. 317 (Book III, para. 317).
50. Farrell v. Workmen's Compensation Board (1960), 33 W.W.R. 433 at 437, 444-45, 450, 26 D.L.R.(2d) 185 (B.C.C.A.); aff'd. [1962] S.C.R. 48, 37 W.W.R. 39, 31 D.L.R.(2d) 177.
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R.v. Northumberland Compensation Appeal Tribunal, ex p. Shaw, [1952] 1 K.B. 338 at 352, [1952] 1 All E.R. 122 (C.A.).
51. Recommendation 16, p.218.
52. R.S.B.C. 1979, c.209.

53. Combines Investigation Act, R.S.C.1970, c.C-23,
subs.17(3).
 54. National Energy Board Rules of Practice and Procedure,
C.R.C./78, c.1057, s.26.
 55. Recommendation 1, p.446.
 56. R.S.C.1970, c.C-38.
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29 Eliz.II, 1980.
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CHAPTER III

OFFICIAL SEALS

As mentioned in Chapter I, the Anti-Inflation Appeal Tribunal, the National Parole Board, the Tax Review Board, and the tribunals of record (except the Restrictive Trade Practices Commission) have official seals.

The only purpose of the seals appears to be to give formality to documents sealed by the tribunals. The custom of sealing documents pre-dates Roman times and it was introduced into England by the Normans.¹ Seals were used to overcome widespread illiteracy. Identification of the maker of a document was a much more important consideration than any solemnity in the act of sealing. When writing came into popular use, seals were relegated to showing formality or solemnity in the making of a document.²

Judicially, only two seals existed from Norman times in England and both seals were created by the sovereign. The Great Seal formalized all of the sovereign's documents and, through his sealing of writs, his Great Seal originated the judicial process.³ When the Chancellor became the Keeper of the Great Seal, he was recognized as the head of the English legal system. The Privy Seal was created later and it was held, outside the Chancery, by the King's Council. Eventually, a jurisdiction attached to the seals so that the Chancellor,

using the Greal Seal, heard civil cases while the Council, using the Privy Seal, heard criminal cases.⁴ In both situations the seals merely demonstrated a formality in proceedings and an authority flowing from the sovereign. The existence and importance of lesser seals in English judicial history are not mentioned by the historians.

Therefore, an assumption can be made that no inherent judicial importance attaches to the tribunal seals other than they permit judicial notice to be taken of sealed documents.⁵ The documents can be introduced as evidence in a court of law without the necessity of their maker testifying as to their veracity. The seals have no effect on hearing procedure and do not warrant further discussion.

Footnotes

1. Williston, S., "The History of the Law of Business Corporations Before 1800" in Select Essays in Anglo-American Legal History (Frankfurt: Verlag Sauer: 1968), at 209.
Stephen's Commentaries on the Laws of England (London: Butterworths: 1890), vol. 1 at 474-75.
2. Williston;loc.cit.
3. Harding, A., The Law Courts of Mediaeval England (London: George Allan & Unwin:1973), at 24.
4. Holdsworth, W., History of the English Law (London: Methuen: 1938), vol. 1 at 396, 407-409.
5. Phipson on Evidence, 12th ed.(London: Sweet & Maxwell: 1976), at para. 10..

CHAPTER IV

ADMINISTRATIVE PROCEDURE

In hearings before administrative tribunals, various procedures are encountered. From several sources,¹ the following list of procedures was compiled:

- a) The power to hold a hearing, and the granting of a hearing to a person;
- b) The power to determine procedures to be used in a hearing;
- c) The power to receive any evidence and the power to exclude some kinds of evidence;
- d) The power to summon witnesses and documents;
- e) The power to administer oaths;
- f) The power to adjourn hearings;
- g) The power to use extra-curial information when making a decision;
- h) The power to use precedents or guidelines when making a decision;
- i) The power to make a record of proceedings;
- j) Notice of a hearing;
- k) Notice of case to be met;
- l) Personal appearance;
- m) Representation by counsel or agent;
- n) Opportunity to be heard;
- o) The presentation of evidence and argument;

- p) The rebuttal of adverse evidence;
- q) Cross-examination;
- r) The opportunity to be present when witnesses are examined;
- s) Notice of decision with reasons;
- t) The basing of a decision on evidence given at a hearing;
- u) The requirement that decision-makers be at the hearing for which they are rendering a decision; and
- v) The prevention of bias of decision-makers.

The discussion of some procedures overlap and therefore, the following headings will be used for the study:

- 1) Hearing;
- 2) Power to determine own procedure;
- 3) Evidence;
- 4) Official notice;
- 5) Power to summon witnesses and documents and to administer oaths and affirmations;
- 6) Power to adjourn;
- 7) Opportunity to appear or to be heard;
- 8) Notice of hearing;
- 9) Notice of case to be met;
- 10) Representation by counsel or agent;
- 11) Presentation of evidence and argument;
- 12) Rebuttal of adverse evidence; cross-examination;
- 13) Opportunity to be present throughout the hearing;
- 14) Decisions and reasons;
- 15) The use of evidence in a decision;

- 16) Decision-makers to be at hearing;
- 17) Disqualification of tribunal members; and
- 18) Record of proceedings.

1. Hearings

Each of the tribunals in the study holds a hearing and, for all but seven hearings,² a tribunal is obliged, either by legislation or by its own general practice, to do so. Parliament is the appropriate body to determine when a hearing should be held although the courts have sporadically intervened in a few cases to require the holding of a hearing. No recommendation can be made to oblige all tribunals to hold hearings; however, a recommendation can be made to require all tribunals presently obliged to grant a hearing to continue such practice. The reports and legislation of other jurisdictions are of no assistance in this matter.

Examples of the various types of federal provisions from which tribunals imply an obligation to hold a hearing are:

All proceedings before the Commission, other than proceedings in relation to an inquiry, shall be conducted in public....³

(Restrictive Trade Practices
Commission
(Methods to Increase Competition))

An appeal to a Review Committee shall be heard at such place in Canada ...⁴

(Canada Pension Plan Review
Committee)

... the Commission shall fix a place, time, and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed a full opportunity to be heard in person or by counsel. 5

(Restrictive Trade Practices
Commission
(Business Practices))

They may, subject to this Act, sit either together or separately, and either in private or in open court; but any complaint made to them shall, on the application of any party to the complaint, be heard and determined in open court. 6

(Canadian Transport Commission)

An appeal to the Board shall be by way of a hearing ... 7

(Pension Appeals Board (Coverage))

The provision for the Canadian Grain Commission typifies the provisions that grant express powers to hold hearings:

- 1) A public hearing may be held by the Commission ...
- 2) ... the Commission shall hold a public hearing ... 8

In drafting a provision to require a tribunal to hold a hearing, reliance could be placed on the second subsection used by the Canadian Grain Commission stating "... [a tribunal] shall hold a ... hearing" Unfortunately, no immediate sanction is provided if a tribunal refuses to hold a hearing. A more effective provision would prohibit the rendering of a decision without firstly holding a hearing. The draft provision will adopt such an approach, as follows:

A tribunal must not make a decision without holding a hearing.

The provision covers only hearings that are currently obliged to be held.

In regard to whether a hearing should be held in public or in private, the values of openness and efficiency come into conflict. Openness favours a public hearing, efficiency favours a private hearing. The courts of law (hereafter, the "courts") and the tribunals have resolved the conflict in favour of openness. The courts stipulate that an administrative hearing should be held in public unless legislation requires otherwise or unless justice cannot be secured except by a private hearing.⁹ The tribunals hold all but nine hearings in public.¹⁰ The nine are held in private because of a party's intimate personal or financial information to be considered. For three of the nine hearings, legislation requires a private hearing.¹¹

A recommendation is made to require each federal hearing to be conducted in public, unless a private hearing is necessitated either by legislation or by the disclosure of intimate personal or financial information.

The same recommendation was made by the Attorney General's Report,¹² the Franks Report,¹³ and the McRuer Report.¹⁴ The latter two added public security and professional discipline as justifications for holding a hearing privately. In a Canadian federal context, mention of public security is unnecessary because it falls within the legislative

justification by reason of the Official Secrets Act and the security exemptions of the proposed Access to Information Act.

¹⁶ A stipulation of professional discipline is unnecessary because it is covered by the intimate personal justification.

The Model Act does not deal with the issue but the Ontario Act and the U.S. Federal Act strongly favour public hearings. Subsection 9(1) of the Ontario Act states:

A hearing shall be open to the public except where the tribunal is of the opinion that,

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing concerning any such matters in camera.

The general rule in the subsection is to hold a public hearing unless public security of any kind or intimacy of a sufficient kind may arise, in which case the hearing may be held in private. The words "having regard to the circumstances" and "in the interests of any person affected or in the public interest" are unnecessary because a tribunal would naturally consider the context and importance of the intimacy involved.

Section 552b of the U.S. Federal Act is very lengthy but, in essence, simply requires a hearing to be held in public,

subject to exceptions for public security, intimate information, and legislative requirements. Each aspect of the section has already been discussed.

Thus, the reports and legislation of other jurisdictions support the recommendation made above. Since none of the federal and foreign legislation has clarity in drafting, reliance will be placed on basic skills in order to create a provision for the proposed Code. The draft provision is:

A tribunal must conduct its hearings in public unless a private hearing is required by legislation or necessitated by the disclosure of matters of sufficient personal or financial intimacy to outweigh the value of holding the hearing in public.

The provision is broad enough in scope to cover all federal hearings.

2. Power to Determine Own Procedure

A tribunal's power to determine its own procedure is a natural accessory to the power to conduct a hearing. Without the power, inefficiency could result from an inability to function, possibly causing much unfairness to the parties at a hearing. As a general rule, the courts permit a tribunal to determine its procedure as long as the requirements of legislation and fairness are met.¹⁷ In fact, each federal tribunal in any hearing considers itself empowered to

determine procedure.

A recommendation is made to codify current federal practice by empowering each tribunal to determine, in any of its hearings, procedure supplementary to the procedures set out in the proposed Code.

Of the reports and legislation of other jurisdictions only two considered the power and both are in agreement with the recommendation. Without making a recommendation, the Franks Report spoke favourably of tribunals adopting a definite hearing procedure, variable when necessary.¹⁸ Paragraph 556(c)(5) of the U.S. Federal Act grants the power in a simple statement.

Before a provision is drafted for the proposed code, the following federal legislation must be examined. Four varieties exist.

Eight federal hearings are governed by the following complex provision:¹⁹

The Board may make rules respecting

- (a) the sittings of the Board;
- (b) the procedure for making applications, representations and complaints to the Board and the conduct of hearings before the Board, and generally the manner of conducting any business before the Board;
- (c) the apportionment of the work of the Board among its members, and the assignment of members to sit at hearings, and to preside thereat; and
- (d) generally, the carrying on of the work of the Board, the management of its internal affairs, and the duties of its officers and employees.

For two²⁰ of the hearings, procedural rules are made by regulations, for example:²¹

The Board may make regulations of general application respecting

- (a) the establishment of rules of procedure for its hearings.

(Canada Labour Relations Board)

For seven²² of the hearings, procedural rules are made only on the approval of the Governor-in-Council. A common provision is:²³

The Board may, with the approval of the Governor in Council, make rules for the conduct of its proceedings ... and the performance of its duties and functions under this ... Act

(National Parole Board)

For twelve²⁴ of the hearings, a very succinct provision²⁵ is used, stating:

The Board may

- (a) make rules for regulating its proceedings and the performance of its functions.

(Atomic Energy Control Board)

The provision of the Atomic Energy Control Board states the power most clearly and, therefore, will be used as a base for a draft provision. Special requirements for its exercise will have to be left to the enabling legislation of the relevant tribunals. The draft provision is:

A tribunal may make rules for the regulation of its proceedings and for the performance of its functions.

The provision covers all federal hearings.

3. Evidence

In a hearing, evidence supplies or augments the information base of a tribunal. Mention is often made in law of the technical or judicial rules of evidence, designed to perfect the trustworthiness of information. The value of efficiency prefers the minimization of such time-consuming rules but the value of fairness favours them. The conflict between the two values has been determined on the side of efficiency.

The courts will generally not interfere with a tribunal's acceptance or rejection of evidence, nor with the weight placed on evidence.²⁶ The position of the courts is understandable because the judicial rules of evidence are designed for jury trials, non-existent in administrative law. In fact, any evidence can be received in all federal hearings except those of the Pension Review Board. The Board cannot hear oral evidence according to its statute²⁷ but, in practice, any evidence is received because oral comments are written down and submitted to the Board. Therefore, practically speaking, any evidence can be received in each federal hearing.

The universal criterion of admissibility in all hearings is relevancy and, despite clear statutory directions to the contrary,²⁸ the Anti-Inflation Appeal Tribunal and the Tax Review Board also frequently use the judicial rules of evidence. However much disapproval might be expressed as to the adoption of such rules, as a practical matter their use cannot be prevented because the courts of law will not interfere.

Relevancy is a device valuable to the maintenance of hearing efficiency because the presentation of worthless information can be halted by it. The courts hold that a tribunal should not admit irrelevancies into a hearing but their presence will not invalidate a decision unless it is based on them.²⁹ Deference is again paid to the value of efficiency. The use of the test of relevancy is supported by the Law Reform Commission³⁰ and several authors.³¹

From the above discussion, the following recommendations can be made. For any hearing, each tribunal should be empowered to receive any evidence, regardless of the judicial rules. Relevancy should be the standard of admissibility of evidence.

Without making a recommendation, the Franks Report remarked that no general rules of evidence could be created for English tribunals.³² The Attorney General's Report recommended that the tests of admissibility should be relevancy, reliability, and probity but not the judicial rules of evidence.³³ Reliability and probity appear to be used

synonymously. A test of reliability or probity is useful to exclude relevant but unbelievable evidence. Several authors also advocate use of the test.³⁴

The McRuer Report recommended that a tribunal should have, unless its enabling legislation states otherwise, a discretion to admit facts that are relevant and considered reliable by reasonably prudent men in the conduct of their affairs. In other respects, the judicial rules of evidence should be observed, especially the rules of privilege.³⁵ The reliability test of a reasonably prudent man is known as the "Learned Hand rule" in the U.S.A.³⁶ The test does not help a tribunal chairman, who undoubtedly considers himself a reasonably prudent man at all times. While disapproval of the use of the judicial rules has already been expressed in a general way, consideration has not yet been given to the rules of privilege. A situation could easily be envisioned in which evidence, privileged before a court of law, could be forcibly divulged by means of a tribunal hearing. A misuse of tribunal proceedings for such an ulterior purpose could create much unfairness to the parties; therefore, the rules of privilege must apply to the proceedings. The Law Reform Commission has reached the same conclusion.³⁷ The Canada Evidence Act would require the observance of most rules of privilege in any event.³⁸

The legislation of other jurisdictions has extensive provisions dealing with evidence. Subsection 556(d) of the U.S. Federal Act states:

... Any oral or documentary evidence may be received but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence ...

The usefulness of the test of relevancy has already been noted. The tests of materiality and undue repetition are similarly valuable to exclude, respectively, insignificant and duplicative evidence that might pass the tests of relevancy and reliability.

Subsections 10(1) and (2) of the Model Act are more detailed, as follows:

In contested cases:

- (1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in [non-jury] civil cases in the [District Courts of this State] shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
- (2) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

In contrast to the American federal legislation, the subsections require a tribunal to follow the judicial rules of evidence but if a fact cannot be reasonably proven, then the Learned Hand rule is to be employed. The inefficiency

of such an approach has been adequately discussed. Although a permission to object is probably implicit in an opportunity to appear and be heard, an express stipulation is desirable to prevent abridgments of the permission. A restraint of reasonableness should be placed on the permission to prevent a dilatory abuse of it. The recording of an objection is useful to demonstrate on an appeal or review that a party was diligent in the protection of his interests.

Section 15 of the Ontario Act is quite detailed and states:

- (1) Subject to subsections 2 and 3, a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
 - (a) any oral testimony; and
 - (b) any document or other thing,
 relevant to the subject matter of the proceedings and may act on such evidence, but the tribunal may exclude anything unduly repetitious.
- (2) Nothing is admissible in evidence at a hearing,
 - (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - (b) that is inadmissible by the statute under which the proceedings arise or any other statute.
- (3) 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 in any proceedings.
- (4) Where a tribunal is satisfied as to their authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

- (5) Where a document has been filed in evidence at a hearing, the tribunal may, or the person producing it or entitled to it may with the leave of the tribunal, cause the document to be photocopied and the tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a member of the tribunal.
- (6) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a true copy thereof by a member of the tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document.

The section is verbose. In subsection 15(1) the non-applicability of an oath or affirmation is unnecessarily stated in view of the broad power to receive relevant evidence. Similarly unnecessary are the description of evidence as oral or documentary (paragraphs 15(1)(a), (b)) and the power to receive secondary evidence (subsections 15(4), (5), (6)). Paragraph 15(2)(a) ensures observance of the rules of privilege, which have already been noted favourably. The subordination, by paragraph 15(2)(b) and subsection 15(3), of subsection 15(1) to any other statute restraining evidence, is unnecessary because subsection 15(1), as general legislation, would be overridden by express evidentiary legislation: Specialibus non derogant. The value of the section is its reinforcement of the use of the tests of relevancy, undue repetition, and privilege and the non-use of the judicial rules.

The above reports and legislation support the recommendations initially made and warrant the following additional recommendations for all federal hearings. The tests of admissibility should be

expanded to include reliability, materiality, and undue repetition. The additional tests are concerned only with hearing efficiency and should not be permitted to become potential grounds for judicial review. The rules of privilege should be observed. A party to a proceeding should be allowed an opportunity to object to the reception of evidence and a tribunal should be required to enter objections in its record. The latter recommendation will pose no significant hindrance to the tribunals because objections are permitted in all but four hearings³⁹ and recorded in all but fourteen hearings.⁴⁰ Exceptions for the four hearings will have to be left to the enabling legislation of the tribunals. The position in the fourteen hearings will be discussed later when records are considered. The federal legislation on topic will now be considered.

For thirteen hearings,⁴¹ reliance is placed on section 4 of the Inquiries Act⁴² and, for three other hearings,⁴³ reliance is placed on section 7 of the Act for the authority to receive any evidence. Section 4 states:

The commissioners have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.

Section 7 is:

The commissioner or commissioners may, for the purposes of the investigation, enter into and remain within any public office or institution, and shall have access to every part thereof, and may examine all papers, documents, vouchers, records and books of every kind belonging thereto, and may summon before him or them any person and require him to give evidence on oath, orally or in writing, or on solemn affirmation if he is entitled to affirm in civil matters; and any such commissioner may administer such oath or affirmation.

Both sections imply that a tribunal has a power to hear any evidence. A better approach is to expressly state the power instead of relying on the implications of the Act. The Law Reform Commission agrees with this observation.⁴⁴

The provision for the National Energy Board focuses on relevancy, without a clear direction to receive any evidence:⁴⁵

... the Board shall have regard to all considerations that appear to it to be relevant ...

The provision for Canadian Transport Commission hearings⁴⁶ states:

The Commission may accept evidence upon affidavit or written affirmation, in cases in which it seems to it proper to do so.

This provision permits the reception of written evidence but says nothing of oral evidence.

For hearings of the Anti-Inflation Appeal Tribunal, the Tax Review Board, and the U.I.C. Umpire, the power is implied from a provision, such as:⁴⁷

The Appeal Tribunal is not bound by any legal or technical rules of evidence in conducting a hearing, and all appeals shall be dealt with by the Tribunal as informally and expeditiously as the circumstances and considerations of fairness permit.

(Anti-Inflation Appeal Tribunal)

Lastly, the Anti-Dumping Tribunal, the Canada Labour Relations Board, the Public Service Staff Relations Board, and the Textile and Clothing Board are given express power to receive any evidence, regardless of judicial rules, as follows:

The Board has, in relation to any proceeding before it, power ...

- (c) to receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion the Board sees fit, whether admissible in a court of law or not.

(Canada Labour Relations Board)

The message of Parliament in all of the provisions is that its tribunals should be governed by only the minimum rules of admissibility of evidence and not by the judicial rules. The clearest statement of the message is the provision of the Canada Labour Relations Board, which will form the basis for a draft provision after certain changes are made in its wording. The verb phrase "has power" should be condensed to the simpler verb "may". The verbs "receive"

and "accept" are used synonymously and, consequently, only the first verb will be used. Similarly, the nouns "evidence" and "information" are used synonymously and only the first will be used. The mention of an oath, affidavit, and discretion is unnecessary if a direction to disregard the judicial rules is to be given.

The draft provisions, incorporating all of the recommendations, are:

- (1) Notwithstanding the judicial rules of evidence, except the rules of privilege, a tribunal may
 - (a) receive relevant evidence, and
 - (b) exclude unreliable, immaterial, or unduly repetitious evidence.
- (2) A party may reasonably object to the reception of evidence.

The provisions cover all federal hearings.

4. Official Notice

Courts of law are occasionally concerned about their own efficiency as shown by their invention of a device, judicial notice, that obviates formal proof of matters of public notoriety or matters capable of immediate verification (by resort to readily accessible sources of indisputable accuracy).⁴⁹ When exercised by a tribunal, judicial notice is referred to as official notice; however, the latter is broader than the former because a tribunal is not bound by the judicial

rules of evidence. The broadness of official notice is understandable, given that a tribunal is often created to bring an expertise to bear on problems.

Official notice serves the value of efficiency because information is created without any time-consuming presentation. A conflict could be expected with the values of fairness and openness because information is received without proof and sometimes without disclosure. The trend in the thinking of both the courts and the tribunals has favoured the value of efficiency. The courts permit a tribunal to officially notice notorious facts within its field of expertise and anything capable of judicial notice.⁵⁰ In fact, official notice is used in all but sixteen federal hearings⁵¹ and, in the sixteen, reliance is probably placed unknowingly on matters of public notoriety.

A recommendation is made to empower each tribunal in any hearing to take official notice of notorious facts within its field of expertise and anything capable of judicial notice. To prevent subversion of the general rule of admissibility, the matters officially noticed should be relevant to the hearing.

The Franks Report did not consider official notice but the Attorney General's Report made the same recommendation as above and added that a tribunal should inform the parties to a proceeding when official notice is being taken.⁵² The McRuer Report went even further on the issue of disclosure and required it to be made before or during a hearing, on

any officially noticed matter, including staff memoranda

and data.⁵³ The issue of disclosure is complex and will be fully discussed after the legislation from other jurisdictions has been considered. The McRuer Report also recommended that a party should be granted an opportunity to contest the taking of official notice.⁵⁴ Since officially noticed information

replaces or supplements evidence presented by a party, then he should be allowed to object to the taking of official notice in the same manner as he can object to information presented. Of course, the opportunity could only be realized when a disclosure of official notice has occurred.

The McRuer Report recommendations were based on subsection 10(4) of the Model Act, which states:

In contested cases:

- (4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

The subsection permits official notice to be taken of judicially noticeable facts and of expertise, subject to the requirements of disclosure and of an opportunity to contest the noticed matters. The issue of disclosure will

be discussed shortly and the opportunity will be considered later as part of the opportunity to rebut evidence generally.

Section 16 of the Ontario Act is based on the McRuer Report recommendations and, consequently, parallels the Model Act provision, as follows:

A tribunal may, in making its decision in any proceedings,

- (a) take notice of facts that may be judicially noticed; and
- (b) take notice of any generally recognized scientific or technical facts, information, or opinions within its scientific or specialized knowledge.

The essentials of the section have already been discussed but, interestingly, no stipulation is made for disclosure or objection, contrary to the McRuer Report.

Subsection 556(e) of the U.S. Federal Act permits the taking of official notice on condition that a party is given an opportunity to rebut the noticed facts:

... When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

The opportunity to rebut will be considered later.

At this point, the discussion will digress to the issue of disclosure. Fortunately, a recent study of disclosure was done by a Canadian author who refined the concept of official notice and determined when disclosure is required.

His conclusions were that official notice arises in the following four situations: when tribunal expertise is used to evaluate evidence, when the expertise is used to supplement evidence, when previous cases are employed as guidance, and when a tribunal consults its staff or performs an investigation.⁵⁶ Disclosure is not required in the first and second situations. In the third situation, disclosure is required of the decisions and evidence from past cases but not of a general impression created by the cases. In the fourth situation, disclosure is obligatory for investigatory material, staff reports containing a summary of evidence, and for a hearing examiner's report. Internal staff discussions and staff reports containing advice on policy need not be disclosed.⁵⁷

Non-disclosure in the first situation is understandable because a tribunal is presumed to bring its expertise to bear on issues presented, in the same manner as a judge using his legal expertise. However, no similar reason can be given to justify non-disclosure in the second situation wherein expertise is used to create evidence competing with evidence presented by the parties. In fairness to the parties such "expertise evidence" should be disclosed so that it can be tested for trustworthiness. In the third situation, impressions of past cases are exempt from disclosure because they are a form of expertise, acquired from membership on a tribunal. An obligation to disclose is not imposed in the fourth situation for staff discussions and reports on policy because a tribunal's deliberative process would otherwise be impaired.

The information in the third and fourth situations is known as "extra-curial information." The use of such information could be the subject of a balancing of values but practical necessity dictates that official notice of the information be permitted; otherwise, a tribunal will use it clandestinely or, as one author has stated, the use will be driven "underground."⁵⁸ The jurisprudence acknowledges the necessity and allows a tribunal to use the information as long as it does not fetter the tribunal's discretion.⁵⁹ In all but nine federal hearings,⁶⁰ such information is knowingly employed. Official notice should consequently also cover extra-curial information in the same way that expertise is covered.

The proposed Access to Information Act⁶¹ will probably not change the disclosure rules mentioned above because a tribunal's expertise and impressions are not in the form of disclosable records and because exemptions from disclosure are provided for records containing staff advice, recommendations, and consultations. In the particular case of staff reports, if the American experience is any guide,⁶² then the past reticence of the Canadian judiciary in requiring disclosure will be continued.⁶³ Legal authors hope that disclosure will at least be required of the objective, factual parts of staff reports.⁶⁴ The Law Reform Commission merely recommends disclosure wherever appropriate,⁶⁵

From the above reports and legislation, the following recommendations can be made for all federal hearings. A

tribunal should be allowed to take official notice of extra-curial information. Before or during a hearing, a tribunal should disclose to the parties that official notice will be taken; however, the disclosure requirement should not apply to official notice of a tribunal's expertise (when used to evaluate evidence), staff advice and consultations, not should it apply where legislation exempts matters from disclosure. A party should be allowed to object to the taking of official notice (when disclosure is made) in the same manner as he can object to the reception of evidence presented by another party. Currently, the tribunals for
 66
 seventeen hearings permit objections to official notice.

The federal legislation dealing with official notice is particular to the tribunals' requirements, such as benevolence to veterans or notice of G.A.T.T., and is unsuitable as a drafting base. Of the legislation from other jurisdictions, sections 16 of the Ontario Act is the clearest provision. It will form the framework for a draft provision after a few changes in wording are made. The phrase "generally recognized scientific and technical" excludes many other areas of expertise and should be replaced by a broad adjective, such as "notorious." The adjectives "scientific or technical" are unnecessary because they are subsumed within the adjective "specialized."

The draft provisions for inclusion in the proposed code are:

- (1) Subject to subsection (2), a tribunal may take official notice of relevant
 - (a) facts that may be judicially noticed,
 - (b) notorious facts, opinions, and information within its specialized knowledge, and
 - (c) extra-curial information, such as policy, precedents, and staff reports.
- (2) Except when officially noticed knowledge is to be used to evaluate evidence or when official notice is to be taken of staff advice or consultations, a tribunal must disclose, before or during a hearing, to the parties to a proceeding that official notice will be taken in accordance with subsection (1).
- (3) A party may object to the taking of official notice.

The provisions cover all federal hearings.

5. Power to Summon Witnesses and Documents
Power to Administer Oaths and Affirmations

The powers to summon witnesses and documents and to administer oaths and affirmations will be considered together because they are usually combined in one provision in the administrative statutes. The powers are conducive to both

the values of efficiency and of fairness because necessary facts can be brought before a tribunal, a party can assemble information essential to his case, and an obligation of truthfulness can be imposed on testimony.

Only Parliament can create the powers for a tribunal although one tribunal, the Copyright Appeal Board, has implied a power to administer oaths from its statutory power to determine procedure.⁶⁷ Parliament has sensed the importance of the powers and made them available to all but seven federal hearings.⁶⁸ For only two of the seven, namely, the hearings of the Atomic Energy Control Board and of a Public Service Commission Appeal Board, has a need been expressed for the powers.

A recommendation is made to empower each federal tribunal in any hearing to summon witnesses and documents and to administer oaths and affirmations. Although section 28 of the Interpretation Act⁶⁹ defines an oath to include an affirmation, express mention of the latter is valuable to ensure that lay chairmen and parties are fully aware of the ability to affirm. Exceptions for the five hearings not desiring the powers will have to be made in their enabling legislation.

Only the Franks Report⁷⁰ and the McRuer Report⁷¹ examined the powers and each recommended that a tribunal should be given both powers. The Model Act did not deal with the powers. An elaborate provision for them is contained in subsection 12(1) of the Ontario Act:

A tribunal may require any person, including a party, by summons,

- (a) to give evidence on oath or affirmation at a hearing; and
- (b) to produce in evidence at a hearing documents and things specified by the tribunal, relevant to the subject-matter of the proceedings and admissible at a hearing.

The subsection's test of admissibility is an unnecessary restriction on the power to summon because admissibility can only be determined at the hearing and not at the time of summoning. The U.S. Federal Act, in two simple statements contained in paragraphs 556(c)(1) and (2), grants both powers. No further recommendations are warranted by the reports and statutory provisions. The following substantial amount of federal legislation deals with the powers.

For fourteen federal hearings,⁷² the relevant tribunals are given the powers of a superior court of record for the purposes of summoning witnesses and documents, administering oaths and affirmations, and for enforcing those powers. In three of the eleven hearings, namely, those of the Canadian Transport Commission, the Canadian Radio-Television Commission in a broadcasting hearing, and of the National Energy Board,⁷³ the following powers are granted:

The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry upon and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

(National Energy Board)

For the other eight hearings, there is a narrower provision, such as: ⁷⁴

The Board has, as regards the attendance, swearing and examination of witnesses and the production and inspection of documents, and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

(Tax Review Board)

The powers listed in these provisions are:

- a) the power to summon persons,
- b) the power to administer oaths and affirmations,
- c) the power to examine witnesses,
- d) the power to require the production of documents,
- e) the power to inspect documents,
- f) the power to enforce the powers and orders of the tribunal, and
- g) the power to enter upon and to inspect property.

A superior court of record traditionally summons persons and documents by the use of a subpoena. The courts now ⁷⁵ consider a subpoena and a summons to be synonymous. The Law Reform Commission also equates the two in subsection 17(1) ⁷⁶ of its draft Advisory and Investigatory Commissions Act.

A superior court of record does not administer oaths or affirmations in a manner different from any other court.

A power to examine witnesses is implicit in the nature of a hearing and unnecessarily stated. Furthermore, a judge of a superior court of record probably has less power than

a member of a tribunal to examine witnesses in a hearing. A judge of a superior court of record must be careful not to interfere too greatly in the examination or cross-examination of a witness; otherwise, he could be held to have denied a party a right to a fair hearing.⁷⁷ Similar restraints on tribunal members are rare. The power to inspect documents is usually related to pre-hearing discovery and is unnecessary for a hearing because a subpoena duces tecum could be used to enable their inspection.

In regard to the enforcement of powers and orders, a superior court of record relies on its power to punish for contempt of court. As stated in Chapter II, the court can punish for contempts committed both in and not in its face.⁷⁸ The recommendation made in that chapter, stated again with equal vigour, is to take the contempt power away from the tribunals and to entrust it to the courts of law for exercise on behalf of the tribunals.

A power to enter upon and to inspect property is a matter arising outside of a hearing and, consequently, outside the scope of this study.

Of the remaining federal hearings, the relevant tribunals⁷⁹ for thirteen of them have powers to summon witnesses and documents and to administer oaths under section 4 of the Inquiries Act,⁸⁰ three⁸¹ find the same powers under section 8 of the Act, and six⁸² have statutory provisions similar to section 4 of the Act.

Sections 4 and 8 of the Act state:

4. The commissioners have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.
8. (1) The commissioner or commissioners may, under his or their hand or hands, issue a subpoena or other request or summons, requiring and commanding any person therein named to appear at the time and place mentioned therein, and then and there to testify to all matters within his knowledge relative to the subject-matter of such investigation, and to bring with him and produce any document, book, or paper that he has in his possession or under his control relative to any such matter as aforesaid; and any such person may be summoned from any part of Canada by virtue of the subpoena, request or summons.
- (2) Reasonable travelling expenses shall be paid to any person so summoned at the time of service of the subpoena, request or summons.

Subsection 8(1) can basically be condensed into section 4, as follows. The words "may ... commanding" are synonymous with the concept of a power to summon. The words "to appear ... investigation" convey the same meaning as "to give evidence on oath." A witness would not appear at a time and place other than that for which he was summoned, and presumably he would testify "then and there" without more statutory prompting. Furthermore, a tribunal would not want a witness to testify to matters not within his knowledge or irrelevant to the hearing. The words "bring with him" are unnecessary because a person could not produce a document at a hearing without bringing it with him. Since tribunals can

accept any information, the limiting words "documents, books, or papers" should be replaced by broader words, such as "documents and things" or simply "things."

Subsection 8(1) does have a few advantages over section 4. The words "that he has in his possession or under his control" are necessary to cover a person who has constructive instead of actual possession of something. The express stipulation that a person may be summoned from anywhere in Canada is better than the implication of national effect in section 4. Lastly, the amelioration by subsection 8(2) of financial hardship on witnesses is desirable.

The Law Reform Commission has condensed the two sections into subsections 17(1) and (3) and section 18 of its draft Advisory and Investigatory Commissions Act,⁸³ which state respectively:

17.(1) An investigatory commission may summon or subpoena a person to testify under oath or to produce any document or thing relevant to its mandate.

(3) A summons or subpoena has effect throughout Canada.

18. A person to whom a summons or subpoena is issued shall, at the time of service, be paid such travelling expenses as the commission deems reasonable.

Subsections 17(1) and (3) combine to grant a commission an express power to summon persons or things from anywhere in Canada and an implied power to administer an oath or affirmation. In terms of drafting style, the infinitive, "to

summon" would probably suffice for the phrase "to summon or subpoena." The noun "anything" could adequately summarize the nouns "any document or thing." In section 18, the expenses should be paid to the person served with a summons and not to the person to whom the summons is issued. For instance, a summons might be issued to a party who has another person serve it. Generally, expenses are paid after a witness has appeared. On the whole, the sections eliminate much of the verbiage in the existing provisions.

In regard to the enforcement of the powers to summon and to administer oaths, section 5 of the Inquiries Act,⁸⁴ enforcing section 4, grants to a tribunal the following power:

The commissioners have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

The power exercised by a court of record is to hold a person in contempt of court. Since Parliament has not specifically stated that the power is of a superior court of record, then the power is presumably of an inferior court of record.

As discussed in Chapter II, the latter type of court can only punish for contempts in the face of the court. The undesirability of a tribunal exercising a contempt power has been emphasized. If a tribunal of record should not have the power, a fortiori, lesser tribunals should not either. An even stronger disapproval can be voiced for subsection 10(1),

enforcing subsection 8(1), that creates penal offences, as follows:

Every person who

- (a) being required to attend in the manner provided in this Part, fails, without valid excuse, to attend accordingly,
- (b) being commanded to produce any document, book or paper, in his possession or under his control, fails to produce the same,
- (c) refuses to be sworn or to affirm, as the case may be, or
- (d) refuses to answer any proper question put to him by a commissioner, or other person as aforesaid,,

is liable, on summary conviction before any police or stipendiary magistrate, or judge of a superior or county court, having jurisdiction in the county or district in which such person resides, or in which the place is situated at which he was so required to attend, to a penalty not exceeding four hundred dollars.

From the above discussion, a recommendation is made to entrust to the judiciary the enforcement of a summons, in accordance with the recommendation contained in Chapter II for the power to punish a contempt.

Based on the concise sections drafted by the Law Reform Commission, the provisions for inclusion in the proposed code are:

- (1) A tribunal may summon from any part of Canada, a person to testify under oath or affirmation or to produce anything under his control, if the testimony or thing will be relevant to the proceedings.

- (2) A person summoned pursuant to subsection (1) is entitled to receive reasonable travelling expenses, as determined by the tribunal.
- (3) A tribunal may apply to the Federal Court of Canada alleging that a person has not complied with a summons mentioned in subsection (1), and the court may consider any information supporting or rebutting the allegation and may treat the non-compliance as though it were a contempt of the court.

The provisions apply to all federal hearings.

6. Power to Adjourn

A necessary concomitant of a power to hold a hearing is a power to adjourn it. The power serves both the value of efficiency, because the endurance of tribunal members would otherwise be surpassed, and the value of fairness, because a party might be unable to proceed on a particular day. No conflict of values is expected and none has occurred. Each of the federal tribunals considers itself able to adjourn any of its hearings and the courts will generally not interfere in a decision to adjourn.

85

A recommendation is made to codify the federal practice by empowering each tribunal to adjourn any of its hearings.

Of past studies, only the McRuer Report dealt with the power and a recommendation was made to grant to a party

86

reasonable adjournments. The Model Act and the U.S. Federal

Act do not deal with the power. Section 21 of the Ontario Act implements the McRuer recommendation, as follows:

A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

The power to adjourn is a simple power and does not require the elaboration of this section. For instance, the words "from time to time" are unnecessary because repeated use of the power is implicit in its nature. Similarly, no mention need be made that the power can be exercised on motion of the tribunal or of a party. Also, a tribunal would not grant an adjournment unless it met the satisfaction of the tribunal. Unfortunately, the section omits the ability to attach terms and conditions to an adjournment. Both the McRuer Report and section 21 support the recommendation made above but do not warrant changes in it. Before a provision is drafted for the proposed procedural code, existing federal legislation must be examined.

87

A typical federal provision is:

The Board may adjourn or postpone any hearing for such time, to such place and on such terms as it deems fit.

(Canada Labour Relations Board)

The provision is simpler than section 21 of the Ontario Act but verbiage is still evident. The verb "postpone" is unnecessary when used synonymously with "adjourn." The words "for such time, to such place and" are not needed

because the time and place are "terms" of the adjournment.

Based on the simplicity of the Board's section, the draft provision will be:

A tribunal may adjourn its hearings on such terms as it deems necessary.

The provision covers all federal hearings.

7. Opportunity to Appear or to be Heard

The two opportunities are considered together because, within the context of the hearings examined, the two are treated synonymously. The presence of a party before a tribunal promotes fairness because he has contact with the decision-maker; however, his presence hinders tribunal efficiency because he can raise objections that slow procedure. Parliament and its tribunals have balanced the values of efficiency and fairness and given paramountcy to the latter. In all federal hearings, a party is granted an opportunity to appear and be heard. Henceforth, mention will only be made of an opportunity to appear.

A recommendation is made to grant to a party in any federal hearing an opportunity to personally appear at the hearing.

The same recommendation was made by the Franks Report,⁸⁸ the McRuer Report,⁸⁹ and impliedly by the Attorney General's Report.⁹⁰ In regard to legislation of other jurisdictions, the opportunity is only considered by subsection 555(b) of

the U.S. Federal Act, which simply states that a party may appear in person at a hearing. Similar simple statements are made in the following federal legislation.

Seventeen federal hearings have express provisions,⁹¹
such as:⁹²

All parties to a hearing before the Tribunal may appear in person ...

(Anti-Dumping Tribunal)

The remaining hearings with legislative directions must rely on other wording, such as:⁹³

No order shall be made ... unless ... the Board has afforded him an opportunity of being heard.

(National Energy Board)

The opportunity is a simple concept and warrants only a simple drafting style, as found in the example for the Anti-Dumping Tribunal. The draft provision for inclusion in the proposed code is:

A party to a proceeding may appear in person.

The provision covers all federal hearings.

8. Notice of Hearing

An opportunity to appear at a hearing would be useless if a party were not given a notice of the hearing so that he could exercise the opportunity. Any inefficiency caused by the expenditure of tribunal effort in preparing and sending

the notice should be outweighed by the fairness resulting from it and, in fact, this has occurred. Each federal tribunal for any hearing sends such a notice to a party and the courts, on their part, consider such a notice obligatory for a hearing to be fair.⁹⁴

A recommendation is made to require each tribunal in any hearing to give a notice of hearing to every party. To be meaningful, the notice should be given a reasonable time before the hearing starts.

The same recommendation was made by the McRuer Report⁹⁵ and impliedly by the Franks Report⁹⁶ and the Attorney General's Report.⁹⁷ Notice was also considered in the legislation of other jurisdictions. Section 6 of the Ontario Act is the most complete, stating:

- (1) The parties to any proceedings shall be given reasonable notice of the hearing by the tribunal.
- (2) A notice of a hearing shall include,
 - (a) a statement of the time, place and purpose of the hearing;
 - (b) a reference to the statutory authority under which the hearing will be held; and
 - (c) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in his absence and he will not be entitled to any further notice in the proceedings.

Paragraph 24(1) (a) of the Ontario Act adds:

- (1) Where a tribunal is of opinion that because the parties to any proceedings before it are so numerous or for any other reason, it is impracticable,

- (a) to give notice of the hearing

To all or any of the parties individually, the tribunal may, instead of doing so, cause reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

Discussion of the provisions will be made in the ensuing comparison with the other legislation.

Subsections 9(a) and (b) of the Model Act are:

- (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.
- (b) The notice shall include:
 - (1) a statement of the time, place and nature of the hearing;
 - (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) a reference to the particular sections of the statutes and rules involved.

The corresponding provision in the U.S. Federal Act is subsection 554(b) that says:

Persons entitled to notice of an agency hearing shall be timely informed of

- (1) the time, place, and nature thereof;
- (2) the legal authority and jurisdiction under which the hearing is to be held;
- (3) the matters of fact and law to be asserted.

The elements of the subsection are included in the Model Act and, therefore, the latter will form the basis of comparison with the Ontario Act.

The Ontario legislation is clearer than its Model counterpart. Although both require notice to be given to parties, only the Ontario legislation places the duty of giving notice directly on a tribunal.

Both provisions require a notice to be reasonable. The reasonableness of a notice is a function of the number of parties involved in a hearing. If only a few parties are involved, notice can be given individually to them. If many parties are involved, notice would have to be given by public advertisement, as the Ontario legislation directs.

Both provisions require a statement of time and place of hearing. The statement must also contain, for the Ontario provision, the purpose of the hearing but, for the Model provision, the nature of the hearing. The word "nature" is a very vague term and could refer to the judicial/administrative aspect of or to the purpose or goal of the hearing. Probably, the legislators were referring to the purpose of the hearing and so, the Ontario wording is preferable.

Regarding a reference to legislative authority, the Ontario provision is weaker because it merely requires a reference to a statutory authority, which could mean the long or short title of the relevant legislation, or a part or section of the legislation. The Model provision is clearer and requires notice of the jurisdiction of the hearing, its legal authority, and the relevant legislative sections. The extra requirements of this provision would not unduly encumber a tribunal's procedure because they would already

have been resolved before a decision would be made to hold a hearing.

Lastly, the Ontario legislation contains a useful warning to parties that a tribunal can proceed despite their default of appearance. Parties cannot thereby impede a hearing process by failing to appear.

From the comparison of Ontario and Model provisions, the following recommendations can be made for all federal hearings. The obligation of giving notice should be placed directly on a tribunal. The notice should be reasonable and its content should include the time of the hearing, its place, purpose, jurisdiction, and legislative authorization (plus relevant sections). A notice should also contain a warning to a party that the tribunal can proceed despite his default to appear. The recommendations accord well with the jurisprudence, which requires a notice to be clear, definite, and accompanied by particulars.⁹⁸ Particulars will be discussed as part of the notice of case to be met.

The Law Reform Commission has also studied notice requirements and has similarly recommended that a tribunal should give to a party reasonable notice, including the nature of the proceedings, and the time and place of hearing.⁹⁹

An examination must also be made of existing federal legislation.¹⁰⁰ For fifteen hearings there exist clear legislative directions to give notice of a hearing. A typical provision is:¹⁰¹

The Registrar shall notify all parties to an appeal of the time and place appointed for the hearing of the appeal at least 20 days before the date so appointed.

(Pension Appeals Board (Coverage))

The remaining tribunals having a legislative direction
102
must rely on vague provisions, such as:

... the Board shall, in respect of every objection, advise the society, association or company concerned of the nature of the objection and shall afford it an opportunity of replying thereto.

(Copyright Appeal Board)

The former legislative direction is more desirable as a drafting base because it clearly states the obligation of a tribunal to give notice of the time and place of a hearing. While the essence of the obligation can be easily stated in a standard form, some of the ancillary parts of the obligation vary too greatly to be standardized. For instance, great variances occur, firstly, in the number of days before a hearing that notice must be sent, secondly, in the officers of a tribunal who must send notices, and lastly, in the methods of giving notice (newspapers, Canada Gazette, mail, telephone). The description of a person entitled to notice varies greatly from an "appellant" or "party" to a "company" or an "association." A general, descriptive phrase to cover all of them would be "person required by legislation to receive notice."

The draft provisions for inclusion in the proposed code are:

- (1) Before conducting a hearing, a tribunal must give notice, in accordance with subsection (2), to a person required by legislation to receive notice.
- (2) A notice mentioned in subsection (1) must set forth:
 - (a) the time, place, and purpose of the hearing,
 - (b) the jurisdiction, the legal authority, and the sections of particular legislative authority involved in the hearing, and
 - (c) a warning that if the person does not attend at the hearing, the tribunal may proceed in his absence and that he will not be entitled to further notice in the proceeding.

The provisions cover all federal hearings.

9. Notice of Case to be Met

A notice of case to be met informs a party of the issues involved in a hearing. The inefficiency caused by the preparatory effort for the notice has been exceeded, in the opinion of the courts and the tribunals, by the fairness resulting from it. The courts hold that the notice should be given by a tribunal to parties unless they are already aware of the issues.¹⁰³ In practice, the tribunals give such notice in twenty-four hearings¹⁰⁴ but not in the others because the parties are often aware of the issues involved.

The saving provision (for when a party is aware of issues) prevents an inefficient waste of tribunal effort.

A recommendation is made to require each federal tribunal to give in every hearing a notice of case to be met to each party, unless he is aware of the issues involved before the hearing begins.

The Franks Report,¹⁰⁵ the Attorney General's Report,¹⁰⁶ and the McRuer Report¹⁰⁷ recommended that a tribunal should give to a party a notice of case to be met in all instances. Section 8 of the Ontario Act considers notice necessary when the character or competence of a party is in issue. Paragraph 554 (b) (3) of the U.S. Federal Act requires a tribunal to give notice of:

... the matters of fact and law asserted. When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; ...

The paragraph contemplates a form of pleading, as does paragraph 9(b) (4) of the Model Act, which requires a tribunal to give:

... a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

A requirement for a type of pleading appears unnecessary at this time in Canadian federal law. A notice of issues appears sufficient. The Law Reform Commission has also studied notice

requirements and reached the same conclusion.¹⁰⁸ Before a provision is drafted for the proposed code, the two existing pieces of federal legislation must be examined.

The provision for the Atomic Energy Control Board¹⁰⁹ states:

The Board or a designated officer shall not issue a notice ... unless the holder of the licence

- (a) has been informed in writing of the reasons for the proposed issue of the notice and, in the case of an amendment of the terms and conditions thereof, the proposed amendments; ...

The provision for the Copyright Appeal Board is:¹¹⁰

... the Board shall, in respect of every objection, advise the society, association or company concerned of the nature of the objection ...

The former provision contemplates a tribunal pleading. The latter provision uses an ambiguous word "nature", which could refer to a hearing's character (judicial/administrative), or to its purpose. Each provision is particular to the hearing involved and, consequently, cannot act as a drafting base.

A notice of case to be met is a simple concept and it can easily be combined with the notice of hearing. The draft provision for the proposed code is:

[(2) A notice in subsection (1) must set forth:]

- (d) the issues involved in the hearing unless the person is aware of them before the hearing begins.

The provision covers all federal hearings.

10. Representation by Counsel or Agent

If a person is to appear in legal proceedings, logically he should be permitted representation by an agent who understands the operations of the legal system. On the one hand, the presence of a counsel or agent promotes the value of fairness by protecting the interests of a party. On the other hand, his presence could hinder or promote the value of tribunal efficiency, depending on whether he raises technicalities or summarizes succinctly his party's position. Any conflict between the values has been resolved in favour of fairness. The courts consider the opportunity necessary only when a proceeding will have serious consequences for a person, such as the loss of reputation or livelihood.¹¹¹ The federal tribunals must consider either their hearings to have serious consequences or representation to be an asset to efficiency, because a party in any hearing is allowed to have counsel or agent.

A recommendation is made to permit a party to a proceeding to have representation by counsel or agent.

The Attorney General's Report did not deal with the issue of representation. The Franks Report¹¹² and the McRuer Report¹¹³ made the same recommendation as above. Simple statements that a party may be represented by counsel or agent are made by subsection 555(b) of the U.S. Federal Act and by subsection 10(a) of the Ontario Act. No statement was made by the Model Act. In conclusion, the reports and legislation support the

recommendation made above but warrant no changes in it.

The following two types of federal legislation deal with the issue.

The predominant type of legislative provision is: 114

All parties to an appeal to the Board may appear in person or may be represented at the hearings by counsel or agent.

(Tax Review Board)

The other type of provision is more vague, as follows: 115

An applicant may state that he desires to make representations in person or through an agent ...

(Pension Appeals Board (Coverage))

The draft provision for the proposed code will use the simple, straightforward approach of the Tax Review Board section. As a drafting change, the verb phrase "grant an opportunity" can be replaced by the verb "may". The draft provision is:

A party to a proceeding may be represented by counsel or agent.

The provision covers all federal hearings.

In regard to the opportunity of a witness to be represented by counsel or agent, the balance of values would, at first glance, weigh in favour of representation. However, unbridled participation by such counsel or agent could seriously affect tribunal efficiency without commensurate benefits.

Efficiency dictates that the participation be restricted to protection of the witness, and the Federal Court would probably agree. The court has held that a witness, while being cross-examined in the office of a solicitor, is entitled to representation by counsel for the protection only of the witness' rights.¹¹⁶ A fortiori, the court would similarly hold for a more important context, such as a tribunal hearing. Paragraph 2(d) of the Canadian Bill of Rights guarantees the representation if the witness is compelled to testify in a hearing.¹¹⁷ The tribunals permit a witness to have representation in all hearings except those of the National Parole Board, the Pension Review Board, and the War Veterans Allowance Board. In hearings of the latter three boards, witnesses are not generally encountered. In the other hearings, the counsel or agent is allowed to intervene only to protect the rights of the witness.

A recommendation is made to permit a witness in any federal hearing to have representation by counsel or agent solely for the protection of his rights. The recommendation applies to but has no practical effect on the three federal hearings that have no witnesses.

Of past studies, only the McRuer Report considered the issue and the same recommendation as above was made, with a condition that the counsel be excluded from a private hearing if the witness is not testifying.¹¹⁸ The recommendation of the Report was fully implemented in section 11 of the Ontario Act, as follows:

- (1) A witness at a hearing is entitled to be advised by his counsel or agent as to his rights but such counsel or agent may take no other part in the hearing without leave of the tribunal.
- (2) Where a hearing is in camera, a counsel or agent for a witness is not entitled to be present except when that witness is giving evidence.

Subsection 11(1) duplicates the recommendation of this study and grants a discretion to a tribunal to determine when its efficiency is being impaired by the counsel or agent for a witness. Subsection 11(2) balances fairness to a witness with fairness to a hearing participant who seeks to protect the confidentiality of information. More will be said later about confidentiality but, needless to say, it is imperilled as a hearing becomes more public. The exclusion of the counsel or agent from a private hearing is sensible.

The Model Act did not consider representation for a witness but subsection 555(b) of the U.S. Federal Act states:

A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative

The subsection adds nothing new to the discussion.

The report and legislation support the recommendation made above and suggest a refinement to exclude the counsel or agent of a witness from a private hearing unless he is testifying.

No federal legislation exists to be examined. Owing to its clarity,, section 11 of the Ontario Act will be used as a base on which to draft a provision for the proposed code.

A few drafting changes must be made in the section. The verb phrases "is entitled" and "grant an opportunity" should each be simplified to the verb "may". The presence of the nouns "counsel or agent" in both subsections permits them to be condensed into one provision. The draft provision is:

A witness at a hearing may be advised by his counsel or agent as to his rights but the counsel or agent may take no other part in the hearing without leave of the tribunal and, where a private hearing is conducted, the counsel or agent may not be present at the hearing except when the witness is giving evidence.

The provision applies to all federal hearings.

11. Presentation of Evidence and Argument

The presentation of evidence and argument to a tribunal promotes fairness by permitting a party to explain his position but it also impairs tribunal efficiency by slowing a hearing process. In this conflict of values, the courts and tribunals have sided with fairness to permit a party to present evidence and argument.

The courts have held that an opportunity to appear implies an opportunity to be heard and to make submissions (arguments) on information to be used in a decision. An

120

opportunity to be heard allows a party to present evidence in a hearing. Therefore, an opportunity to appear implies an ability to present evidence and argument. Since every federal tribunal grants to a party an opportunity to appear, then it should also allow a party to present evidence and argument. In fact, this has occurred in all hearings. A restriction is placed on presentation in the following two hearings. In a hearing of the National Parole Board, an inmate is allowed to make representations only to substantiate statements in his appeal. In a hearing of the Pension Review Board, a party is permitted to present argument and only new documentary evidence;¹²¹ however, the restriction is weak because a wide interpretation is given to the word "new" and oral evidence is acceptable if written down before presentation to the Board. Practically speaking, the Board has no restriction on the presentation of evidence.

A recommendation is made to permit a party in any hearing to present evidence and argument. If the National Parole Board wants to maintain its current practice, which is contrary to the recommendation, then it will have to seek an exemption in its enabling legislation (to avoid the provision to be based on the recommendation).

The Franks Report did not consider the issue of presentation. The Attorney General's Report recommended that a party should be permitted to present his case (presumably, his evidence and argument).¹²² The McRuer Report recommended that a party should be allowed to present evidence but no mention was made of argument.¹²³ Paragraph 10(b) of the Ontario Act remedies the McRuer defect by allowing a party to present evidence and argument, as follows:

A party to proceedings may at a hearing,

- (b) call and examine witnesses and present his arguments and submissions

Paragraph 554(c) of the U.S. Federal Act is similar:

The agency shall give all interested parties opportunity for

- (1) the submission and consideration of fact, arguments

Subsection 9(c) of the Model Act also allows the presentation of both information and argument:

Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

The reports and legislation support the recommendation made above but suggest no changes in it. A substantial amount of federal legislation exists on topic.

The following eight tribunals are required by legislation to allow persons to present evidence and argument in an unqualified manner.

The U.I.C. Board of Referees¹²⁴ and the Human Rights Tribunals¹²⁵ rely on the phrase "an opportunity to make representations."

The Canada Pension Plan Review Committee relies on the phrase "an opportunity to be heard"¹²⁶ for the presentation of argument, but a detailed regulation governs the presentation of evidence:¹²⁷

The appellant and the Director shall be entitled to bring witnesses before a Committee and to furnish evidence by way of letters, affidavits, or written representations.

The Canadian Pension Commission Entitlement Boards rely
128,129
on the vague phrases:

... he shall send to the Chairman of the Commission written notice of his readiness to proceed, together, with any written submission he wishes to make to the Board.

... the arguments made by or on behalf of the applicant shall be recorded ...

In a business practices hearing before the Restrictive Trade Practices Commission, the Director (of Investigations)
130
is expressly allowed to present evidence and argument, while an individual must rely on the phrase "an opportunity
131
to be heard." In hearings on the use of methods to increase competition, a party is allowed "to call and examine witnesses
132
and produce documents on his own behalf," but his ability to present argument must be implied from a regulation
133
stating:

The Commission may, in any case where it considers it necessary to do so, request written briefs to be submitted by the parties in addition to oral argument.

The Pension Appeals Board, in a hearing to decide contribution matters, relies on its regulations, which are
134,135
as follows:

Witnesses shall be examined viva voce ...

An applicant may state that he desires to make representations

Only two of the tribunals¹³⁶ have express provisions,
¹³⁷
 an example being:

... the appellant and the Administrator shall be afforded an opportunity to present evidence, to cross-examine witnesses, and to present argument.

(Anti-Inflation Appeal Tribunal)

The draft provision for the proposed code will be based on the last-mentioned legislation because it expresses with clarity the content of the recommendation. A few drafting changes are necessary. The verb "shall be afforded" should be replaced by the simpler "may". The object "opportunity" is unnecessary if the verb "may" is used.

The draft provision is:

A party to a hearing may present evidence and argument.

The provision applies to all federal hearings.

12. Rebuttal of Adverse Evidence; Cross-examination

The devices of rebuttal and cross-examination are used to test the value and credibility of evidence so that a tribunal is not misled into delivering a wrong decision.

They are time-consuming and naturally interfere with the efficiency of a tribunal. On the other hand, they promote fairness to a party by allowing him to explain or to controvert adverse evidence. The trends in the thinking of both the courts and the tribunals have favoured fairness in the case of rebuttal, efficiency in the case of cross-examination.

From a party's opportunity to appear, the courts imply an ability to rebut.¹³⁸ A permission to cross-examine, however, is not implied and the many ways to correct or to controvert evidence often render such permission unnecessary for a fair hearing.¹³⁹ Consequently, the courts place more importance on rebuttal as a means to test evidence.

The tribunals generally allow rebuttal and, to a lesser extent, cross-examination. Only in five federal hearings¹⁴⁰ is neither rebuttal nor cross-examination allowed. In seven hearings,¹⁴¹ rebuttal is permitted but not cross-examination. Both rebuttal and cross-examination are allowed in the balance of the hearings. In regard to the five hearings, the position in three¹⁴² is understandable because they are appeal hearings in which no new evidence is introduced. The position in the other two of five hearings denies rebuttal because it is a hindrance to efficiency. The practice of the tribunals concerned in the two hearings is contrary to the trend in federal law to allow rebuttal. Surely, the tribunals could permit written rebuttal, which they could read or

ignore at their convenience without much hindrance to their efficiency. Their current practice cannot be condoned.

A recommendation is made to permit a party in any federal hearing to rebut adverse evidence and, in hearings currently permitting, to cross-examine. The recommendation will apply to but have no practical effect on the three appeal hearings.

The Attorney General's Report¹⁴³ recommended allowing a party to rebut, the Franks Report¹⁴⁴ and the McRuer Report¹⁴⁵ recommended allowing him to cross-examine. Cross-examination is also advocated by subsection 10(3) of the Model Act:

A party may conduct cross-examinations required for a full and true disclosure of the facts.

The limitation of a full and true disclosure of facts is useful for a tribunal chairman who, although the jurisprudence permits him to control cross-examination,¹⁴⁶ needs a rule to quote so that his point is made. The same limitation is contained in subsection 556(d) of the U.S. Federal Act, which covers rebuttal and cross-examination:

... A party is entitled ... to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Paragraph 10(c) of the Ontario Act deals only with cross-examination and uses a "full and fair" limitation in lieu of "full and true", as follows:

A party to proceedings may at a hearing

(c) conduct cross-examinations of witnesses at a

hearing reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.

Subsection 23(2) adds:

A tribunal may reasonably limit further cross-examination of a witness where it is satisfied that the cross-examination of the witness has been sufficient to disclose fully and fairly the facts in relation to which he has given evidence.

The two provisions are examples of poor drafting style because nearly identical wording is repeated on the same matter in two widely separated parts of one statute. Subsection 23(2) is redundant because the power of a tribunal to limit cross-examination is clearly contained in the tests of reasonableness and "full and fair disclosure" in paragraph 10(c). The usefulness of the disclosure test has already been noted but the "reasonable" test provides a similar function, stated more concisely.

The reports do not warrant an alteration in the recommendation made above but, on the basis of the legislation, a recommendation is made to impose a test of reasonableness on the opportunities to rebut and to cross-examine.

Only two pieces of federal legislation exist and both are explicit. The provision for a hearing of the Anti-
147
Inflation Appeal Tribunal is:

... the appellant and the Administrator shall be afforded an opportunity to present evidence, to cross-examine witnesses, and to present argument.

The provision of the Restrictive Trade Practices Commission
for a hearing on methods to increase competition is: ¹⁴⁸

... any person against whom the order is sought
is entitled to cross-examine witnesses called by
the Director ...

These examples of concise drafting supply an excellent base
on which to create a provision for the proposed code. Because
some federal tribunals permit rebuttal but not cross-
examination, separate provisions should be drafted for each.
The draft provisions, incorporating the recommendations made
above, are:

- (1) A party to a proceeding may reasonably rebut
evidence adverse to his case.
- (2) A party to a proceeding may reasonably cross-
examine a witness.

The first provision applies to all federal hearings and the
second covers only hearings currently permitting cross-
examination.

13. Opportunity to be Present Throughout a Hearing

In order for a party to be able to fully present his
case to a tribunal, he must be able to hear all evidence
and argument. His presence throughout a hearing would seem
logically necessary from the viewpoint of fairness. However,
his continuous presence could also be seen as an impediment
to tribunal efficiency if he attempted to influence the

proceedings by objections or other means. The courts and tribunals have unanimously adopted fairness as the more important value, thus supporting a party's continuous presence. In each federal hearing a party is allowed to be present throughout the hearing and, if evidence is received in his absence, the courts presume such evidence to be prejudicial to him.¹⁴⁹ When confidential evidence is to be tendered at a hearing, an exception to the rule of continuous presence is acknowledged by the courts,¹⁵⁰ and by the tribunals¹⁵¹ in all but five federal hearings.

A recommendation is made to permit a party to be present throughout any hearing, subject to limitations imposed for the preservation of the confidentiality of evidence.

Except for the Franks Report, the issue of continuous presence has not been considered by the studies and legislation of other jurisdictions. Without making a recommendation, the Report commented that a hearing should only take place in the presence of all parties.¹⁵² No mention was made of preserving the confidentiality of information.

The federal legislation does not deal with the opportunity to be present throughout a hearing. The legislation concerned with confidentiality is often a simple prohibition against disclosure, such as:¹⁵³

Where evidence or information that is in its nature confidential, relating to the business or affairs of any person, firm or corporation is given or elicited in the course of any inquiry under section 16, the evidence or information shall not be made public in such a manner as to be available for the

use of any business competitor or rival of the person, firm or corporation.

(Anti-Dumping Tribunal)

A similar provision, giving much discretion to a tribunal,
154
is:

Where the Board receives a written request from a party who has filed a written submission or document marked "Confidential" ... the Board may, if it is of the opinion that the public interest will be served by so doing, treat as confidential the material so filed.

(Yukon Territory Water Board)

Neither provision has guidelines explaining how to use confidential information. The best treatment of the confidentiality issue is found in the following procedural rule for a telecommunications hearing of the Canadian Radio-
155
Television Commission:

Where the Commission is of the opinion that, based on all the material before it, the specific direct harm likely to result from public disclosure justifies a claim for confidentiality, the Commission may

- (a) order that the document not be placed on the public record;
- (b) order disclosure of an abridged version of part of the document; or
- (c) order that the document be disclosed to parties at a hearing to be conducted in camera.

This provision refines the fairness value down to direct harm to a party and contains three methods for preserving confidentiality. All three methods assume prior presentation of the evidence privately to the tribunal. The ban on disclosure in the first method cannot be supported because the absence of

potentially crucial evidence from a record could thwart judicial review or appeal of the proceedings. More acceptable are the second method's disclosure of a summary of evidence and the third method's full disclosure within a private hearing. The latter two methods attempt to create flexibility for maximum fairness to all parties concerned. The third method appears to be based on a suggestion made by the Federal Court to the Anti-Dumping Tribunal.¹⁵⁶ The Tribunal has varied the third method and allows only the parties' counsel to be present, with an undertaking by them not to disclose the confidential evidence presented in the session.¹⁵⁷ The Tribunal obtains the benefit of a testing of the evidence by cross-examination, and fairness to the parties is protected by the presence of their counsel. The disadvantage of this variation is that a party is forced to hire counsel, contrary to the non-legalistic character of administrative law. The two approved methods of the Canadian Radio-Television Commission are to be preferred. Since confidentiality is for the advantage of the parties, they should be permitted to agree to a third solution.

A recommendation is made to empower each federal tribunal in any hearing to determine a claim for confidentiality of evidence and, if found valid, to order disclosure of the evidence either in summary form or in a private session, unless the parties agree otherwise.

In drafting legislation for the recommendations, reliance will be placed on the provision of the Canadian Radio-Television

Commission. The draft provisions are:

- (1) A party to a proceeding may be present throughout a hearing.
- (2) When a claim for the preservation of the confidentiality of evidence is made, a tribunal
 - (a) may determine if specific, direct harm will likely result from public disclosure of the evidence, and, if so,
 - (b) may, unless the parties agree otherwise, order the disclosure of the evidence either in a summary form or in a private hearing.

The provisions cover all federal hearings.

14. Decisions and Reasons

A decision is the culmination of a hearing. Reasons for a decision demonstrate a tribunal's decision-making process and reveal any jurisdictional or other errors that could be appealed or reviewed. The issue of rendering decisions and reasons brings four values into conflict. The expenditure of time and effort in formulating a reasoned decision adversely affects the value of efficiency but promotes the three values of fairness, authoritativeness, and principled decision-making. Fairness is served by explaining to the parties the tribunal's thinking. A conclusion to a hearing

advances authoritativeness. Lastly, reasons promote principled decision-making by ensuring the decision relates to the evidence and argument presented to the tribunal. The ultimate goal of balancing the values is the reinforcement of public confidence in the judgmental ability of the tribunal. The conflict of efficiency with the other three values has been resolved by the courts and tribunals as follows: with regard to decisions in favour of the three values and, with regard to reasons, in favour of an even balance.

From the viewpoint of the courts, a tribunal should render a written decision, whether it be of a final nature or simply a recommendation to a superior.¹⁵⁸ Reasons need not be given unless required by statute¹⁵⁹ but, if given, they should be proper, adequate, and intelligible.¹⁶⁰ No requirement appears to exist for the sending of a decision to a party.

The practice of the tribunals is to render written decisions in all hearings except those of the National Parole Board, which may render a decision orally.¹⁶¹ Written reasons are given with the decisions except for hearings of the Canada Labour Relations Board, the Canadian Pension Commission Entitlement Boards, the National Parole Board, the Northwest Territories Water Board, the Tax Review Board, and the Yukon Territory Water Board. The Canada Labour Relations Board apparently favours the jurisprudential approach of not necessarily providing reasons. The Tax Review Board may give reasons orally or in writing.¹⁶² The rendering of oral reasons could become more important to tribunal efficiency in

the future as caseloads increase and new balances of efficiency and fairness are sought. The other four boards give reasons only when a decision is unfavourable to an applicant. Their attitude is well-intentioned but improperly based because they presume that a successful party would not want reasons -- they should ask him before deciding not to give reasons. A negative reply would then relieve a tribunal of the obligation of providing reasons. The result would probably be the same as the current situation. The recommendation to be made will follow the trend to give written, reasoned decisions but allowance will be made, firstly, for oral reasons where legislation permits and, secondly, for situations in which a party, when asked, does not desire reasons. The adoption of the trend and the exceptions will ensure that the proposed recommendation will cover all federal hearings, except those of the National Parole Board and the Canada Labour Relations Board for which exceptions will have to be made in their enabling legislation.

163

The decisions for all except four hearings are sent to the parties involved. The decisions of the four hearings are recommendations to a Minister of the Crown and only he can release them. Except for six hearings, reasons accompany the sent decisions. Of the six, written reasons are not necessarily sent for decisions of the Canada Labour Relations Board and the Tax Review Board and, for the other four hearings, reasons are not sent unless a decision adverse to an applicant is rendered.

164

For eight hearings¹⁶⁵ the act of sending a reasoned decision is performed by an administrative or political body superior to the tribunal. Exceptions for the Tax Review Board and the four boards rendering reasons for adverse decisions have already been mentioned above and can again be made for the act of sending. The practice of the Canada Labour Relations Board and the situation of the eight above hearings are too particular to fit the proposed code and will have to be left to their enabling legislation.

From the above discussion, a recommendation is made to require each federal tribunal at the conclusion of any hearing to render a written decision, which must be sent to the parties. Written reasons should similarly be rendered and sent unless legislation permits reasons to be given orally or unless a party does not want reasons, when asked.

The Franks Report recommended that, as soon as possible after a hearing, a tribunal should send to a party a written notice of decision. The notice should contain the decision, if rendered in writing, or should confirm the decision, if rendered orally. Also, the notice should contain the findings of fact, reasons, and a notice of a right to appeal the decision. Reasons are to be included in the interests of fairness, clarity of tribunal thought, and the disclosure of possible grounds for appeal.¹⁶⁶ The Report contains some useful points. The imposition of a time-limit serves the value of fairness by preventing an indefinite wait for the decision. The inclusion of findings of fact in reasons

demonstrates the value of principled decision-making. A notice of right to appeal promotes fairness by apprising a party, unrepresented by counsel, of possible rights that he might overlook. The gathering of the notice, decision, and reasons into one document called a "notice of decision" serves the value of efficiency.

The McRuer Report recommended that a tribunal should render a written decision and, when required, written reasons. The reasons should contain findings of fact and of law and matters officially noticed. The decision and reasons, together with a notice of right to appeal, should be sent to all parties to a hearing.¹⁶⁷ In comment on the Report, it classifies findings of fact properly as part of reasons and expressly includes a special type of fact-finding, namely, matters officially noticed. The inclusion of findings of law serves the value of principled decision-making.

The Attorney-General's Report did not deal with the rendering of decisions and reasons but the Law Reform Commission has studied the issue and recommended that a tribunal should provide a written decision and, upon request, reasons for the decision.¹⁶⁸

The Ontario Act contains the following four provisions on topic. Section 4 states:

Notwithstanding anything in this Act and unless otherwise provided in the Act under which the proceedings arise, or the tribunal otherwise directs, any proceedings may be disposed of by,

(a) agreement;

- (b) consent order; or
- (c) a decision of the tribunal given,
 - (i) without a hearing; or
 - (ii) without compliance with any other requirement of this Act,

where the parties have waived such hearing or compliance.

Section 17 is:

A tribunal shall give its final decision and order, if any, in any proceedings in writing and shall give reasons in writing therefor if requested by a party.

Section 18 provides:

A tribunal shall send by first class mail addressed to the parties to any proceedings who took part in the hearing, at their addresses last known to the tribunal a copy of its final decision and order, if any, in the proceedings, together with the reasons therefor, where reasons have been given, and each party shall be deemed to have received a copy of the decision or order on the fifth day after the day of mailing unless the party did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the copy of the decision or order until a later date.

Lastly, paragraph 24(1)(b) and subsection 24(2) state:

- (1) Where a tribunal is of opinion that because the parties to any proceedings before it are so numerous or for any other reason, it is impracticable,

- (b) to send its decision and the material mentioned in section 18,

to all or any of the parties individually, the tribunal may, instead of doing so, cause

reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

- (2) A notice of a decision given by a tribunal under clause b of subsection 1 shall inform the parties of the place where copies of the decision and the reasons therefor, if reasons were given, may be obtained.

Section 4 promotes both efficiency and fairness by permitting the avoidance of a hearing unwanted by all parties concerned. A party's ability to waive, implied in paragraph 4(c), should be expressly stated. Section 17 is ambiguous as to whether a tribunal can give oral reasons and, if so, at all times or only on request. Section 18 resolves the thorny issue of sending reasoned decisions, by placing the obligation squarely on a tribunal. Such a solution is not yet possible in federal thinking. Sections 18 and 24 promote efficiency by limiting in two ways the obligation to send a reasoned decision. Firstly, a decision need not be sent to a non-participating party and, secondly, it may be rendered by public advertisement where the number of parties warrants.

The U.S. Federal Act does not deal with decisions and reasons. The Model Act has two provisions dealing with decisions but none for reasons. Subsection 9(d) states:

Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

Section 12 is:

A final decision or order adverse to a party in a contested case shall be in writing or stated in

the record. . . . Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

The power in subsection 9(d) to dispose of a hearing has already been discussed with approval. Disposition by default is a useful adjunct to the power because efficiency is promoted when fairness is not in issue (through default of a party). Section 12 requires a notice of decision to be sent to parties but, unfortunately, does not impose the obligation on anyone.

From the reports and legislation, the following recommendations can be made for all federal hearings. A federal tribunal should render a decision as soon as possible after a hearing. Reasons for a decision should contain findings of fact and of law and matters officially noticed that are necessary for the decision. A notice of right to appeal, where applicable, should be sent to a party. The decision, reasons, and notice of right to appeal should be grouped into one document called a notice of decision, which should be sent to a party or should be given by public advertisement where numbers warrant. A notice of decision need only be sent to a party who participated in a hearing. A party should be allowed to waive the holding of a hearing or compliance to the proposed code. A tribunal should be empowered to dispose of a hearing by an agreement, settlement, consent order, default, or by a decision where the parties have waived the holding of the hearing.

A great variety of federal legislation exists on the question of decisions and reasons. Often the authority for giving decisions and reasons must be implied from a requirement to send a copy of a decision to persons involved in a hearing. For example, the provision for the Anti-Dumping Tribunal states:

The Secretary shall forward by registered mail a copy of each order or finding to the Deputy Minister, the importer, the exporter and such other persons as may be specified by the rules of the Tribunal.

The Tax Review Board is not required to render a decision but, in practice, it always do so in writing. The Board has a statutory requirement to give reasons for decisions, but the following discretion is granted to give the reasons orally or in writing:

The Board shall give reasons for its decisions but, except where the Board deems it in the public interest in any particular case that the reasons given by it be in writing, reasons given by it need not be in writing.

The Anti-Inflation Appeal Tribunal has a similar provision:

- (1) The Appeal Tribunal shall, wherever practicable, give written reasons for its decisions.
- (2) Upon the disposition of an appeal, the Appeal Tribunal shall forthwith send, by registered mail or in such other manner as is prescribed by the regulations, a copy of the decision and any written reasons given therefor to the Administrator and the appellant.

The provision for the U.I.C. Umpire, on an appeal to decide coverage, has a more direct approach:

On an appeal under this section, the umpire may reverse, affirm or vary the determination or may vacate, confirm or vary the assessment, and shall thereupon in writing notify the parties to the appeal of his decision and the reasons therefor.

173

The Umpire's rules state:

- (1) The decision and the reasons for the decision of the umpire in any appeal shall be in writing and shall be deposited with the Registrar.
- (2) The Registrar shall draw up the decision described in subsection (1) and forthwith send by registered mail a copy of the decision and the reasons therefor to the parties to the appeal.

The Restrictive Trade Practices Commission in a hearing on methods to increase competition has the following roundabout
174
method of ensuring all parties receive notice of a decision:

Where an order is made pursuant to section 13, the Secretary shall forthwith forward a signed copy thereof to the applicant or his solicitor, who shall forthwith have service of a copy thereof made upon the respondent and return the signed copy to the Secretary with affidavit of service attached or acknowledgment of service by the respondent endorsed thereon.

The Public Service Commission Appeal Boards have the
175
most straightforward provision of all of the tribunals:

As soon as practicable after the completion of the inquiry, the board shall render its decision on the inquiry and shall send a copy thereof, together with the reasons therefor to the Commission, to the deputy head concerned and to the person who appealed.

This provision has the desirable feature of placing a "practicable" time limit on the rendering of the decision. As stated previously, a party should not have to wait indefinitely to receive notice of a decision.

None of the legislation mentioned above covers more than a few of the recommendations. A combination of the provisions is necessary. Section 4 of the Ontario Act provides a useful starting point, to be supplemented primarily by the provision for Public Service Commission Appeal Boards. Thereafter, basic drafting skills will have to be relied on. The draft provisions for the proposed code are:

(1) A tribunal

(a) may dispose of proceedings by

(i) agreed settlement, consent order, or default or

(ii) a decision without a hearing or compliance to the Code where the parties have waived such hearing or compliance,

(b) must render in writing, as soon as practicable after the completion of a hearing, a decision with reasons,

(c) must include in its reasons matters officially noticed and findings of fact and of law used by the tribunal in rendering the decision,

(d) must ensure that a notice of decision containing the decision, any written reasons, and a notice of right to appeal, is sent to the parties who

participated in the hearing or is given by public advertisement where the number of parties so warrants,

- (3) A party to a proceeding may waive the holding of a hearing or compliance to the requirements of the Code.

Each of the provisions apply to all hearings.

15. The Use of Evidence in a Decision

A hearing would be nugatory if evidence received during it was not considered in the decision-making process. A useless hearing is both an inefficient waste of tribunal time and unfair to the parties involved. The courts¹⁷⁶ and the tribunals have recognized this coincidence of values so that in any federal hearing a tribunal always considers the evidence presented.

A recommendation is made to require each tribunal in any hearing to consider in its decision-making process evidence presented by the parties. Since officially noticed matters replace evidence, a tribunal should also be required to consider them.

Little assistance is provided by the reports and legislation of other jurisdictions. Subsection 9(g) of the Model Act requires findings of fact to be based exclusively on evidence and on matters officially noticed. Subsections 556(d) and (e) of the U.S. Federal Act oblige a tribunal to consider the whole record of a hearing before rendering a decision. The

legislation adds nothing to the discussion and does not warrant a change in the recommendation.

In drafting a provision to embody the recommendation, existing federal legislation is of no help because it is peculiar to each tribunal. For instance, the legislation allowing the Textile and Clothing Board to use the General Agreement on Trade and Tariffs¹⁷⁷ is helpful to it but not to other tribunals. The provision for the proposed code will have to be drafted from basics, as follows:

Before rendering a decision on a hearing, a tribunal must consider evidence presented by the parties to the proceeding and matters officially noticed by the tribunal.

The provision covers all federal hearings.

16. Decision-Makers to be at Hearing

A controversy in administrative law is whether a decision can only be rendered by a tribunal member who sat throughout a particular hearing and who heard all of the evidence and argument presented in the hearing. To require a decider to be also a hearer promotes the values of fairness and principled decision-making but hinders tribunal efficiency. Fairness is advanced because a party appreciates direct contact with and influence on the person who will decide his case. Principled decision-making is served because a hearer can relate

information to a decision more easily than a person who was not continuously present at a hearing. Efficiency is, however, impaired because constraints are placed on the distribution of tribunal manpower. The courts and tribunals have weighed the values and given paramountcy to fairness and principled decision-making but, in the future, efficiency may take precedence.

The traditional jurisprudential rule requires a decider to be also a hearer.¹⁷⁸ For all of the federal hearings except six,¹⁷⁹ the rule is followed. As tribunal case-loads increase, a tendency away from the rule will inevitably grow in order to maintain tribunal efficiency, as has occurred in the U.S.A. The Law Reform Commission agrees with this observation and recommends provision for delegation of tribunal hearing authority to a single member where time or geography prevent¹⁸⁰ a collegial sitting of the tribunal. A power to delegate¹⁸¹ already exists for five federal hearings.

A recommendation is made to require a decision for a federal hearing to be rendered only by a tribunal member who sat throughout a hearing, unless time or geography necessitate a delegation of hearing authority to a single tribunal member who must file a report on the hearing to the full tribunal.

Of past studies, only the McRuer Report considered the issue and a recommendation was made to adopt the jurisprudential¹⁸² rule. The Ontario Act has no provision on topic. Section 11 of the Model Act states:

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

The section permits a member to hear information and to prepare a record whereupon he may, depending on relevant legislation, render a decision or send the record to other members who must, before rendering a decision, either read the record or hear argument based on it. The section ensures that a deciding member has either heard the information, read the record, or heard arguments or briefs on the record.

Permitting a member to render a decision simply on the basis of reading a record condones an undesirable, anonymous decision. 183

Subsections 557(b) and (c) of the U.S. Federal Act remedy some of the anonymity by using a two-stage process, as follows:

- (b) When the agency did not preside at the reception of the evidence, the presiding employee ... shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule ...

- (c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions,
 - (1) proposed findings and conclusions; or
 - (2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and
 - (3) supporting reasons for the exception or proposed findings or conclusions.

This process is preferable to section 11 of the Model Act because greater emphasis is placed on the decision-making ability of the member presiding at the hearing. His decision is final unless appealed to the tribunal. 184

On the basis of the American federal legislation, the recommendation above is amended to make the decision of the presiding member, to whom hearing authority is delegated, final and binding unless appealed to the tribunal.

Typical federal legislation dealing with the delegation of hearing authority is the following: 185

The Board or the Chairman may authorize any one of the members to report to the Board upon any question or matter arising in connection with the business of the Board, and the person so authorized has all the powers of the Board for the purpose of taking evidence or acquiring the necessary information for the purpose of such report, and upon such a report being made to the Board, it may be adopted as the order of the Board or otherwise dealt with as the Board considers advisable.

(National Energy Board)

This provision repeats the essentials of section 11 of the Model Act.

Relying on the American federal legislation, the draft provisions for inclusion in the proposed code are:

- (1) Subject to subsection (2), a decision on a hearing of a tribunal must be rendered only by the tribunal members who conducted the hearing.
- (2) Where either time or geography make the requirement of subsection (1) impracticable for a tribunal, it may authorize, with all necessary tribunal powers, a member to conduct a hearing; and after the hearing he must make an initial decision, which becomes final and binding unless appealed to the tribunal.

The provisions apply to all federal hearings.

17. Disqualification of Tribunal Members

Public confidence in the integrity of a system of justice is directly proportional to the impartiality of its decision-makers. A disqualification of a member on a ground of partiality or bias might interfere with the efficiency of a tribunal's manpower planning but will greatly promote fairness to parties. With public confidence an overriding factor, the trend in the thinking of both the courts and the tribunals has been in favour of fairness and its consequent rule of disqualification.

From the standpoint of the courts, a tribunal member must not participate in a hearing if he has a pecuniary interest in it¹⁸⁶ or if a reasonable apprehension exists¹⁸⁷ that he cannot act impartially. The rule is applied less rigorously for a tribunal member than for a law court judge because a member's required familiarity with his tribunal's field of jurisdiction can be expected to have engendered¹⁸⁸ familiarity with participants in the field. A member should disclose on his own initiative his potential bias and, if necessary, he should withdraw from a hearing, since his bias¹⁸⁹ will taint all other members sitting with him. The parties¹⁹⁰ to a proceeding can waive a member's bias.

As a general tribunal rule, a member is disqualified for potential bias in all but hearings of the three following tribunals.

The Bilingual Districts Advisory Board does not disqualify a member because it considers its hearings too oriented towards fact-finding. Supposedly, a biased member could not influence facts gathered at a hearing. Perhaps the Board should ponder more fully how a member can influence facts by refusing to hear them, to record them accurately, or to test their credibility.

A Canada Pension Plan Review Committee does not disqualify a member because a committee has an inherent bias authorized¹⁹¹ by legislation. The parties each choose one member and the two members choose a third.

The Canadian Transport Commission will disqualify a member only if a party objects to his sitting at a hearing.

Of the three tribunals, only in the situations of the Canada Pension Plan Review Committee and the Canadian Transport Commission has forethought apparently been given to public confidence, either through an implied waiver of bias (by a choice of members) or through objection. The attitude of the Bilingual Districts Advisory Board appears to be directed to efficiency rather than to public confidence and cannot be condoned.

From the above discussion, the following recommendations are made. A member of a federal tribunal should be obliged to disclose at the opening of a hearing his potential bias. The member should be required to withdraw from the hearing if he has a bias judged sufficient by the tribunal, on motion of a party, to so warrant. The parties should be able to waive the member's disqualification. Exemptions for the three exceptional hearings will have to be made in their enabling legislation.

Without making recommendations, the Attorney General's Report,¹⁹² the Franks Report,¹⁹³ and the McRuer Report¹⁹⁴ all commented that a tribunal member should be impartial in a hearing. Of legislation from other jurisdictions, only subsection 556(b) of the U.S. Federal Act deals with disqualification, as follows:

The functions of presiding employees ... shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

The first two sentences state the obvious. Since a person is less inclined to make an unfounded statement in writing than orally, the requirement of an affidavit is a useful means of discouraging vexatious complaints of bias. An entry into the record of a ruling on bias is desirable because the ruling is preserved for possible judicial review. Another useful feature is the drawing to the tribunal's attention of any potential grounds for disqualification.

From the above legislation, the recommendation is amended to require a party alleging bias to file with his motion an affidavit of his allegations. All potential grounds of disqualification should be considered and not just bias. A tribunal should be required to rule on the alleged grounds and to enter the ruling in its record.

No federal legislation exists dealing with disqualification of a member. Therefore, in drafting provisions for the proposed code, primary importance will have to be placed on basic skills, partially supplemented by subsection 556(b) of the U.S. Federal Act. The draft provisions for disqualification of a member are:

- (1) A tribunal member must disclose, at the opening of a hearing at which he is sitting, a potential bias or other reason that he might have to prevent him from acting impartially in the hearing.
- (2) A party may object to the sitting of a member by filing in good faith with the tribunal a timely and sufficient affidavit alleging the bias or

other reason preventing the member from acting impartially in the hearing.

(3) A tribunal must decide on its record any allegation filed in accordance with subsection (2).

(4) A party may waive the effect of any bias or other reason described in subsection (1).

The provisions apply to all federal hearings.

18. Record of Proceedings

As stated in Chapter II, the keeping of a record of proceedings promotes the value of fairness and has a balanced effect on the value of efficiency. Fairness is advanced because a record acts as a permanent memorial of a proceeding, which greatly assists a party in an appeal or review of a decision. In terms of efficiency, the hindrance caused by the expenditure of tribunal effort is balanced by assistance rendered to the memory of a tribunal member and to the development of tribunal jurisprudence. The courts and the tribunals are unanimous in their adoption of fairness as the more important value. The courts hold that a tribunal should keep a record of a proceeding in order to facilitate a party's right to an appeal or to judicial review.¹⁹⁵

Each of the tribunals (other than the tribunals of record) in any hearing keeps a record of the proceeding. Often the record consists only of a file in which everything pertaining

to the proceeding is amassed. Pleadings frequently amount to no more than correspondence with a tribunal. The contents of all records correspond to the record requirements of a tribunal of record, except in the recording of hearing events (motions, evidence, objections). The events are recorded in all but nine hearings. ¹⁹⁶ In addition, the Atomic Energy Control Board records motions and evidence but not objections.

Of the nine hearings, the Pension Appeals Board keeps no record of hearing events in either type of its hearings because no appeal or review of a decision is available to warrant the recording of the events. ¹⁹⁷ A U.I.C. Board of Referees and the Public Service Staff Relations Board summarize the events in their decisions and reasons. In the five remaining hearings, ¹⁹⁸ a tribunal member records events in his personal notes. The member could turn on a taperecorder as easily as take down notes and the recording of all events would promote fairness to the parties. A party desirous of a transcript could borrow a copy of the recorded tape from the tribunal and pay the costs of typing his own transcript.

From the above discussion, the following recommendations can be made. Each federal tribunal for any of its hearings should compile a record, in accordance with the recommendation made for a record of a tribunal of record. An exemption from the recording of hearing events should be permitted where legislation denies any right to appeal and to review a tribunal's decision, as in the case of the Pension Appeals Board. The record should be co-ordinated with provisions

drafted elsewhere in this chapter.

The provisions for the record requirements of a tribunal of record, refined and re-drafted in accordance with the above recommendations, are:

- (1) A tribunal must keep a record, in accordance with subsection (2), of each of its proceedings.
- (2) Subject to subsection (3), a record of a proceeding must contain, where applicable,
 - (a) the initiatory document,
 - (b) the pleadings, if any, of the parties to the proceeding or their correspondence, if any, with the tribunal,
 - (c) the notice of hearing,
 - (d) the motions and rulings thereon,
 - (e) subject to disclosure provisions for confidential information, the oral and documentary evidence presented at the hearing,
 - (f) a statement of matters officially noticed, unless disclosure is not required,
 - (g) objections to the admission of information and to the taking of official notice, and the rulings on the objections,
 - (h) the decision or other disposition of the proceeding, and
 - (i) the reasons, if any, for the decision if they were given in writing.

- (3) Where legislation prohibits an appeal and review of the decision mentioned in paragraph (2)(h), the record need not contain matters mentioned in paragraphs (2)(d), (e), (f), and (g).

The provisions apply to all federal hearings.

T H E S I S

A DRAFT ADMINISTRATIVE PROCEDURE CODE
FOR FEDERAL ADJUDICATORY HEARINGS

Submitted by:

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To the School of Graduate Studies
in partial fulfillment of degree
requirements for Master of Common
Laws at the University of Ottawa.

FOOTNOTES

1. Barbe, R.P., "Problemes Concernant Les Tribunaux Administratifs" (1969), 29 Rev. du B. 506, at 512.

McAllister, G.A., "Administrative Law" (1963), 6 Can. B.J. 439, at 454-456.

Turner, K., "Administrative Evidence" (1966), 4 Alta. L. Rev. 373, at 375.

Royal Commission Inquiry Into Civil Rights
(Toronto: Queen's Printer : 1968), Report 1, vol. 1, at 213-220.

Analysis of and recommendations for pre-hearing discovery, are considered premature, at this time, because the tribunals are currently evolving their thoughts on it.
2. Bilingual Districts Advisory Board
Canada Labour Relations Board
Canadian Radio-Television Commission
(telecommunications)
Canadian Transport Commission
Copyright Appeal Board
National Farm Products Marketing Council (complaints)
Pension Appeals Board (benefits).
3. Combines Investigation Act, R.S.C. 1970, c. C-23, subs. 27(2), as rep. by S.C. 1974-75-76, c. 76, s. 9.
4. Canada Pension Plan Act, R.S.C. 1970, c. C-5, subs. 84(4), as rep. by S.C. 1974-75-76, c. 4, s. 41; S.C. 1976-77, c. 36, s.16.
5. Combines Investigation Act, R.S.C. 1970, c. C-23, subs. 18(2).
6. National Transportation Act, R.S.C. 1970, c. N-17, subs. 17(2).
7. Pension Appeals Board Rules of Procedure (Contributions and Coverage), C.R.C./78, c. 389, s. 4.
8. Canada Grain Act, S.C. 1970-71-72, c. 7, subs. 80(1).
9. Samuel Moore & Co. v. Commissioner of Patents, [1980] 2 F.C. 350 at 351-352, 30 N.R. 84 (C.A.).

10. Canada Pension Plan Review Committee
Farm Credit Corporation Appeal Boards
Merchant Seamen Compensation Board
National Parole Board
Patent Appeal Board
Pilotage Authorities
Restrictive Trade Practices Commission (business practices)
U.I.C. Board of Referees
War Veterans Allowance Board.
11. Canada Pension Plan Review Committee
Pilotage Authorities
Restrictive Trade Practices Commission (business practices).
12. page 68.
13. Recommendation 13, p. 92.
14. Recommendation 5, p. 214.
15. R.S.C. 1970, c. 0-3.
16. Bill C-43, First Session, Thirty-Second Parliament,
29 Eliz. II, 1980, ss.13-19, 23.
17. Kane v. Board of Governors of University of British Columbia, [1980] 1 S.C.R. 1105 at 1112, 30 N.R. 214, 110 D.L.R. (3d) 311.

Burnbrae Farms Ltd. v. Canadian Egg Marketing Agency, [1976] 2 F.C. 217 at 227, 11 N.R. 422, 65 D.L.R. (3d) 705 (C.A.).
18. Paragraph 75, p. 19.
19. National Energy Board Act, R.S.C. 1970, c. N-6, s. 7.
20. Canada Labour Relations Board
Public Service Staff Relations Board.
21. Canada Labour Code, R.S.C. 1970, c. L-1, para. 117(a),
as am. by S.C. 1972, c. 18, s. 1.
22. Anti-Dumping Tribunal
Anti-Inflation Appeal Tribunal
Canadian Pension Commission Entitlement Boards
Immigration Appeal Board
National Parole Board
Pension Review Board
Tax Review Board.

23. Parole Act, R.S.C. 1970, c. P-2, subs. 3(6), as rep.
by S.C. 1976-77, c. 53, s. 18.
24. Atomic Energy Control Board
Canada Pension Plan Review Committee
Canadian Radio-Television Commission (broadcasting)
Merchant Seamen Compensation Board
National Farm Products Marketing Council
(establishment) and (complaints)
Restrictive Trade Practices Commission (business
practices) and (methods to increase competition)
Tariff Board (appeals) and (references)
U.I.C. Board of Referees
U.I.C. Umpire (benefits).
25. Atomic Energy Control Act, R.S.C. 1970, c. A-15,
para. 8(a).
26. Re McKendry, [1973] F.C. 126 at 130, 35 D.L.R. (3d)
305 (sub nom. McKendry and Dep. Min. of Dept. of
Regional Economic Expansion) (C.A.).
County of Strathcona No. 20 v. Maclab Enterprises Ltd.,
[1971] 3 W.W.R. 461 at 467, 20 D.L.R. (3d) 200
(Alta. C.A.).
Canadian Motorways Ltd. v. Laidlaw Motorways Ltd.,
[1974] S.C.R. 675 at 683, 40 D.L.R. (3d) 52,
11 C.P.R. (2d) 1.
27. Pension Act, R.S.C. 1970, c. P-7, subs. 80(3), as rep.
by R.S.C. 1970 (2nd Supp.), c. 22, s. 28.
28. Anti-Inflation Act, S.C. 1974-75-76, c. 75, subs. 31(4).
Tax Review Board Act, S.C. 1970-71-72, c. 11, subs. 9(2).
29. Dallinga v. Calgary City Council, [1976] 1 W.W.R. 319
at 320, 62 D.L.R. (3d) 433 (Alta. C.A.).
30. Law Reform Commission of Canada, Report on Evidence
(Ottawa: Supply and Services Canada: 1977), at
pp. 106-7 (hereafter cited, the Report on Evidence).
31. Turner, K., op. cit., footnote 1, at 388.
Yates, C., "Tribunal Evidence" (1980), 44 The Conveyancer
and Property Lawyer 136, at 138.
32. Paragraph 90, p. 22.

33. Pages 70-71.
34. Yates, C., loc. cit., footnote 31.
Schwartz, B., "The Model State Administrative
Procedure Act — Analysis and Critique" (1953),
7 Rutgers L. Rev. 431, at 450.
35. Recommendation 11, pp. 216-17.
36. National Labour Relations Board v. Remington Rand,
304 U.S. 576 (1938).
37. Report on Evidence, op. cit., footnote 30 , at 87.
38. R.S.C. 1970, c. E-10, s. 2.
39. Canadian Pension Commission Entitlement Boards
Pension Review Board
Tariff Board (references)
Textile and Clothing Board.
40. Atomic Energy Control Board
Canada Labour Relations Board
Canadian Pension Commission Entitlement Boards
Canada Pension Plan Review Committee
National Parole Board
Pension Appeals Board (benefits) and (coverage)
Pension Review Board
Public Service Commission
Public Service Staff Relations Board
Tariff Board (references)
Textile and Clothing Board
U.I.C. Board of Referees
U.I.C. Umpire (benefits).
41. Bilingual Districts Advisory Board
Canadian Grain Commission (rates) and (revocation)
Canadian Pension Commission Entitlement Boards
National Farm Products Marketing Council (establishment)
and (complaints)
Northwest Territories Water Board
Pension Review Board
Pilotage Authorities
Restrictive Trade Practices Commission (business
practices) and (methods to increase competition)
Textile and Clothing Board
Yukon Territory Water Board.
42. R.S.C. 1970, c. I-13.

43. Patent Appeal Board
Public Service Commission
War Veterans Allowance Board.
44. Law Reform Commission of Canada, Independent Administrative Agencies: Working Paper 25 (Ottawa: Supply and Services Canada: 1980), (hereafter cited as Independent Agencies), recommendation 3.10 at 58.
45. National Energy Board Act, R.S.C. 1970, c. N-6, ss. 44, 83, as rep. by R.S.C. 1970 (1st Supp.), c. 27, s. 28.
46. National Transportation Act, R.S.C. 1970, c. N-17, subs. 75(1).
47. Anti-Inflation Act, S.C. 1974-75-76, c. 75, subs. 31(4).
48. Canada Labour Code, R.S.C. 1970, c. L-1, para. 118(c), as am. by S.C. 1972, c. 18, s. 1.
49. Robertson, J.R., "The Use of Official Notice by Administrative Tribunals" (1980), 6 Queen's L.J. 3, at 6.
50. C.N.R. v. Bell Telephone, [1939] S.C.R. 308 at 317, [1939] 3 D.L.R. 8.
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Canada Pension Plan Review Committee
Canadian Grain Commission (rates) and (revocation)
Canadian Pension Commission Entitlement Boards
Canadian Radio-Television Commission (broadcasting) and (telecommunications)
Copyright Appeal Board
Merchant Seamen Compensation Board
National Farm Products Marketing Council (complaints)
Pension Review Board
Public Service Commission
Restrictive Trade Practices Commission (business practices), (methods to increase competition), and (corporate wrongdoing)
War Veterans Allowance Board.
52. Page 72.
53. Recommendation 12, p. 217.

54. Ibid.
55. Robertson, J.R., op. cit., footnote 49 .
56. Ibid., at 37-62.
57. Ibid., at 37-58.
58. Schwartz, B., op. cit., footnote 34 at 451.
59. Capital Cities Communications Inc. et al. v. C.R.T.C.,
[1978] 2 S.C.R. 141 at 171, 81 D.L.R. (3d) 609,
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[1965] 1 O.R. 259 at 263, 47 D.L.R. (2d) 482 (C.A.).
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Anti-Inflation Appeal Tribunal
Bilingual Districts Advisory Board
Copyright Appeal Board
Human Rights Tribunal
Merchant Seamen Compensation Board
Patent Appeal Board
Pilotage Authorities
Tariff Board (references).
61. Bill C-43, First Session, Thirty-Second Parliament,
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recommendation 6.8 at 136.
66. Canada Labour Relations Board
Canadian Grain Commission (rates) and (revocation)
Canadian Transport Commission
Farm Credit Corporation Appeal Boards
Immigration Appeal Board
National Farm Products Marketing Council
(establishment) and (complaints)
National Parole Board
Pension Appeals Board (benefits) and (coverage)
Public Service Commission
Public Service Commission Appeal Boards
Public Service Staff Relations Board
Restrictive Trade Practices Commission (business
practices), (methods to increase competition) and
(corporate wrongdoing).
67. Copyright Act, R.S.C. 1970, c. C-30, subs. 50(4).
68. Atomic Energy Control Board
Canada Pension Plan Review Committee
Farm Credit Corporation Appeal Boards
National Parole Board
Public Service Commission Appeal Boards
U.I.C. Board of Referees
U.I.C. Umpire (benefits).
69. R.S.C. 1970, c. I-23.
70. Recommendations 17, 18, at p. 92.
71. Recommendations 4, 7, at pp. 214-15.
72. Anti-Dumping Tribunal
Anti-Inflation Appeal Tribunal
Canadian Radio-Television Commission (broadcasting)
Canadian Transport Commission
Human Rights Tribunal
Immigration Appeal Board
National Energy Board
Public Service Staff Relations Board
Restrictive Trade Practices Commission (business
practices), (methods to increase competition) and
(corporate wrongdoing)
Tariff Board (appeals) and (references)
Tax Review Board.
73. National Energy Board Act, R.S.C. 1970, c. N-6, subs.
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74. Tax Review Board Act, S.C. 1970-71-72, c. 11, subs. 8(2).
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80. R.S.C. 1970, c. I-13.
81. The tribunals are listed in footnote 43 .
82. Canada Labour Relations Board
Merchant Seamen Compensation Board
Public Service Commission
Tariff Board (appeals) and (references)
U.I.C. Umpire (coverage).
83. Advisory and Investigatory Commissions, loc. cit., footnote 76.
84. R.S.C. 1970, c. I-13.
85. Burnbrae Farms Ltd. v. Canadian Egg Marketing Agency, supra, footnote 17 , at 227.
86. Recommendation 3, p. 213.
87. Canada Labour Relations Board Regulations, S.O.R./78-499, s. 22.
88. Recommendation 12, p. 92.
89. Recommendation 1, p. 213.

90. Page 68.
91. Anti-Dumping Tribunal
 Anti-Inflation Appeal Tribunal
 Canada Pension Plan Review Committee
 Canadian Radio-Television Commission (broadcasting)
 and (telecommunications)
 Canadian Transport Commission
 Human Rights Tribunals
 Immigration Appeal Board
 National Energy Board
 Pension Review Board
 Pilotage Authorities
 Restrictive Trade Practices Commission (business
 practices), (methods to increase competition) and
 (corporate wrongdoing)
 Tax Review Board
 U.I.C. Board of Referees
 Yukon Territory Water Board.
92. Anti-Dumping Act, R.S.C. 1970, c. A-15, subs. 29(1).
93. National Energy Board Act, R.S.C. 1970, c. N-6, subss.
 47(2), 84(2), as rep. by R.S.C. 1970 (1st Supp.),
 c. 27, ss. 13, 29 respectively.
94. Re Harvie et al. and Calgary Regional Planning
 Commission (1979), 94 D.L.R. (3d) 49, at 72
 (Alta. C.A.).
- L'Alliance des Professeurs Catholiques de Montreal v.
 Commission des Relations du Travail, [1953] 2 S.C.R.
 140 at 154, 4 D.L.R. 161, 107 C.C.C. 183.
- R. v. Ontario Racing Commission, ex parte Taylor,
 [1971] 1 O.R. 400 at 402-403, 15 D.L.R. (3d) 430
 (C.A.).
95. Recommendation 1, p. 213.
96. Recommendation 10, p. 91.
97. Page 62.
98. Re Darnel and Pacific Pilotage Authority, [1974]
 2 F.C. 580 at 583-584, 51 D.L.R. (3d) 603, 5 N.R.
 185 (C.A.).
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(H. Ct.).

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(1978), 86 D.L.R. (3d) 375, at 381 (Nfld. S.C.,
Trial Div.).

99. Independent Agencies, op. cit., footnote 44 ,
recommendation 6.1 at 122.

100. Anti-Dumping Tribunal
Anti-Inflation Appeal Tribunal
Canada Labour Relations Board
National Farm Products Marketing Council
(establishment) and (complaints)
Northwest Territories Water Board
Pension Appeals Board (coverage)
Public Service Commission Appeal Board
Restrictive Trade Practices Commission (methods to
increase competition) and (corporate wrongdoing)
Tax Review Board
Textile and Clothing Board
U.I.C. Umpire (benefits) and (coverage)
Yukon Territory Water Board.

101. Pension Appeals Board Rules of Procedure (Contributions
and Coverage), C.R.C./78, c. 389, subs. 15(2).

102. Copyright Act, R.S.C. 1970, c. C-30, subs. 50(6).

103. R. v. Ontario Racing Commission, ex p. Morrissey,
supra, footnote 98, at 462-463.

Workmen's Compensation Board v. Rammell, [1962] S.C.R.
85 at 91, 31 D.L.R. (2d) 94.

104. Atomic Energy Control Board
Canada Pension Plan Review Committee
Canadian Pension Commission Entitlement Boards
Canadian Radio-Television Commission
(telecommunications)
Copyright Appeal Board
National Energy Board
National Farm Products Marketing Council
(establishment) and (complaints)
National Parole Board
Northwest Territories Water Board
Pension Review Board
Pilotage Authorities
Public Service Commission

Public Service Staff Relations Board
 Restrictive Trade Practices Commission (business practices), (methods to increase competition) and (corporate wrongdoing).
 Tariff Board (appeals) and (references)
 Tax Review Board
 Textile and Clothing Board
 U.I.C. Board of Referees
 U.I.C. Umpire (benefits)
 Yukon Territory Water Board.

105. Recommendation 10, p. 91.
106. Page 62..
107. Recommendation 2, p. 213.
108. Independent Agencies, op. cit., footnote 44 , recommendation 6.1 at 122.
109. Atomic Energy Control Regulations, C.R.C./78, c. 365, para. 27(3)(a).
110. Copyright Act, R.S.C. 1970, c. C-30, subs. 50(6).
111. Re Men's Clothing Manufacturer's Association of Ontario and Arthurs (1979), 26 O.R. (2d) 20 at 30-31, 104 D.L.R. (3d) 441 (Div. Ct.).

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113. Recommendation 8, p. 215.
114. Tax Review Board Act, S.C. 1970-71-72, c. 11, subs. 10(1).
115. Pension Appeals Board Rules of Procedure (Contributions and Coverage), C.R.C./78, c. 389, subs. 25(2).
116. Vapor Canada Ltd. v. John A. MacDonald, Railquip Enterprises Ltd., and Vapor Corporation, [1971] F.C. 465 at 467, 22 D.L.R. (3d) 607 (T.D.).
117. R.S.C. 1970 (Appendix), at 457.
118. Recommendation 9, pp. 215-216.

119. Magnasonic Canada Ltd. v. Anti-Dumping Tribunal, [1972] F.C. 1239 at 1246-47, 30 D.L.R.(3d) 118 (C.A.).
120. Harelkin v. University of Regina, [1977] 3 W.W.R. 754 at 758, 74 D.L.R.(3d) 537 (Sask.Q.B.); rev'd. [1979] 3 W.W.R. 673 (Sask.C.A.); aff'd. [1979] 2 S.C.R. 561, [1979] 3 W.W.R. 676, 96 D.L.R.(3d) 14.
121. Pension Act, R.S.C.1970, c. P-7, subs. 80(2), (3), as rep. by R.S.C.1970(2nd Supp.), c. 22, s. 28.
122. Page 68.
123. Recommendation 10, p. 216.
124. Unemployment Insurance Regulations, C.R.C./78, c. 1576, subs. 66(1).
125. Canadian Human Rights Act, S.C.1976-77, c. 33, subs. 40(1).
126. Review Committee Rules of Procedure, C.R.C./78, c. 392, subs. 8(2).
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128. Pension Act, R.S.C.1970, c. P-7, s. 70, as am. by R.S.C. 1970 (2nd Supp.), c. 22, s. 28.
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130. Combines Investigation Act, R.S.C.1970, c. C-23, subss. 18(1), (2) as am. by S.C.1974-75-76, c. 76, s. 6.
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133. Restrictive Trade Practices Commission Rules, C.R.C./78, c. 416, s. 20.
134. Pension Appeals Board Rules of Procedure (Contributions and Coverage), C.R.C./78, c. 389, s. 19.
135. Pension Appeals Board Rules of Procedure (Contributions and Coverage), C.R.C./78, c. 389, subs. 25(2).
136. Anti-Inflation Appeal Tribunal
Immigration Appeal Board

137. Anti-Inflation Act, S.C. 1974-75-76, c. 75, subs. 32(1).
138. Magnasonic Canada Ltd. v. Anti-Dumping Tribunal, supra, footnote 119, at 1246-47.
139. Re County of Strathcona No. 20 et al. and Maclab Enterprises Ltd., supra, footnote 26, at 464-466.
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140. Farm Credit Corporation Appeal Boards
Merchant Seamen Compensation Board
National Farm Products Marketing Council
(establishment)
Pension Review Board
War Veterans Allowance Board.
141. Bilingual Districts Advisory Board
Canadian Pension Commission Entitlement Boards
Canadian Radio-Television Commission (broadcasting)
National Parole Board
Patent Appeal Board
Tariff Board (references)
Textile and Clothing Board.
142. Farm Credit Corporation Appeal Boards
Pension Review Board
War Veterans Allowance Board.
143. Page 62.
144. Recommendation 19, p. 92.
145. Recommendation 10, p. 216.
146. Wednesbury Corporation v. Minister of Housing and Local Government (No. 2), [1956] 2 Q.B. 275 at 302-303, [1965] 3 All E.R. 571 (C.A.).
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148. Combines Investigation Act, R.S.C. 1970, c. C-23, subs. 31.8(3), as am. by S.C. 1974-75-76, c. 76, s. 12.
149. Kane v. Board of Governors of University of British Columbia, supra, footnote 17, at 1113, 1116.

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Cathcart v. Public Service Commission, [1975] F.C.
407 at 413, 56 D.L.R. (3d) 1 (T.D.).

150. Magnasonic Canada Ltd. v. Anti-Dumping Tribunal,
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151. Bilingual Districts Advisory Board
Copyright Appeal Board
Pension Appeals Board (benefits) and (coverage)
Public Service Staff Relations Board.

152. Paragraph 74, p. 19.

153. Anti-Dumping Act, R.S.C. 1970, c. A-15, subs. 29(3),
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154. Yukon Territory Water Board Rules of Procedure,
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156. Magnasonic Canada Ltd. v. Anti-Dumping Tribunal,
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157. Anti-Dumping Tribunal Rules of Procedure, C.R.C./78,
c. 300, s. 24.

158. Magnasonic Canada Ltd. v. Anti-Dumping Tribunal,
supra, footnote 119, at 1249.

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(H.L.).

159. Canadian Arsenal Ltd. v. Canada Labour Relations
Board and Public Service Alliance of Canada,
[1979] 2 F.C. 393, at 399-400 (C.A.).

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Board of Province of Alberta v. City of Edmonton,
[1979] 1 S.C.R. 684 at 704-706, 7 A.L.R. (2d)
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160. Dome Petroleum Ltd. v. Public Utilities Board of Alberta and Canadian Superior Oil Ltd. (1976), 2 A.R. 453 at 472, 13 N.R. 301 (Alta. C.A.); aff'd. [1977] 2 S.C.R. 822, 2 A.R. 451, 13 N.R. 299.
161. Parole Act, R.S.C. 1970, c. P-2 as am., subs. 8(2).
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162. Tax Review Board Act, S.C. 1970-71-72, c. 11, subs. 10(3).
163. Bilingual Districts Advisory Board
National Farm Products Marketing Council
(establishment)
Tariff Board (references)
Textile and Clothing Board.
164. Canada Labour Relations Board
Canadian Pension Commission Entitlement Boards
National Parole Board
Northwest Territories Water Board
Tax Review Board
Yukon Territory Water Board.
165. Bilingual Districts Advisory Board
Copyright Appeal Board
Farm Credit Corporation Appeal Boards
National Farm Products Marketing Council
(establishment)
Patent Appeal Board
Tariff Board (references)
Restrictive Trade Practices Commission (business practices)
Textile and Clothing Board.
166. Recommendations 22, 23, at page 92;
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167. Recommendations 13, 15, at pp. 217-18.
168. Independent Agencies, op. cit., footnote 44, recommendation 6.10 at 138.
169. Anti-Dumping Act, R.S.C. 1970, c. A-15, subs. 16(5).

170. Tax Review Board Act, S.C. 1970-71-72, c. 11, subs. - 10(3).
171. Anti-Inflation Act, S.C. 1974-75-76, c. 75, subss. 34(1), (2).
172. Unemployment Insurance Act 1971, S.C. 1970-71-72, c. 48, subs. 84(2).
173. Umpire Rules of Procedure, C.R.C./78, c. 1574, subss. 24(1), (2).
174. Restrictive Trade Practices Commission Rules, C.R.C./78, c. 416, s. 15.
175. Public Service Employment Regulations, C.R.C./78, c. 1337, s. 48.
176. Re Cluney and Registrar of Motor Vehicles of Nova Scotia (1975), 11 N.S.R. (2d) 246 at 254, 53 D.L.R. (3d) 468 (C.A.).

Board of Education v. Rice, supra, footnote 158, at 182.
177. Textile and Clothing Board Act, S.C. 1970-71-72, c. 39, para. 18(a).
178. Mehr v. Law Society of Upper Canada, [1955] S.C.R. 344 at 351, [1955] 2 D.L.R. 289.

Re Ramm, [1957] O.R. 217 at 221-23, 7 D.L.R. (2d) 378 (C.A.).

R. v. Committee on Works of Halifax City Council, ex p. Johnston (1962), 46 M.P.R. 345 at 355-57, 369, 371-72, 34 D.L.R. (2d) 45 (C.A.).
179. Bilingual Districts Advisory Board
Canadian Radio-Television Commission (broadcasting)
National Farm Products Marketing Council
(establishment)
National Parole Board
Northwest Territories Water Board
Yukon Territory Water Board.
180. Independent Agencies, op. cit., footnote 44, recommendation 6.7 at 133.

181. Anti-Inflation Appeal Tribunal
Canadian Radio-Television Commission (broadcasting)
Canadian Transport Commission
National Energy Board
National Parole Board.
182. Recommendation 3, p. 220.
183. Schwartz, B., op. cit., footnote 34, at 453.
184. Ibid., at 454.

Schwartz, B., "The American Administrative Procedure Act 1946" (1947), 63 L.Q.R. 43, at 54.
185. National Energy Board Act, R.S.C. 1970, c. N-6, subs. 14(1).
186. Re George (1974), 9 N.B.R. (2d) 28, at 29 (C.A.).
187. Committee for Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369, at 391, 394-395, 68 D.L.R. (3d) 716.
188. Ibid., at 394-395.
189. Cathcart v. Public Service Commission, supra, footnote 149, at 413.

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190. Canadian Air Line Pilots Association v. C.P. Air Lines Ltd. (1966), 57 D.L.R. (2d) 417, at 426 (B.C.C.A.).

R. v. Byles et al., ex p. Hollidge (1912), 77 J.P. 40.
191. Canada Pension Plan Act, R.S.C. 1970, c. C-5, subs. 84(2), as am. by S.C. 1974-75, c. 4, s. 41 and by S.C. 1976-77, c. 36, subs. 16(1).
192. Page 43.
193. Paragraph 41, p. 10.
194. Page 47.
195. Re Fitzpatrick and City of Calgary (1964), 47 D.L.R. (2d) 365, at 369 (Alta. S.C.).

196. Canada Labour Relations Board
Canada Pension Plan Review Committee
National Parole Board
Pension Appeals Board (benefits) and (coverage)
Public Service Commission
Public Service Staff Relations Board
U.I.C. Board of Referees
U.I.C. Umpire (benefits).

197. Federal Court Act, R.S.C.1970 (2nd Supp.), c.10,
subs.28(6).

198. Canada Labour Relations Board
Canada Pension Plan Review Committee
National Parole Board
Public Service Commission
U.I.C. Umpire (benefits).

CHAPTER V

DRAFTING THE PROPOSED CODE

Before the draft provisions are combined to form the proposed code, a compilation must be made of the federal hearings covered by them. Differences in coverage will reveal the various classes of tribunals.

The provisions in Chapter II pertain to only the hearings of the tribunals of record.

The provisions in Chapter IV cover all federal hearings with the following exceptions. The provision for the obligation to hold a hearing (no decision without a hearing) applies to all hearings except those of the tribunals below:

Bilingual Districts Advisory Board

Canada Labour Relations Board

Canadian Radio-Television Commission

conducting a hearing on telecommunications

Canadian Transport Commission

Copyright Appeal Board

National Farm Products Marketing Council

conducting a hearing on complaints

Pension Appeals Board conducting a

hearing on benefits

The provision for the opportunity to cross-examine pertains to all federal hearings except those of the following tribunals:

Bilingual Districts Advisory Board

Canadian Pension Commission Entitlement Boards

Canadian Radio-Television Commission

conducting a hearing on a broadcasting matter

Farm Credit Corporation Appeal Boards

Merchant Seamen Compensation Board

National Farm Products Marketing Council

conducting a hearing on the establishment of

an agency

National Parole Board

Patent Appeal Board

Pension Review Board

Tariff Board conducting a reference hearing

Textile and Clothing Board

War Veterans Allowance Board.

On the basis of differences in coverage, four classes of tribunals are revealed. The first class is governed by all provisions of Chapter IV. The second class is the same as the first but is not obliged to hold a hearing. The third class is the same as the first but does not allow cross-examination. The fourth class is the same as the first and is also governed by the provisions of Chapter II. A minor amount of overlap will occur in three instances. The Bilingual

Districts Advisory Board belongs to the second and third classes. The Canadian Transport Commission straddles the second and fourth classes. The Tariff Board, when conducting a hearing on references, overlaps the third and fourth classes.

In drafting the Code, the chronological order of a hearing should be followed with an initial requirement to hold a hearing, followed by provisions for notice, disclosure of disqualification grounds, a general power over procedure, information, a summoning power, a party's conduct, decisions and reasons, and a record. A general statement of subordination of the Code to other legislation should replace all similar statements contained within drafted provisions.

CHAPTER VI

THE DRAFT PROCEDURE CODE

"An Act Respecting Procedures Before
Administrative Tribunals"

1. This Act may be cited as the Administrative Procedure Code.

2. In this Code,

"Class A Tribunal" means a tribunal named in Schedule A,

"Class B Tribunal" means a tribunal named in Schedule B,

"Class C Tribunal" means a tribunal named in Schedule C, and

"Class D Tribunal" means a tribunal named in Schedule D.

3. In the event of a conflict between this Code and any other legislation, the other legislation prevails.

PART I

4. Subject to the other Parts of the Code, the Part applies to hearings of Class A, Class B, Class C, and Class D Tribunals.

5. A tribunal

(a) must not make a decision without holding a hearing, unless the parties to a proceeding have waived holding it by paragraph 12(g), and

(b) must conduct its hearings in public unless a private

hearing is required by legislation or necessitated by the disclosure of matters of sufficient personal or financial intimacy to outweigh the value of holding the hearing in public.

6. (1) Before conducting a hearing, a tribunal must give notice, in accordance with subsection (2), to a person required by legislation to receive notice..

(2) A notice mentioned in subsection (1) must set forth:

(a) the time, place, and purpose of the hearing,
(b) the jurisdiction, the legal authority, and the sections of particular legislative authority involved in the hearing,
(c) a warning that if the person does not attend at the hearing, the tribunal may proceed in his absence and that he will not be entitled to further notice in the proceeding, and

(d) the issues involved in the hearing, unless the person is aware of them before the hearing begins.

7. (1) A tribunal member must disclose, at the opening of a hearing at which he is sitting, a potential bias or other reason that he might have to prevent him from acting impartially in the hearing.

(2) A party may object to the sitting of a member by filing in good faith with the tribunal a timely and sufficient affidavit alleging the bias or other reason preventing the member from acting impartially in the hearing.

(3) A tribunal must decide on its record any allegation filed in accordance with subsection (2).

(4) A party may waive the effect of any bias or other reason described in subsection (1).

8. A tribunal may make rules for the regulation of its proceedings and for the performance of its functions, and may adjourn its hearings as it deems necessary.

9. Notwithstanding the judicial rules of evidence, except the rules of privilege, a tribunal may

(a) receive relevant evidence, and

(b) exclude unreliable, immaterial, or unduly repetitious evidence.

10. (1) Subject to subsection (2), a tribunal may take official notice of relevant

(a) facts that may be judicially noticed,

(b) notorious facts, opinions, and information within its specialized knowledge, and

(c) extra-curial information, such as policy, precedents, and staff reports.

(2) Except when officially noticed knowledge is to be used to evaluate evidence or when official notice is to be taken of staff advice or consultation, a tribunal must disclose, before or during a hearing, to the parties to a proceeding that official notice will be taken in accordance with subsection (1).

11. (1) A tribunal may summon from any part of Canada a person to testify under oath or affirmation or to produce anything under his control, if the testimony or thing will be relevant to the proceedings.

(2) A person summoned pursuant to subsection (1) is entitled to receive reasonable travelling expenses, as determined by the tribunal.

(3) A tribunal may apply to the Federal Court of Canada alleging that a person has not complied with a summons mentioned in subsection (1); and the Court may consider any information supporting or rebutting the allegation and may treat the non-compliance as though it were a contempt of the Court.

12. A party to a proceeding

- (a) may appear in person,
- (b) may be represented by counsel or agent,
- (c) may present evidence and argument,
- (d) may reasonably object to the reception of evidence and to the taking of official notice,
- (e) may reasonably rebut evidence adverse to his case,
- (f) may reasonably cross-examine a witness,
- (g) may waive the holding of a hearing or compliance to the requirements of the Code.

13. (1) A party to a proceeding may be present throughout a hearing.

(2) When a claim for the preservation of the confidentiality of evidence is made, a tribunal

- (a) may determine if specific, direct harm will likely result from public disclosure of the evidence, and, if so,
- (b) may, unless the parties agree otherwise, order the disclosure of the evidence either in a summary form or in a private hearing.

14. A witness at a hearing may be advised by his counsel or agent as to his rights but the counsel or agent may take no other part in the hearing without leave of the tribunal, and, where a private hearing is conducted, the counsel or agent may not be present at the hearing except when the witness is giving evidence.

15. (1) A tribunal

(a) may dispose of proceedings by

(i) agreed settlement, consent order, or default or

(ii) a decision without a hearing or compliance to the Code where the parties have waived such hearing or compliance,

(b) must render in writing, as soon as practicable, after the completion of a hearing, a decision with reasons,

(c) must include in its reasons matters officially noticed and findings of fact and of law used by the tribunal in rendering the decision,

(d) must ensure that a notice of decision containing the decision, any written reasons, and a notice of right to appeal, is sent to the parties who participated in the hearing or is given by public advertisement where the number of parties so warrants.

16. Before rendering a decision on a hearing, a tribunal must consider evidence presented by the parties to the proceeding and matters officially noticed by the tribunal.

17. (1) Subject to subsection (2), a decision on a hearing of a tribunal must be rendered only by the tribunal members who conducted the hearing.

(2) Where either time or geography make the requirement of subsection (1) impracticable for a tribunal, it may authorize, with all necessary tribunal powers, a member to conduct a hearing; and after the hearing he must make an initial decision, which becomes final and binding unless appealed to the tribunal.

18. (1) A tribunal must keep a record, in accordance with subsection (2), of each of its proceedings.

(2) Subject to subsection (3), a record of a proceeding must contain, where applicable,

(a) the initiatory document,

(b) the pleadings, if any, of the parties to the proceeding or their correspondence, if any, with the tribunal,

(c) the notice of hearing,

(d) the motions and rulings thereon,

(e) subject to paragraph 13(2)(b), the oral and documentary evidence presented at the hearing,

(f) a statement of matters officially noticed, unless subsection 10(2) does not require their disclosure,

(g) objections to the admission of information and to the taking of official notice, and the rulings on the objections,

(h) the decision or other disposition of the proceeding,

and

(i) the reasons, if any, for the decision if they were given in writing.

(3) Where legislation prohibits an appeal and review of the decision mentioned in paragraph (2)(h), the record need not contain matters mentioned in paragraphs (2)(d), (e), (f), and (g).

PART II

19. The Part applies to hearings of Class B Tribunals and of the Canadian Transport Commission.

20. A tribunal need not hold a hearing before making a decision.

PART III

21. The Part applies to hearings of Class C Tribunals, and of the Bilingual Districts Advisory Board, and of the Tariff Board when conducting a hearing under section 4 of the Tariff Board Act.

22. A party may not cross-examine a witness without the permission of the tribunal.

PART IV

23. The Part applies to hearings of Class D Tribunals.

24. (1) A record of a tribunal is, in the absence of information to the contrary, conclusive proof of the statements contained therein, without proof of the signature or official character of the maker of the record.

(2) A tribunal may correct its record, by itself or on motion of a party to a proceeding and after notice of the proposed correction has been sent to all other parties, in order to make the record speak the truth of the proceeding.

25. A tribunal may apply to the Federal Court of Canada alleging that a person has committed a contempt of tribunal

procedure; and the Court may consider any information supporting or rebutting the allegation and may treat the non-compliance as though it were a contempt of the Court.

26. No criminal or civil proceedings lie against a member of a tribunal or any person acting on his behalf or under his direction, for anything done, reported or said in good faith in the course of the actual, or purported, exercise or performance of his powers, duties, or functions.

SCHEDULE A

Anti-Inflation Appeal Tribunal

Atomic Energy Control Board

Canada Pension Plan Review Committee

Canadian Grain Commission when conducting a hearing under
subsection 80(1) of the Canada Grain Act

Canadian Grain Commission when conducting a hearing under
subsection 80(2) of the Canada Grain Act

Human Rights Tribunals

Northwest Territories Water Board

Pension Appeals Board when conducting a hearing under
section 29 of the Canada Pension Plan Act

Pilotage Authority

Public Service Commission when conducting a hearing under
section 41 of the Public Service Employment Act

Public Service Commission Appeal Board

Public Service Staff Relations Board

Restrictive Trade Practices Commission when conducting a hearing
under section 18 of the Combines Investigations Act

Restrictive Trade Practices Commission when conducting a hearing
under section 114 of the Canada Corporations Act

Tax Review Board

Unemployment Insurance Commission Board of Referees

Unemployment Insurance Commission Umpire when conducting
a hearing under section 95 of the Unemployment Insurance
Act, 1971

Unemployment Insurance Commission Umpire when conducting
a hearing under section 84 of the Unemployment Insurance
Act, 1971

Yukon Territory Water Board

SCHEDULE B

Bilingual Districts Advisory Board

Canada Labour Relations Board

Canadian Radio-Television Commission when conducting a
hearing on telecommunications under subsection 17(2)
of the National Transportation Act

Copyright Appeal Board

National Farm Products Marketing Council when conducting
a hearing under subsection 8(2) of the Farm Products
Marketing Agencies Act

Pension Appeals Board when conducting a hearing under
section 85 of the Canada Pension Plan Act

SCHEDULE C

Canadian Pension Commission Entitlement Boards

Canadian Radio-Television Commission conducting a hearing
under section 15 and subsection 19(1) of the
Broadcasting Act

Farm Credit Corporation Appeal Boards

Merchant Seamen Compensation Board

National Farm Products Marketing Council conducting a
hearing under subsection 8(1) of the Farm Products
Marketing Agencies Act

National Parole Board

Patent Appeal Board

Pension Review Board

Textile and Clothing Board

War Veterans Allowance Board

SCHEDULE D

Anti-Dumping Tribunal

Canadian Transport Commission

Immigration Appeal Board

National Energy Board

Restrictive Trade Practices Commission when conducting a
hearing under Part IV.1 of the Combines Investigation
Act

Tariff Board conducting a hearing under section 4 of the
Tariff Board Act

Tariff Board conducting a hearing under section 19 of the
Anti-Dumping Act, or section 47 of the Customs Act,
or section 59 of the Excise Tax Act.

CHAPTER VII

CONCLUSION

The draft Administrative Procedure Code provides a feasible organization of the hearing procedures of federal administrative tribunals. It categorizes the tribunals into classes and furnishes a label for each class. The different classes create a degree of flexibility because not all tribunals are lumped together in a same class. Uniformity is achieved by the standardization of hearing procedures within each class. Thus, the incongruity of flexibility and uniformity is overcome within the framework of one statute. To ensure ultimate flexibility, the Code is subordinated to other legislation, especially the enabling legislation of the tribunals. Hopefully, deviations from the Code will be minimized.

The Code will render easier the tasks of persons involved in federal administrative law. Using the Code, a Minister of the Crown wishing to create a tribunal will be able to communicate his thoughts more easily to a legislative draftsman. In turn, the draftsman will have his drafting time reduced because, instead of drawing up an elaborate set of rights and powers, he will only have to draft a provision labelling the tribunal as being a Class A, B, C, or D Tribunal within the meaning of the Code.

The Code would then supply the necessary list of rights and powers.

Valuable time in Parliament will also be saved by the Code because debate will centre on the concept of creating a particular tribunal, rather than on individual rights or powers. Being a statute, the Code will answer the complaints of some Members of Parliament that too much law is buried in subordinate legislation, which escapes Parliamentary consideration.

The Code will assist lawyers and laymen to quickly determine the rights and powers involved in a hearing. With such information, they will be able to better assess the strengths and weaknesses of a case, the chance of winning it, and the limits for settling it. Litigation on hearing procedures should consequently decrease.

Lastly, the Code will greatly aid the judiciary because convoluted arguments along the administrative-judicial spectrum of functions will be avoided. To determine the rights and powers in a hearing, the judiciary need only classify the relevant tribunal (by its enabling legislation) and then examine the Code for the attributes associated with that class.

If the Code does nothing else, it will at least be an initial "first step" towards organizing a chaotic area of law.

APPENDICES

APPENDIX A

Advisory Council on the Status of Women
Agricultural Products Board
Agricultural Stabilization Board
Anti-Inflation Board
Army Benevolent Fund Board
Atlantic Development Council
Blue Water Bridge Authority
Board of Examiners for Dominion Land Surveyors
Canada Council
Canada Employment & Immigration Advisory Council
Canadian Consumer Council
Canadian Council on Rural Development
Canadian Dairy Commission
Canadian Government Specifications Board
Canadian Human Rights Commission
Canadian International Development Agency
Canadian Livestock Feed Board
Canadian Livestock Feed Board Advisory Committee
Canadian Pension Commission
Canadian Permanent Committee on Geographical Names
Canadian Wheat Board
Cape Breton Development Corporation
Central Mortgage & Housing Corporation
Correctional Investigator
Economic Council of Canada

Emergency Planning Establishment
Energy Supplies Allocation Board
Export Development Corporation
Farm Credit Corporation
Federal Business Development Bank
Fisheries Price Support Board
Fisheries Research Board of Canada
Foreign Investment Review Agency
Freshwater Fish Marketing Council
Grain Appeal Tribunal
Historic Sites & Monuments Board of Canada
Interprovincial & Territorial Boundary Commission
Maritime Pollution Claims Fund
Medical Research Council
Metric Commission
National Advisory Council on Fitness and Amateur Sport
National Battlefields Commission
National Capital Commission
National Design Council
National Farm Products Marketing Council Agency
National Film Board
National Harbours Board
National Research Council of Canada
Office of the Custodian of Enemy Property
Oil & Gas Committee
Petroleum Compensation Board
Regional Development Incentives Board
St. Lawrence Seaway Authority

Science Council of Canada

Standards Council of Canada

Unemployment Insurance Commission

War Veteran's Allowance District Authorities

APPENDIX B

The abbreviations used in Appendix B are:

"C", "C.R.C.": Consolidated Regulations of Canada, 1978

"c" : chapter

"para." : paragraph

"s" : section

"S" : the enabling statute of a tribunal

"S.O.R." : statutory order or regulation

"subs." : subsection.

When an affirmative answer is necessary in an analysis of a tribunal and if the answer is governed by legislation, a reference to the legislation will be made. When an affirmative answer is not governed by legislation, a "yes" or a more full explanation will be provided. A "no" reply means that the tribunal attribute does not exist.

Name of Tribunal: Anti-Dumping Tribunal

Established by: "S": Anti-Dumping Act, R.S./C.1970, c.A-15 as am.¹, s.21.

Regulations (C.R.C.): "C": c.300 ; "SOR.1": - ; "SOR.2": -

1. Court of Record: subs.27(1) (S)
Official Seal: subs.27(1) (S)
2. Hearing: Power to hold: ss.16,16.1,31 (S)
Obligated to hold: yes
Type: public, but discretion to hold privately
s.24, subs.29(2) (S)
3. Power to: Determine own procedure: s.33 (C);subs.25(1) (S) on
Governor-in-Council approval
Receive any evidence: subs.12(4),s.23 (C)
Summon witnesses and documents: } subs.27(2) (S);ss.20,22 (C)
Administer oaths/affirmations: } as if superior court of
record
Adjourn: s.18 (C)
4. Information: Confidentiality maintained: subs.29(3) (S);s.12 (C)
How maintained: exclude all persons but parties'
counsel from hearing
Extra-curial info. used: subs.16(4) (S) (state of economy)
Disclosed to parties: generally no
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: s.8 (C)
Case to be met or issues: no
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subs.29(1) (S);s.32 (C)
Representation by counsel or agent
for party: subs.29(1) (S);s.32 (C)
for witness: yes
Presentation of evidence and argument: yes
Objection to: Evidence: yes
Extra-curial information: no
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes, unless
confidential information

7. Decision: Written: s.25 (C)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: subs.16(4) (S)
 Sent to parties: subs.16(5) (S), s.25 (C)
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings: yes
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:
 R.S.C.1970(2nd Supp.), c. 1, ss. 2, 3, 7.

Name of Tribunal: Anti-Inflation Appeal Tribunal

Established by: "S": Anti-Inflation Act, S.C. 1974-75-76, c. 75 as am.¹, subs. 26(1).

Regulations (C.R.C.): "C": c.301; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
Official Seal: subs.26(4) (S)
2. Hearing: Power to hold: subs.32(1) (S)
Obligated to hold: subs.32(1) (S)
Type: public, but discretion to hold privately, subs.33(2) (S)
3. Power to: Determine own procedure: subs.27(2) (S) on Governor-in-Council
Receive any evidence: yes approval
Summon witnesses and documents: } subs.26(5) (S) as if
Administer oaths/affirmations: } superior court of
Adjourn: subs.8(4) (C)
4. Information: Confidentiality maintained: subs.14(2), 34(4) (S)
How maintained: prohibition against disclosure
to business competitor
Extra-curial info. used: no
Disclosed to parties: no
Excluded on the basis of: irrelevancy, subs.31(4) (S)
5. Notice of: Hearing: subs.8(3) (C)
Case to be met or issues: no
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subss.32(1), 33(1) (S)
Representation by counsel or agent
for party: subs.33(1) (S)
for witness: yes
Presentation of evidence and argument: subs.32(1) (S)
Objection to: Evidence: yes
Extra-curial information: not arisen
Rebuttal of adverse evidence: subs.32(1) (S)
Cross-examination: subs.32(1) (S)
Appearance throughout hearing: yes

7. Decision: Written: subs.34(2) (S)
 Only by tribunal members at hearing: yes, but unnecessary by
 subs.32(3) (S)
 Evidence used in decision: yes
 Extra-curial information used in decision: no
 Sent to parties: subs.34(2) (S)
8. Reasons: Written: yes, if practicable subs.34(1) (S)
 Sent to parties: subs.34(2) (S)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings: yes
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

-
1. The amendments relevant to the provisions examined are:
 S.C.1974-75-76, ss. 8, 9, 10.

Name of Tribunal: Atomic Energy Control Board

Established by: "S": Atomic Energy Control Act, R.S.C.1970, c. A-19, s. 3.

Regulations (C.R.C.): "C": c. 365; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: para. 27(3)(b), subs. 27(6) (S)
 Obliged to hold: subs. 27(6) (S)
 Type: public
3. Power to: Determine own procedure: para. 8(a) (S)
 Receive any evidence: yes
 Summon witnesses and documents: no, but desirable
 Administer oaths/affirmations: no, but desirable
 Adjourn: yes
4. Information: Confidentiality maintained: yes
 How maintained: follows guidelines of proposed
 Access to Information Act
 Extra-curial info. used: yes
 Disclosed to parties: follows guidelines as above
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes, and if emergency suspension-- para.27(6)(b) (S)
 Case to be met or issues: para. 27(3)(b) (S)
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: subs. 27(3) (S)
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: no
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: subs.27(1) (S)
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: yes
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings: yes
Initiatory document: yes
Pleadings or correspondence: yes
Notice of hearing and other notices: yes
Motions: yes
Evidence: yes
Objections to evidence: no
Decision: yes
Reasons: yes
-

Name of Tribunal: Bilingual Districts Advisory Board

Established by: "S": Official Languages Act, R.S.C.1970, c. O-2, subs. 14(1).

Regulations (C.R.C.): "C": _____; "SOR.1": _____ - _____; "SOR.2": _____ - _____.

- | | |
|---|--|
| 1. Court of Record: | no |
| Official Seal: | no |
| 2. Hearing: Power to hold: | s. 15 (S) |
| Obligated to hold: | no |
| Type: | public, s. 15 (S) |
| 3. Power to: Determine own procedure: | yes |
| Receive any evidence: | s. 4 <u>Inquiries Act</u> by subs.14(1) (S) |
| Summon witnesses and documents: | } s.4 <u>Inquiries Act</u> by
subs.14(1) (S) as if
civil court of record |
| Administer oaths/affirmations: | |
| Adjourn: | yes |
| 4. Information: Confidentiality maintained: | no |
| How maintained: | not applicable |
| Extra-curial info. used: | yes, member's knowledge |
| Disclosed to parties: | no |
| Excluded on the basis of: | irrelevancy |
| 5. Notice of: Hearing: | yes |
| Case to be met or issues: | no |
| 6. Party conduct permitted in hearing: | |
| Opportunity to appear/to be heard: | yes |
| Representation by counsel or agent | |
| for party: | yes |
| for witness: | yes |
| Presentation of evidence and argument: | yes |
| Objection to: Evidence: | discretion of chairman |
| Extra-curial information: | not applicable |
| Rebuttal of adverse evidence: | yes |
| Cross-examination: | no |
| Appearance throughout hearing: | yes |

7. Decision: Written: yes
 Only by tribunal members at hearing: not necessarily
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: no
8. Reasons: Written: yes
 Sent to parties: no
9. Disqualification of member for bias or other cause: not yet arisen
10. Record or file of proceedings: yes
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
- | | | |
|-------------------------|---|-----------------|
| Motions: | } | in summary form |
| Evidence: | | |
| Objections to evidence: | | |
| Decision: | | yes |
| Reasons: | | yes |
-

Name of Tribunal: Canada Labour Relations Board

Established by: "S": Canada Labour Code, R.S.C. 1970, c.L-1 as am.¹, subs. 111(1).

Regulations (C.R.C.): "C": _____; "SOR.1": 78-499; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s.118 (S), subs.19(2) (SOR.1)
 Obliged to hold: no
 Type: public, but discretion to hold privately
3. Power to: Determine own procedure: para.117(a) (S)
 Receive any evidence: para.118(c) (S)
 Summon witnesses and documents: para.118(a) (S)
 Administer oaths/affirmations: para.118(b) (S)
 Adjourn: para. 118(1) (S)
4. Information: Confidentiality maintained: yes
 How maintained: exclude party
 Extra-curial info. used: yes (membership lists)
 Disclosed to parties: not to employer
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: ss.13,20 (SOR.1)
 Case to be met or issues: no
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes, passive role
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: yes
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: generally yes

7. Decision: Written: yes
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes
8. Reasons: Written:
 Sent to parties: not necessarily given or sent
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings: yes
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } only in member's
 Objections to evidence: } notes not in file
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

S.C.1972, c. 18, s.1;
 S.C.1977-78, c. 27, ss. 39, 40.

Name of Tribunal: Canada Pension Plan Review Committee

Established by: "S": Canada Pension Plan Act, R.S.C. 1970, c.C-5 as am.,¹ subs. 85(1).

Regulations (C.R.C.): "C": c. 392; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: subs. 84(4) (S)
 Obliged to hold: yes
 Type: owing to intimate personal and financial information, private subs. 8(3) (C)
3. Power to: Determine own procedure: subss. 8(1), (2) (C)
 Receive any evidence: yes
 Summon witnesses and documents: no
 Administer oaths/affirmations: no
 Adjourn: yes
4. Information: Confidentiality maintained: subs. 8(3) (C)
 How maintained: private hearing
 Extra-curial info. used: yes (Medical reports, precedents)
 Disclosed to parties: discretion of chairman
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
 Case to be met or issues: yes (Statement of Evidence) on request
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: subs. 8(2) (C)
 Representation by counsel or agent
 for party: subs. 8(2) (C)
 for witness: yes
 Presentation of evidence and argument: subss. 7(1), 8(2) (C)
 Objection to: Evidence: yes
 Extra-curial information: not arisen
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: s.9 (C)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: s.9 (C)
8. Reasons: Written: s.9 (C)
 Sent to parties: yes
9. Disqualification of member for bias or other cause: no, subs.84(2) (S)
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } only member's notes
 Objections to evidence: } not in file
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

S.C.1974-75-76, c.4, ss. 18, 41, 42;
 S.C.1976-77, c. 36, ss. 16, 17.

Name of Tribunal: Canadian Grain Commission
(Hearing to set rates)

Established by: "S": Canada Grain Act, S.C.1970-71-72, c.7, s. 3.

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: subs.80(1) (S)
Obligated to hold: subs.80(1) (S)
Type: public, subs.80(1) (S)
3. Power to: Determine own procedure: subs.81(2) (S)
Receive any evidence: s.4 Inquiries Act by subs.80(3) (S)
Summon witnesses and documents: } ss.4,5 Inquiries Act by
Administer oaths/affirmations: } subs.80(3) (S) as if
civil court of record
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: private session within
hearing
Extra-curial info. used: yes (investigation report)
Disclosed to parties: generally yes
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
Case to be met or issues: no
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: yes
Representation by counsel or agent
for party: yes
for witness: yes
Presentation of evidence and argument: yes
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: yes
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
- | | |
|--------------------------------------|--|
| Initiatory document: | not arise |
| Pleadings or correspondence: | not arise |
| Notice of hearing and other notices: | yes |
| Motions: | } by tape-recording or
court reporter |
| Evidence: | |
| Objections to evidence: | |
| Decision: | yes |
| Reasons: | yes |
-

Canadian Grain Commission

Name of Tribunal: (Hearing to suspend or revoke grain licences)Established by: "S": Canada Grain Act, S.C.1970-71-72, c. 7, s. 3.

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: subs.80(2) (S)
Obligated to hold: subs.80(2) (S)
Type: public, subs.80(2) (S)
3. Power to: Determine own procedure: subs.81(2) (S)
Receive any evidence: s.4 Inquiries Act by subs.80(3) (S)
Summon witnesses and documents: } ss.4, 5 Inquiries Act by
Administer oaths/affirmations: } subs.80(3) (S) as if
civil court of record
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: private session within hearing
Extra-curial info. used: yes (staff reports)
Disclosed to parties: generally yes
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
Case to be met or issues: no
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subs. 77(2) (S)
Representation by counsel or agent
for party: subs. 77(2) (S)
for witness: yes
Presentation of evidence and argument: yes
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written: yes
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } by tape-recording
 Objections to evidence: } or court reporter
 Decision: yes
 Reasons: yes
-

Name of Tribunal: Canadian Pension Commission Entitlement Boards.

Established by: "S": Pension Act, R.S.C. 1970, c.P-7 as am.¹, s.71.

Regulations (C.R.C.): "C": _____; "SOR.1": _____ - _____; "SOR.2": _____ - _____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: subs.72(3) (S)
Obligated to hold: subs.72(3) (S)
Type: public, but discretion to hold privately, subs.72(3) (S)
3. Power to: Determine own procedure: s.84 on Governor-in-Council approval
Receive any evidence: para.85(b) (S)
Summon witnesses and documents: } ss.4,5 Inquiries Act by subs.
Administer oaths/affirmations: } 82(1) (S) as if civil court of
Adjourn: } record
yes
4. Information: Confidentiality maintained: yes
How maintained: private hearing
Extra-curial info. used: yes (precedents)
Disclosed to parties: no
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
Case to be met or issues: yes (Statement of Case)
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: yes
Representation by counsel or agent
for party: s.60 (S)
for witness: yes
Presentation of evidence and argument: s.70, subss.73(2), 74(1) (S)
Objection to: Evidence: not arise
Extra-curial information: not arise
Rebuttal of adverse evidence: yes
Cross-examination: no
Appearance throughout hearing: yes

7. Decision: Written: subs. 74(2) (S)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: s. 74 (S)
8. Reasons: Written: yes, if adverse decision subs. 74(2) (S)
 Sent to parties: yes, if reasons are given
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } by tape-recording
 Objections to evidence: }
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

R.S.C.1970(2nd Supp.), c. 22, s. 28;
 S.C.1976-77, c. 13, s. 1; and c. 28, s. 34.

Canadian Radio-Television Commission

Name of Tribunal: (Hearing to issue, suspend, revoke broadcasting licence)
Canadian Radio-Television and Telecommunications Commission
 Established by: "S": Act, S.C.1974-75-76, c.49, subs.3(1); but see 1.
 Regulations (C.R.C.): "C": c. 375; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: subs. 19(1), para. 24(1) (b) (S)
 Obligated to hold: yes
 Type: public, subs. 19(1), para. 24(1) (b) (S)
3. Power to: Determine own procedure: subs. 19(7), s. 21 (S)
 Receive any evidence: ss. 26, 32 (C)
 Summon witnesses and documents: } subs.19(7) (S) as if
 Administer oaths/affirmations: } civil court of record
 ss. 31, 32 (C)
 Adjourn: ss. 26, 40 (C)
4. Information: Confidentiality maintained: s. 20 (C)
 How maintained: segregation of information
 Extra-curial info. used: yes
 Disclosed to parties: generally no
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subs. 20(1) (S); subs.4(2), ss. 5, 11, 27 (C)
 Case to be met or issues: generally no, unless revocation hearing
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: s. 35 (C)
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: ss. 32- 34 (C)
 Objection to: Evidence: yes
 Extra-curial information: discretion of chairman
 Rebuttal of adverse evidence: yes
 Cross-examination: no
 Appearance throughout hearing: yes

7. Decision: Written: subs.24(2) (S), s.41 (C)
 Only by tribunal members at hearing: no, subs.19(4) (S)
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: subs.24(2) (S)
8. Reasons: Written: subs.24(2) (S)
 Sent to parties: subs.24(2) (S)
9. Disqualification of member for bias or other cause: relies on guidelines to prevent
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

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1. Although the Act re-established the Commission, all of the operative statutory provisions are contained in the Broadcasting Act, R.S.C. 1970, c. B-11, which will be referred to as "S".

Name of Tribunal: Canadian Radio-Television Commission
(Telecommunications Hearing)
 Established by: "S": Canadian Radio-Television and Telecommunications
Commission Act, S.C.1974-75-76, c.49, subs.3(1).
 Regulations (C.R.C.): "C": _____; "SOR.1": 79-554; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: subs.14(3) (S) referring to National Transportation Act, (hereafter NTA) subs.17(2)
 Obligated to hold: no
 Type: subs.14(3) (S) (subs.17(2) NTA), public
3. Power to: Determine own procedure: ss.8,28 (SOR.1), subs.14(3) (S)
 Receive any evidence: subs.14(3) (S) (subs.75(1) NTA)
 Summon witnesses and documents: } subs.14(3) (S) (subs.45(3) NTA)
 Administer oaths/affirmations: } as if superior court of record)
 ss.20,21 (SOR.1)
 Adjourn: s.25 (SOR.1), subs.14(3) (S)
 subs.45(3) NTA
4. Information: Confidentiality maintained: subs.19(1) (SOR.1)
 How maintained: adjudication, non-disclosure,
 summary report, private hearing.
 subs.19(11) (C)
 Extra-curial info. used: yes
 Disclosed to parties: discretion of chairman, but
 generally no
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes, and public notice by subs.39(1) (SOR.1)
 Case to be met or issues: yes
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: ss.21,24; subss.43(2), (6)
 (SOR.1)
 Objection to: Evidence: yes
 Extra-curial information: no
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes, except for confidential
 information

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: yes
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: relies on guidelines to prevent
10. Record or file of proceedings:
- Initiatory document: yes
 - Pleadings or correspondence: yes
 - Notice of hearing and other notices: yes
 - Motions: yes
 - Evidence: yes
 - Objections to evidence: yes
 - Decision: yes
 - Reasons: yes
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Name of Tribunal: Canadian Transport Commission

Established by: "S": National Transportation Act, R.S.C. 1970, c.N-17, subs. 6(1).

Regulations (C.R.C.): "C": c. 1142; "SOR.1": -; "SOR.2": -.

1. Court of Record: subs. 6(2) (S)
Official Seal: subs. 6(2) (S)
2. Hearing: Power to hold: subs. 17(2) (S)
Obligated to hold: not necessarily
Type: public, but privately if confidential information
subs. 17(2) (S)
3. Power to: Determine own procedure: subss.17(1), 24(5); ss.20, 65 (S)
Receive any evidence: subs.75(1) (S)
Summon witnesses and documents: } subs.45(3) (S) as if
Administer oaths/affirmations: } superior court of record
ss. 57-59 (C)
Adjourn: s. 69 (C)
4. Information: Confidentiality maintained: yes
How maintained: private hearing
Extra-curial info. used: yes (expertise, staff reports)
Disclosed to parties: yes for reports; no for expertise
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: ss. 43, 48 (C)
Case to be met or issues: no
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: s. 60 (C)
Representation by counsel or agent
for party: yes
for witness: yes
Presentation of evidence and argument: ss. 60, 64 (C)
Objection to: Evidence: yes
Extra-curial information: yes for reports;
no for expertise
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written:

s. 70 (C)

Only by tribunal members at hearing: yes, but can delegate
s.19 (S)

Evidence used in decision: yes

Extra-curial information used in decision: yes

Sent to parties: ss.70, 71 (C)

8. Reasons: Written:

s.70 (C)

Sent to parties: ss. 70, 71 (C)

9. Disqualification of member for bias or other cause: only if party objects
ss.8,9 (S)

10. Record or file of proceedings:

Initiatory document: yes

Pleadings or correspondence: yes

Notice of hearing and other notices: yes

Motions: yes

Evidence: yes

Objections to evidence: yes

Decision: yes

Reasons: yes

Name of Tribunal: Copyright Appeal Board

Established by: "S": Copyright Act, R.S.C.1970, c. C-30, s. 50.

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: subs. 50(6) (S)
 Obliged to hold: no
 Type: public
3. Power to: Determine own procedure: subs.50(4) (S)
 Receive any evidence: yes
 Summon witnesses and documents: no
 Administer oaths/affirmations: implied from subs.50(4) (S)
 Adjourn: yes
4. Information: Confidentiality maintained: generally no
 How maintained: not applicable
 Extra-curial info. used: no
 Disclosed to parties: not applicable
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subs. 50(6) (S)
 Case to be met or issues: subs.50(6) (S)
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes, if file statement or objection
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: not arise
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: no
Sent to parties: yes
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
Initiatory document: yes
Pleadings or correspondence: yes
Notice of hearing and other notices: yes
Motions: yes
Evidence: yes
Objections to evidence: yes
Decision: yes
Reasons: yes
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Name of Tribunal: Farm Credit Corporation Appeal Boards

Established by: "S": Farm Credit Act, R.S.C. 1970, c. F-2, para. 11(1)(d).

Regulations (C.R.C.): "C": _____; "SOR.1": ____ - ____; "SOR.2": ____ - ____.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: yes
 Obligated to hold: yes
 Type: private, owing to intimate personal and financial information
3. Power to: Determine own procedure: yes
 Receive any evidence: yes
 Summon witnesses and documents: no
 Administer oaths/affirmations: no
 Adjourn: yes
4. Information: Confidentiality maintained: yes.
 How maintained: private hearing
 Extra-curial info. used: yes (expertise, creditors)
 Disclosed to parties: discretion of chairman
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
 Case to be met or issues: no, already aware of issues
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: yes
 Rebuttal of adverse evidence: no
 Cross-examination: no
 Appearance throughout hearing: yes

7. Decision: Written: yes
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes, unless oral
- | | | |
|-------------------------|---|---------------------------|
| Motions: | } | summarized in a
report |
| Evidence: | | |
| Objections to evidence: | | |
| Decision: | | yes |
| Reasons: | | yes |
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Name of Tribunal: Human Rights Tribunals

Established by: "S": Canadian Human Rights Act, S.C.1976-77, c. 33, subs. 39(1).

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: s. 40 (S)
Obligated to hold: s. 39 if conciliation fails (S)
Type: public, but discretion to hold privately, subs. 40(6) (S)
3. Power to: Determine own procedure: yes
Receive any evidence: para. 40(3)(c) (S)
Summon witnesses and documents: } para.'s 40(3)(a), (b) (S)
Administer oaths/affirmations: } as if superior court of record
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: deletion; private hearing
Extra-curial info. used: yes (expertise)
Disclosed to parties: discretion of chairman
Excluded on the basis of: irrelevancy, privilege
subs. 40(4) (S)
5. Notice of: Hearing: subs. 40(1) (S)
Case to be met or issues: no
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subs. 40(1) (S)
Representation by counsel or agent
for party: subs. 40(1) (S)
for witness: yes
Presentation of evidence and argument: subs. 40(1) (S)
Objection to: Evidence: yes
Extra-curial information: discretion of chairman
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: yes
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
Initiatory document: yes
Pleadings or correspondence: yes
Notice of hearing and other notices: yes
Motions: yes
Evidence: yes
Objections to evidence: yes
Decision: yes
Reasons: yes
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Name of Tribunal: Immigration Appeal Board

Established by: "S": Immigration Act, 1976, S.C. 1976-77, c. 52, subs. 59(1).

Regulations (C.R.C.): "C": _____; "SOR.1": 78-311; "SOR.2": 79-80 & 530.

1. Court of Record: subs. 65(1) (S)
 Official Seal: subs. 65(1) (S)
2. Hearing: Power to hold: s. 82 (S)
 Obliged to hold: ss. 72, 73, 79 (S)
 Type: public, but discretion to hold privately, s. 82 (S)
3. Power to: Determine own procedure: s. 67 on Governor-in-Council approval (S)
 Receive any evidence: para. 65(2) (c) (S)
 Summon witnesses and documents: } subs. 65(2) (S) as if superior
 Administer oaths/affirmations: } court of record
 Adjourn: ss. 28-30 (SOR.1)
4. Information: Confidentiality maintained: yes
 How maintained: private hearing
 Extra-curial info. used: yes (political condition of refugees)
 Disclosed to parties: yes
 Excluded on the basis of: irrelevancy, untranslated documents, subs. 6(2) (SOR.1)
5. Notice of: Hearing: s. 24 (SOR.1)
 Case to be met or issues: generally no
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: s. 31 (SOR.1)
 Representation by counsel or agent
 for party: subs. 31(1) (SOR.1)
 for witness: yes
 Presentation of evidence and argument: subs. 31(2) (SOR.1)
 Objection to: Evidence: yes
 Extra-curial information: yes
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: s.39 (SOR.1)
8. Reasons: Written: yes
Sent to parties: on request, subs.65(3) (S) and
s.40 (SOR.1) as am. by (SOR.2)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
Initiatory document: yes
Pleadings or correspondence: yes
Notice of hearing and other notices: yes
Motions: yes
Evidence: yes
Objections to evidence: yes
Decision: yes
Reasons: yes
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Name of Tribunal: Merchant Seamen Compensation Board
 Established by: "S": Merchant Seamen Compensation Act, R.S.C.1970, c. M-11,
subs. 3(1).
 Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s. 14 (S)
 Obligated to hold: yes, if insist
 Type: private, owing to intimate personal information
3. Power to: Determine own procedure: s. 47 (S)
 Receive any evidence: yes
 Summon witnesses and documents: } s. 16 (S) as if civil
 Administer oaths/affirmations: } court of record
 Adjourn: yes
4. Information: Confidentiality maintained: yes
 How maintained: private hearing
 Extra-curial info. used: generally no
 Disclosed to parties: not applicable
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
 Case to be met or issues: no, already aware of issues
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: not arise
 Rebuttal of adverse evidence: no
 Cross-examination: no
 Appearance throughout hearing: yes

7. Decision: Written: yes
 Only by tribunal members at hearing: generally yes
 Evidence used in decision: yes
 Extra-curial information used in decision: generally no
 Sent to parties: yes
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } minutes only
 Objections to evidence: }
 Decision: yes
 Reasons: yes
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Name of Tribunal: National Energy Board

Established by: "S": National Energy Board Act, R.S.C. 1970, c.N-6, subs. 3(1)
as am. by S.C. 1973-74, c. 52, s. 36.1

Regulations (C.R.C.): "C": c. 1057; "SOR.1": -; "SOR.2": -.

1. Court of Record: subs. 10(1) (S)

Official Seal: subs. 10(1) (S)

2. Hearing: Power to hold: subss. 14(2), 20(1), 20(3) (S)

Obliged to hold: ss. 47, 84 (S)

Type: public, subss. 20(1), (3) (S)

3. Power to: Determine own procedure: para. 7(b) (S)

Receive any evidence: ss. 44, 83 (S); ss. 21-23 (C)

Summon witnesses and documents: } subs. 10(3) (S) as if
 Administer oaths/affirmations: } superior court of record
 s. 21 (C)

Adjourn: ss. 14, 16, 20 (C)

4. Information: Confidentiality maintained: yes

How maintained: deletion of information

Extra-curial info. used: yes (expertise, staff reports)

Disclosed to parties: generally no

Excluded on the basis of: irrelevancy

5. Notice of: Hearing: subs. 10(2) (C)

Case to be met or issues: yes

6. Party conduct permitted in hearing:

Opportunity to appear/to be heard: s. 45, subss. 47(2), 84(2) (S)

Representation by counsel or agent

for party: para. 4(2)(c) (C)

for witness: yes

Presentation of evidence and argument: yes

Objection to: Evidence: yes

Extra-curial information: no

Rebuttal of adverse evidence: yes

Cross-examination: yes

Appearance throughout hearing: yes

7. Decision: Written: subs.19(4) (S)
 Only by tribunal members at hearing: yes, despite s.14 (S)
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: subs.3(5) (S)
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

1. Other amendments relevant to the provisions examined are :

R.S.C.1970(1st Supp.), c. 27, ss. 2, 8, 13, 21, 28, 29;
 R.S.C.1970(2nd Supp.), c. 10, s. 65.

National Farm Products Marketing Council

Name of Tribunal: (Hearing to establish an agency)

Established by: "S": Farm Products Marketing Agencies Act, S.C.1970-71-72,
c. 65, subs. 3(1).

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: subs. 8(1) (S)
Obligated to hold: yes
Type: public, subs.8(1) (S)
3. Power to: Determine own procedure: s. 10 (S)
Receive any evidence: s. 4 Inquiries Act by subs. 8(5) (S)
Summon witnesses and documents: } s.4 Inquiries Act by subs.
Administer oaths/affirmations: } 8(5) (S) as if civil
court of record
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: private session within hearing
Extra-curial info. used: yes (desirability of agency in a
Disclosed to parties: generally yes
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: s. 9 (S)
Case to be met or issues: yes
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: yes
Representation by counsel or agent
for party: yes
for witness: yes
Presentation of evidence and argument: yes
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: no
Cross-examination: no
Appearance throughout hearing: yes, generally

7. Decision: Written: yes, report form sent to Minister
 Only by tribunal members at hearing: no
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: no
8. Reasons: Written: yes
 Sent to parties: no
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes
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National Farm Products Marketing Council

Name of Tribunal: .(Hearing on complaints about an agency)

Established by: "S": Farm Products Marketing Agencies Act, S.C.1970-71-72,
c.65, subs. 3(1).

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
- Official Seal: no
2. Hearing: Power to hold: subs. 8(2) (S)
- Obliged to hold: no, para. 7(f) (S)
- Type: public, subs.8(3) (S)
3. Power to: Determine own procedure: s. 10 (S)
- Receive any evidence: s. 4 Inquiries Act by subs. 8(5) (S)
- Summon witnesses and documents: } ss.4, 5 Inquiries Act by
- Administer oaths/affirmations: } subs.8(5) (S) as if civil court of record.
- Adjourn: yes
4. Information: Confidentiality maintained: yes
- How maintained: private hearing
- Extra-curial info. used: yes
- Disclosed to parties: generally yes
- Excluded on the basis of: irrelevancy
5. Notice of; Hearing: s. 9 (S)
- Case to be met or issues: yes
6. Party conduct permitted in hearing:
- Opportunity to appear/to be heard: yes
- Representation by counsel or agent
- for party: yes
- for witness: yes
- Presentation of evidence and argument: yes
- Objection to: Evidence: yes
- Extra-curial information: yes
- Rebuttal of adverse evidence: yes
- Cross-examination: yes
- Appearance throughout hearing: generally yes

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: yes
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
Initiatory document: yes
Pleadings or correspondence: yes
Notice of hearing and other notices: yes
Motions: yes
Evidence: yes
Objections to evidence: yes
Decision: yes
Reasons: yes
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Name of Tribunal: National Parole Board

Established by: "S": Parole Act, R.S.C. 1970, c. P-2, subs. 3(1) as am. by S.C. 1976-77, c. 53, subs. 18(1).

Regulations (C.R.C.): "C": _____; "SOR.1": 78-428; "SOR.2": 78-1528.

1. Court of Record: no
 Official Seal: subs.3(8) (S)
2. Hearing: Power to hold: s.8 (S)
 Obliged to hold: subs.15(1) (SOR.1) if eligible for parole
 Type: private, owing to intimate personal information
3. Power to: Determine own procedure: subs.3(6) (S) on Governor-in-Council approval
 Receive any evidence: yes
 Summon witnesses and documents: no
 Administer oaths/affirmations: no
 Adjourn: yes
4. Information: Confidentiality maintained: yes
 How maintained: private hearing, restrict to oral disclosure
 Extra-curial info. used: yes
 Disclosed to parties: yes, but maybe orally
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subs.17(1) (SOR.1)
 Case to be met or issues: subs.17(1) (SOR.1)
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: no witnesses
 Presentation of evidence and argument: only to substantiate statements in application
 Objection to: Evidence: yes
 Extra-curial information: yes
 Rebuttal of adverse evidence: yes
 Cross-examination: no
 Appearance throughout hearing: not necessarily

7. Decision: Written: oral or written, subs.8(2) (S), s.19 (SOR.1)
 Only by tribunal members at hearing: no, s.23 (SOR.1)
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: s.19 (SOR.1)
8. Reasons: Written: only if unfavourable to inmate
 Sent to parties: s.19 (SOR.1)
9. Disqualification of member for bias or other cause: *yes*
10. Record or file of proceedings:
- | | | |
|--------------------------------------|-----|----------------|
| Initiatory document: | yes | |
| Pleadings or correspondence: | yes | |
| Notice of hearing and other notices: | yes | |
| Motions: | } | member's notes |
| Evidence: | | |
| Objections to evidence: | | |
| Decision: | yes | |
| Reasons: | yes | |
-

Name of Tribunal: Northwest Territories Water Board

Established by: "S": Northern Inland Waters Act, R.S.C. 1970 (1st Supp.), c.28
as am., subs. 7(1).

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: subss.15(1), (2) (S)
Obligated to hold: subss.15(1), (2) (S)
Type: public, subss.15(1), (2) (S)
3. Power to: Determine own procedure: para.18(b) (S)
Receive any evidence: s.4 Inquiries Act by s.16 (S)
Summon witnesses and documents: } ss.4, 5 Inquiries Act by
Administer oaths/affirmations: } s.16 (S) as if civil
court of record
Adjourn: subs.15(3) (S)
4. Information: Confidentiality maintained: yes
How maintained: still developing
Extra-curial info. used: yes (expertise)
Disclosed to parties: yes
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: s.17 (S)
Case to be met or issues: yes, in Gazette
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: yes
Representation by counsel or agent
for party: yes
for witness: yes
Presentation of evidence and argument: yes
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written: yes, by issuing licence or statement of refusal
 Only by tribunal members at hearing: no subs.21(3) (S)
- Evidence used in decision: yes
- Extra-curial information used in decision: yes
- Sent to parties: yes
8. Reasons: Written: yes, if refusal of or conditions placed on licence
 Sent to parties: yes, if any
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
- Initiatory document: yes
- Pleadings or correspondence: yes
- Notice of hearing and other notices: yes
- Motions: yes
- Evidence: yes
- Objections to evidence: yes
- Decision: yes
- Reasons: yes

-
1. An amendment relevant to the provisions examined is contained in
 R.S.C.1970(2nd Supp.), c. 10, s.65.

Name of Tribunal: Patent Appeal Board

Established by: "S": Patent Act, R.S.C.1970, c. P-4, s. 4.

Regulations (C.R.C.): "C": _____; "SOR.1": ____-____; "SOR.2": ____-____.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: yes
 Obligated to hold: yes
 Type: private, owing to intimate personal knowledge of patent
3. Power to: Determine own procedure: yes
 Receive any evidence: s. 7 Inquiries Act by subs.. 4(2) (S)
 Summon witnesses and documents: s.8 Inquiries Act by subs.4(2) (S)
 Administer oaths/affirmations: s.7
 Adjourn: yes
4. Information: Confidentiality maintained: yes
 How maintained: private hearing
 Extra-curial info. used: yes (expertise)
 Disclosed to parties: discretion of chairman
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
 Case to be met or issues: no, already aware of issues
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: discretion of chairman
 Rebuttal of adverse evidence: yes
 Cross-examination: no
 Appearance throughout hearing: yes

7. Decision: Written: yes, recommendation to Commissioner
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes, on advice of Commissioner
8. Reasons: Written: yes
 Sent to parties: yes, when decision sent
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
- | | | |
|--------------------------------------|---|----------------------------------|
| Initiatory document: | } | yes, until decision rendered |
| Pleadings or correspondence: | | |
| Notice of hearing and other notices: | | |
| Motions: | } | yes, until appeal period expired |
| Evidence: | | |
| Objections to evidence: | | |
| Decision: | | yes |
| Reasons: | | yes |
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Pension Appeals Board

Name of Tribunal: (Hearing on contributions and coverage)Established by: "S": Canada Pension Plan Act, R.S.C. 1970, c. C-5, subs. 85(1)
as am. by S.C. 1976-77, c. 36, s. 17.1Regulations (C.R.C.): "C": c. 389; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: s.29 (S); s.4 (C)
Obligated to hold: s.4 (C)
Type: public
3. Power to: Determine own procedure: s.21 (C)
Receive any evidence: yes
Summon witnesses and documents: s.17 (C)
Administer oaths/affirmations: s.17 (C)
Adjourn: subs.15(3) (C)
4. Information: Confidentiality maintained: no
How maintained: not applicable
Extra-curial info. used: yes (precedents, judicial notice)
Disclosed to parties: no
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subs.15(2) (C)
Case to be met or issues: no, already aware of issues
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: yes
Representation by counsel or agent
for party: subss.25(2), (3) (C)
for witness: yes
Presentation of evidence and argument: s.19, subs.25(2) (C)
Objection to: Evidence: yes
Extra-curial information: no
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written: subs.20(1) (C)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: subs.20(1) (C)
8. Reasons: Written: subs.20(1) (C)
 Sent to parties: subs.20(1) (C)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: no
 Evidence: no
 Objections to evidence: no
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

S.C.1974-75-76, c. 4, ss. 18, 41, 42;
 S.C.1976-77, c. 36, ss. 16, 17.

Pension Appeals Board

Name of Tribunal: (Hearing on entitlement to benefits)

Established by: "S": Canada Pension Plan Act, R.S.C. 1970, c.C-5, subs. 85(1) as am. by S.C. 1976-77, c. 36, s. 17.

Regulations (C.R.C.): "C": c. 390 ; "SOR.1": - ; "SOR.2": - .

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s.85 (S); s.18 (C)
 Obligated to hold: no, need leave
 Type: public, s.18 (C)
3. Power to: Determine own procedure: yes
 Receive any evidence: yes
 Summon witnesses and documents: subs.16(1) (C)
 Administer oaths/affirmations: subs.16(1) (C)
 Adjourn: subs.12(14) (C)
4. Information: Confidentiality maintained: no
 How maintained: not applicable
 Extra-curial info. used: yes (precedents, judicial notice)
 Disclosed to parties: no
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subs.12(3) (C)
 Case to be met or issues: no, already aware of issues
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: no
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: subs.23(1) (C)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: subs.23(1) (C)
8. Reasons: Written: subs.23(1) (C)
 Sent to parties: subs.23(1) (C)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: no
 Evidence: no
 Objections to evidence: no
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

S.C.1974-75-76, c. 4, ss. 18, 41, 42;
 S.C.1976-77, c. 36, ss. 16, 17.

Name of Tribunal: Pension Review Board

Established by: "S": Pension Act, R.S.C. 1970, c.P-7, s. 75 as replaced by
S.C. 1976-77, c. 13, subs. 1(1).¹

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: ss.76-80 (S)
Obligated to hold: yes
Type: public
3. Power to: Determine own procedure: yes, on Governor-in-Council approval
Receive any evidence: only written evidence, subs.80(3) s.84 (S)
Summon witnesses and documents: } ss.4,5 Inquiries Act by
Administer oaths/affirmations: } subs.82(1) (S)
Adjourn: yes
4. Information: Confidentiality maintained: yes (medical reports)
How maintained: deletion of information
Extra-curial info: used: yes (medical reports)
Disclosed to parties: discretion of chairman
Excluded on the basis of: irrelevancy, subs.80(3) (S)
5. Notice of: Hearing: yes
Case to be met or issues: yes, in the form of Statement of Case from Entitlement Board
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subs.80(2) (S)
Representation by counsel or agent
for party: s.60 (S)
for witness: no witnesses
Presentation of evidence and argument: { argument and only new
Objection to: Evidence: not arise { documentary evidence
subss.80(2), (3) (S)
Extra-curial information: not arise
Rebuttal of adverse evidence: no
Cross-examination: no
Appearance throughout hearing: yes

7. Decision: Written: ss.63,79 (S)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: s.79 (S)
8. Reasons: Written: yes
 Sent to parties: yes, unless psychiatric case when send to party's lawyer
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } by tape-recording
 Objections to evidence: }
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

R.S.C. 1970(2nd Supp.), c. 22, s. 28;
 S.C.1976-77, c. 13, s.1 and c. 28, s.34.

Name of Tribunal: Pilotage Authorities

Established by: "S": Pilotage Act, S.C.1970-71-72, c. 52, subs. 3(1).

Regulations (C.R.C.): "C": c. 1263; "SOR.1": -; "SOR.2": -.

1. Court of Record:

no

Official Seal:

no

2. Hearing: Power to hold:

subss. 18(1), (2) (S)

Obliged to hold: subss. 18(1), (2), if request (S)

Type: option of party for public or private, subs. 18(3) (S)

subs. 18(1) (C)

3. Power to: Determine own procedure: subs. 24(2) (C)

Receive any evidence: s. 4 Inquiries Act by subs. 18(4) (S)

Summon witnesses and documents: } ss. 4, 5 Inquiries Act by

Administer oaths/affirmations: } subs. 18(4) (S) as if
civil court of record

Adjourn: s. 25 (C)

4. Information: Confidentiality maintained:

yes

How maintained:

private hearing

Extra-curial info. used:

yes (expertise)

Disclosed to parties: discretion of chairman

Excluded on the basis of:

irrelevancy

5. Notice of: Hearing:

subs. 19(1) (C)

Case to be met or issues:

subs. 17(1) (C)

6. Party conduct permitted in hearing:

Opportunity to appear/to be heard:

s. 18 (S)

Representation by counsel or agent

for party:

yes

for witness:

yes

Presentation of evidence and argument:

subs. 24(1) (C)

Objection to: Evidence:

yes

Extra-curial information:

discretion of chairman

Rebuttal of adverse evidence:

yes

Cross-examination:

yes

Appearance throughout hearing:

yes

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: s.26 (C)
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
- | | |
|--------------------------------------|---------------------|
| Initiatory document: | yes |
| Pleadings or correspondence: | yes |
| Notice of hearing and other notices: | yes |
| Motions: | } by tape-recording |
| Evidence: | |
| Objections to evidence: | |
| Decision: | yes |
| Reasons: | yes |
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Public Service Commission
Name of Tribunal: (Special Inquiry into wrongdoing)

Established by: "S": Public Service Employment Act, R.S.C. 1970, c. P-32,
subs. 3(1).

Regulations (C.R.C.): "C": _____; "SOR.1": ____-____; "SOR.2": ____-____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: yes
Obliged to hold: yes, if prima facie case of fraud
Type: public, but discretion to hold privately
3. Power to: Determine own procedure: yes
Receive any evidence: s.7 Inquiries Act by subs. 7(2) (S)
Summon witnesses and documents: } ss. 7, 8 Inquiries Act by
Administer oaths/affirmations: } subs. 7(2), s. 40 (S)
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: private hearing
Extra-curial info. used: yes (precedents)
Disclosed to parties: discretion of chairman
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
Case to be met or issues: yes
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: yes
Representation by counsel or agent
for party: yes
for witness: yes
Presentation of evidence and argument: yes
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written: yes
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
- | | | |
|--------------------------------------|-----|------------------|
| Initiatory document: | yes | |
| Pleadings or correspondence: | yes | |
| Notice of hearing and other notices: | yes | |
| Motions: | | } member's notes |
| Evidence: | | |
| Objections to evidence: | | |
| Decision: | yes | |
| Reasons: | yes | |
-

Name of Tribunal: Public Service Commission Appeal Boards

Established by: "S": Public Service Employment Act, R.S.C. 1970, c.P-32, subs. 3(1).

Regulations (C.R.C.): "C": c. 1337; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s. 21, subs. 31(3) (S)
 Obligated to hold: s. 21, subs. 31(1) (S)
 Type: public, but discretion to hold privately
3. Power to: Determine own procedure: yes
 Receive any evidence: yes
 Summon witnesses and documents: no, but desirable
 Administer oaths/affirmations: no, but desirable
 Adjourn: yes
4. Information: Confidentiality maintained: yes
 How maintained: private hearing
 Extra-curial info. used: yes (precedents, expertise)
 Disclosed to parties: no
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: s. 46 (C)
 Case to be met or issues: no
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: s. 21, subs. 31(1) (S)
 Representation by counsel or agent
 for party: s. 21, subs. 31(1) (S)
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: yes
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: s.48 (C)

Only by tribunal members at hearing: yes

Evidence used in decision: yes

Extra-curial information used in decision: yes

Sent to parties: s.48 (C)

8. Reasons: Written: yes

Sent to parties: yes

9. Disqualification of member for bias or other cause: yes

10. Record or file of proceedings:

Initiatory document: yes

Pleadings or correspondence: yes

Notice of hearing and other notices: yes

Motions:

Evidence:

Objections to evidence:

Decision:

Reasons:

} by tape-recording

yes

yes

Name of Tribunal: Public Service Staff Relations Board

Established by: "S": Public Service Staff Relations Act, R.S.C.1970, c.P-35
as am. by S.C.1974-75, c.67, s.11.¹

Regulations (C.R.C.): "C": c.1353; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s.22 (S)
 Obligated to hold: yes
 Type: public
3. Power to: Determine own procedure: para.19(1)(g), (S); s.13 (C)
 Receive any evidence: para.22(c) (S)
 Summon witnesses and documents: } para. 22(a), (b) (S)
 Administer oaths/affirmations: } as if superior court
 of record
 Adjourn: subs.8(1) (C)
4. Information: Confidentiality maintained: no
 How maintained: not applicable
 Extra-curial info. used: yes (precedents, expertise)
 Disclosed to parties: yes
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
 Case to be met or issues: yes
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: generally yes
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

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- S.C.1973-74, c. 15, s. 2;
S.C.1974-75-76, c. 67, ss. 2, 9, 10.

Name of Tribunal: Restrictive Trade Practices Commission
(Hearing on business practices)

Established by: "S": Combines Investigation Act, R.S.C. 1970, c.C-23 as am.,
subs.16(1).

Regulations (C.R.C.): "C": c.416; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: s.18 (S)
Obliged to hold: yes, if statement of allegations filed
Type: private, owing to intimate financial information, but
discretion to hold publicly subs.27(1) (S)
3. Power to: Determine own procedure: subs.16(9) (S)
Receive any evidence: s.4 Inquiries Act by s.21 (S)
Summon witnesses and documents: } para.12(2)(a), subs.17(1) (S)
Administer oaths/affirmations: } as if superior court of
record
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: exclude all persons but
parties' counsel from hearing
Extra-curial info. used: yes (precedents)
Disclosed to parties: yes
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
Case to be met or issues: yes (Statement of Evidence)
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subs.18(2) (S)
Representation by counsel or agent
for party: subs.18(2), 20(1) (S)
for witness: yes
Presentation of evidence and argument: subs.18(2) (S)
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: yes
Cross-examination: yes
Appearance throughout hearing: yes

7. Decision: Written: yes, report to Minister
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: Minister is bound to publish decision
 unless Commission says otherwise
8. Reasons: Written: yes
 Sent to parties: yes, when decision published
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
- | | |
|--------------------------------------|-----|
| Initiatory document: | yes |
| Pleadings or correspondence: | yes |
| Notice of hearing and other notices: | yes |
| Motions: | yes |
| Evidence: | yes |
| Objections to evidence: | yes |
| Decision: | yes |
| Reasons: | yes |

1. Amendments relevant to the provisions examined are:

R.S.C.1970(1st Supp.), c. 10, s. 34;
 S.C.1974-75-76, c. 76, ss. 5, 6, 9, 12;
 S.C.1976-77, c. 28, s. 9.

Name of Tribunal: Restrictive Trade Practices Commission
(Hearing on methods to increase competition).

Established by: "S": Combines Investigation Act, R.S.C. 1970, c. C-23 as am.,
subs. 16(1).

Regulations (C.R.C.): "C": c. 416; "SOR.1": -; "SOR.2": -.

1. Court of Record: subs. 31.8(1) (S)
Official Seal: no
2. Hearing: Power to hold: yes
Obligated to hold: yes, but only Director has standing
Type: public, but discretion to hold privately, subs. 27(2) (S)
3. Power to: Determine own procedure: subs. 16(9) (S); s. 26 (C)
Receive any evidence: s. 4 Inquiries Act by s. 21 (S)
Summon witnesses and documents: } para. 12(2)(a), subs. 17(1) (S)
Administer oaths/affirmations: } as if superior court of record
Adjourn: ss. 9, 19 (C)
4. Information: Confidentiality maintained: yes
How maintained: exclude all but parties' counsel from hearing
Extra-curial info. used: yes (precedents)
Disclosed to parties: yes
Excluded on the basis of: irrelevancy, judicial rules
5. Notice of: Hearing: subs. 11(2) (C)
Case to be met or issues: yes
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subs. 31.8(3) (S)
Representation by counsel or agent
for party: ss. 4, 6 (C)
for witness: yes
Presentation of evidence and argument: subs. 31.8(3) (S)
Objection to: Evidence: yes s. 20 (C)
Extra-curial information: yes
Rebuttal of adverse evidence: subs. 31.8(3) (S)
Cross-examination: subs. 31.8(3) (S)
Appearance throughout hearing: yes, unless confidential information

7. Decision: Written: yes
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: s.15 (C)
8. Reasons: Written: yes
 Sent to parties: s.15 (C)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

1. Amendments relevant to the provisions examined are:

R.S.C.1970(1st Supp.), c. 10, s. 34;
 S.C.1974-75-76, c. 76, ss. 5, 6, 9, 12;
 S.C.1976-77, c. 28, s. 9.

Restrictive Trade Practices Commission

Name of Tribunal: (Hearing into corporate wrongdoing)"CCA": Canada Corporations Act, R.S.C. 1970, c.C-32 as am.¹Established by: "S": Combines Investigation Act, R.S.C. 1970, c.C-23 as am., subs. 16(1).

Regulations (C.R.C.): "C": _____; "SOR.1": ____-____; "SOR.2": ____-____.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: subss. 114(2) (CCA)
Obligated to hold: subs. 114(24) (CCA) if Inspector recommends hearing
Type: public, but discretion to hold privately, subs. 114(11) (CCA)
3. Power to: Determine own procedure: yes
Receive any evidence: subs. 114(31) (CCA)
Summon witnesses and documents: } subs. 114(10) (CCA) as if
Administer oaths/affirmations: } superior court of record
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: exclude all but parties' counsel from hearing
Extra-curial info. used: yes (precedents) (staff reports)
Disclosed to parties: yes
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subss. 114(1), (4) (CCA)
Case to be met or issues: yes
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: subss. 114(4), (13), (29) (CCA)
Representation by counsel or agent
for party: subs. 114(4) (CCA)
for witness: subss. 114(13), (28) (CCA)
Presentation of evidence and argument: s. 114 (CCA)
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: subs. 114(4) (CCA)
Cross-examination: subs. 114(4) (CCA)
Appearance throughout hearing: yes, unless confidential information

7. Decision: Written: subs.114(26) (CCA)

Only by tribunal members at hearing: yes

Evidence used in decision: yes

Extra-curial information used in decision: yes

Sent to parties: yes

8. Reasons: Written: yes

Sent to parties: yes

9. Disqualification of member for bias or other cause: yes

10. Record or file of proceedings:

Initiatory document: yes

Pleadings or correspondence: yes

Notice of hearing and other notices: yes

Motions: yes

Evidence: yes

Objections to evidence: yes

Decision: yes

Reasons: yes

1. The amendment relevant to the provisions examined is:

R.S.C.1970(1st Supp.), c. 10, s. 12.

Established by: "S": Tariff Board Act, R.S.C. 1970, c.T-1 as am.¹, subs. 3(1).

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|---|--|
| 1. Court of Record: | subs.5(6) (S) |
| Official Seal: | subs.5(6) (S) |
| 2. Hearing: Power to hold: | yes |
| Obligated to hold: | yes |
| Type: | public |
| 3. Power to: Determine own procedure: | subs.5(12) (S) |
| Receive any evidence: | subs.5(2), (9) (S) |
| Summon witnesses and documents: | } subss.5(1), (5), (8) (S)
as if civil court of
record |
| Administer oaths/affirmations: | |
| Adjourn: | |
| 4. Information: Confidentiality maintained: | subs.5(10) (S) |
| How maintained: | prohibit disclosure to
competitor |
| Extra-curial info. used: | yes (expertise) |
| Disclosed to parties: | probably yes, not arisen often |
| Excluded on the basis of: | irrelevancy |
| 5. Notice of: Hearing: | yes |
| Case to be met or issues: | yes, very simple |
| 6. Party conduct permitted in hearing: | |
| Opportunity to appear/to be heard: | yes |
| Representation by counsel or agent | |
| for party: | yes |
| for witness: | yes |
| Presentation of evidence and argument: | yes |
| Objection to: Evidence: | yes |
| Extra-curial information: | no |
| Rebuttal of adverse evidence: | yes |
| Cross-examination: | yes |
| Appearance throughout hearing: | yes |

7. Decision: Written: yes
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: yes
8. Reasons: Written: yes
Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
Initiatory document: yes
Pleadings or correspondence: yes
Notice of hearing and other notices: yes
Motions: yes
Evidence: yes
Objections to evidence: yes
Decision: yes
Reasons: yes

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1. The amendment relevant to the provisions examined is:
S.C.1976-77, c. 28, s. 43.

Name of Tribunal: Tariff Board (Hearing on a reference)

Established by: "S": Tariff Board Act, R.S.C. 1970, c. T-1 as am¹, subs. 3(1).

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: subs.5(6) (S)
 Official Seal: subs.5(6) (S)
2. Hearing: Power to hold: yes
 Obliged to hold: yes
 Type: public
3. Power to: Determine own procedure: subs.5(12) (S)
 Receive any evidence: subss.5(2), (9) (S)
 Summon witnesses and documents: } subss.5(1), (5), (8) (S)
 Administer oaths/affirmations: } as if civil court of record
 Adjourn: yes
4. Information: Confidentiality maintained: subs.5(10) (S)
 How maintained: prohibit disclosure to competitor
 Extra-curial info. used: yes (expertise, staff reports)
 Disclosed to parties: yes
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: yes
 Case to be met or issues: yes, simple
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: no
 Extra-curial information: no
 Rebuttal of adverse evidence: yes
 Cross-examination: no, Board only
 Appearance throughout hearing: yes

7. Decision: Written: yes, recommendation to Minister
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: discretion of Minister
8. Reasons: Written: yes
 Sent to parties: discretion of Minister
9. Disqualification of member for bias or other cause: yes.
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

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1. The amendment relevant to the provisions examined is:
 S.C.1976-77, c. 28, s. 43.

Name of Tribunal: Tax Review Board

Established by: "S": Tax Review Board Act, S.C. 1970-71-72, c. 11 as am¹, subs. 3(1).

Regulations (C.R.C.): "C": c. 1513; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: subs. 8(1) (S)
2. Hearing: Power to hold: subs. 8(2) (S)
 Obligated to hold: yes
 Type: public, but discretion to hold privately, subs. 10(2) (S)
3. Power to: Determine own procedure: subss. 11(1), (2) (S) on Governor-in-Council approval
 Receive any evidence: subs. 9(2) (S)
 Summon witnesses and documents: } subs. 8(2) (S) as if
 Administer oaths/affirmations: } superior court of record
 Adjourn: subs. 5(1) (C)
4. Information: Confidentiality maintained: yes
 How maintained: private hearing
 Extra-curial info. used: yes (precedents, judicial notice)
 Disclosed to parties: probably yes
 Excluded on the basis of: irrelevancy, judicial rules
5. Notice of: Hearing: ss. 4, 10 (C)
 Case to be met or issues: yes, through pleadings
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: s. 7, subs. 10(1) (S)
 Representation by counsel or agent
 for party: subs. 10(1) (S)
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: probably yes
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: subs.87(4) Income Tax Act as am.
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes
8. Reasons: Written: oral or written subs.10(3) (S)
 Sent to parties: not necessarily subs.10(3) (S)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

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1. The amendment relevant to the provisions drafted is:
 S.C.1977-78, c. 22, s. 23.

Name of Tribunal: Textile and Clothing Board

Established by: "S": Textile and Clothing Board Act, S.C. 1970-71-72, c. 39, s. 3

Regulations (C.R.C.): "C": _____; "SOR.1": _____; "SOR.2": _____.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s.13 (S)
 Obligated to hold: yes, if request
 Type: public, but discretion to hold privately, s.13 (S)
3. Power to: Determine own procedure: s.22 (S)
 Receive any evidence: subs.12(1), (S)
 Summon witnesses and documents: } ss.4,5 Inquiries Act by
 Administer oaths/affirmations: } s.11 as if civil court of
 record
 Adjourn: yes
4. Information: Confidentiality maintained: s.23 (S)
 How maintained: prohibit disclosure to
 business competitor
 Extra-curial info. used: para.18(a) (S) (regional needs)
 Disclosed to parties: discretion of chairman
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: s.10 (S)
 Case to be met or issues: yes
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: no
 Extra-curial information: no
 Rebuttal of adverse evidence: yes
 Cross-examination: no
 Appearance throughout hearing: yes

7. Decision: Written: yes, recommendation to Minister
Only by tribunal members at hearing: yes
Evidence used in decision: yes
Extra-curial information used in decision: yes
Sent to parties: no but published by Minister
8. Reasons: Written: yes
Sent to parties: no, but published by Minister
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
- | | |
|--------------------------------------|-----|
| Initiatory document: | yes |
| Pleadings or correspondence: | yes |
| Notice of hearing and other notices: | yes |
| Motions: | yes |
| Evidence: | yes |
| Objections to evidence: | yes |
| Decision: | yes |
| Reasons: | yes |
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Name of Tribunal: Unemployment Insurance Commission Board of Referees

Established by: "S": Unemployment Insurance Act, 1971, S.C. 1970-71-72,
c.48 as am. 1, subs. 91(1).

Regulations (C.R.C.): "C": c.1576; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s.94 (S); s.64 (C)
 Obligated to hold: s.94 (S); subs.64(4) (C)
 Type: private, owing to intimate personal information,
 but discretion to hold publicly
3. Power to: Determine own procedure: subs.64(6) (C)
 Receive any evidence: yes
 Summon witnesses and documents: no
 Administer oaths/affirmations: no
 Adjourn: yes
4. Information: Confidentiality maintained: s.114 (S)
 How maintained: private hearing
 Extra-curial info. used: yes (expertise)
 Disclosed to parties: discretion of chairman
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subs.64(5) (C)
 Case to be met or issues: yes (Submission to Board of
 Referees by U.I.C. Officer)
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: subs.66(1) (C)
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: subs.66(1) (C)
 Objection to: Evidence: generally yes
 Extra-curial information: rarely
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: subs. 94(2) (S)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: subs. 66(4) (C)
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: subs. 62(4) (C)
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } no, since placed
 Objections to evidence: } into decision
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

S.C.1976-77, c. 54, ss. 54, 60.1.

Name of Tribunal: Unemployment Insurance Commission Umpire
(Hearing on entitlement to benefits)

Established by: "S": Unemployment Insurance Act, 1971, S.C. 1970-71-72, c. 48
as am., subs. 92(1).

Regulations (C.R.C.): "C": c. 1576; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: s.95 (S); subs. 69(1), (2) & (C)
 Obligated to hold: subs. 69(1) (C)
 Type: public, but discretion to hold privately
3. Power to: Determine own procedure: subs. 69(7) (C)
 Receive any evidence: subs. 93(1) (S)
 Summon witnesses and documents: no, but desirable
 Administer oaths/affirmations: no, but desirable
 Adjourn: yes
4. Information: Confidentiality maintained: yes
 How maintained: deletion, private hearing
 Extra-curial info. used: yes (precedents, judicial notice)
 Disclosed to parties: discretion of umpire but not yet arisen
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: subs. 69(6) (C)
 Case to be met or issues: yes
6. Party conduct permitted in hearing:
 - Opportunity to appear/to be heard: yes
 - Representation by counsel or agent
 - for party: yes
 - for witness: yes
 - Presentation of evidence and argument: yes
 - Objection to: Evidence: yes
 - Extra-curial information: not arisen
 - Rebuttal of adverse evidence: yes
 - Cross-examination: yes
 - Appearance throughout hearing: yes

7. Decision: Written: subs. 70(1) (C)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: subs. 70(1) (C)
8. Reasons: Written: yes
 Sent to parties: yes
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions:
 Evidence:
 Objections to evidence:
 Decision: yes
 Reasons: yes
- } Umpire's notes only

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1. The amendments relevant to the provisions examined are:
 S.C.1976-77, c. 54, ss. 55, 56.

Name of Tribunal: Unemployment Insurance Commission Umpire
(Hearing on coverage matters)
 Established by: "S": Unemployment Insurance Act, 1971, S.C. 1970-71-72,
c.48 as am. 1, subs. 92(1).
 Regulations (C.R.C.): "C": c.1574; "SOR.1": 81-166; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: ss.75,84 (S); s.12 (C)
 Obligated to hold: s.12 (C) but can consent to decision without hearing (SOR.1)
 Type: public, s.20 (C).
3. Power to: Determine own procedure: yes
 Receive any evidence: subs.93(1) (S)
 Summon witnesses and documents: subs.22(1) (C)
 Administer oaths/affirmations: subs.22(1) (C)
 Adjourn: s.19 (C)
4. Information: Confidentiality maintained: s.114 (S)
 How maintained: deletion, private hearing
 Extra-curial info. used: yes (judicial notice)
 Disclosed to parties: discretion of umpire but not yet arisen
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: s.18 (C)
 Case to be met or issues: no, already aware of issues
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: yes
 Representation by counsel or agent
 for party: yes
 as witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: not arisen
 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: subs.24(1) - (C)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: subs.84(2) (S); subs.24(2) (C)
8. Reasons: Written: yes
 Sent to parties: subs.84(2) (S); subs.24(1) (C)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

1. The amendments relevant to the provisions examined are:

S.C.1974-75-76, c. 80, s. 27;
 S.C.1976-77, c. 54, ss. 55, 60.1.

Name of Tribunal: War Veterans Allowance Board

Established by: "S": War Veterans Allowance Act, R.S.C. 1970, c.W-5, subs.25(1).

Regulations (C.R.C.): "C": c. 1602; "SOR.1": -; "SOR.2": -.

1. Court of Record: no
Official Seal: no
2. Hearing: Power to hold: ss. 26, 29 (S)
Obliged to hold: yes, if insist
Type: private, owing to intimate personal information
3. Power to: Determine own procedure: yes
Receive any evidence: s. 7 Inquiries Act by s. 26 (S)
Summon witnesses and documents: } ss. 7, 8 Inquiries Act
Administer oaths/affirmations: } by s. 26 (S)
Adjourn: yes
4. Information: Confidentiality maintained: yes
How maintained: private hearing
Extra-curial info. used: yes (medical reports)
Disclosed to parties: discretion of chairman
Excluded on the basis of: irrelevancy
5. Notice of: Hearing: generally yes
Case to be met or issues: no, already aware of issues
6. Party conduct permitted in hearing:
Opportunity to appear/to be heard: yes
Representation by counsel or agent
for party: yes
for witness: not arisen, no witnesses
Presentation of evidence and argument: yes
Objection to: Evidence: yes
Extra-curial information: yes
Rebuttal of adverse evidence: no
Cross-examination: no
Appearance throughout hearing: yes

7. Decision: Written: subs.18(3),s.19 (C)
 Only by tribunal members at hearing: yes
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: subs.18(3),s.19 (C)
8. Reasons: Written: subs.18(3),s.19 (C)
 Sent to parties: subs.18(3),s.19 (C)
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: }
 Evidence: } by tape-recording
 Objections to evidence: }
 Decision: yes
 Reasons: yes
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Name of Tribunal: Yukon Territory Water Board

Established by: "S": Northern Inland Waters Act, R.S.C. 1970 (1st Supp.),
c.28 as am., subs.7(1).

Regulations (C.R.C.): "C": _____; "SOR.1": 79 - 838; "SOR.2": -.

1. Court of Record: no
 Official Seal: no
2. Hearing: Power to hold: subss.15(1), (2) (S)
 Obligated to hold: subss.15(1), (2) (S)
 Type: public
3. Power to: Determine own procedure: para.18(b) (S)
 Receive any evidence: s.4 Inquiries Act by s.16 (S)
 Summon witnesses and documents: } ss.4,5 Inquiries Act by
 Administer oaths/affirmations: } s.16 (S) as if civil court of
 Adjourn: } record; s.23(SOR.1)
 subs.15(3) (S)
4. Information: Confidentiality maintained: s.11 (SOR.1)
 How maintained: adjudication, labelling

 Extra-curial info. used: yes (expertise)
 Disclosed to parties: discretion of chairman
 Excluded on the basis of: irrelevancy
5. Notice of: Hearing: s.17 (S); ss.3,4 (SOR.1)
 Case to be met or issues: ss.5,18 (SOR.1)
6. Party conduct permitted in hearing:
 Opportunity to appear/to be heard: s.7 (SOR.1)
 Representation by counsel or agent
 for party: yes
 for witness: yes
 Presentation of evidence and argument: yes
 Objection to: Evidence: yes
 Extra-curial information: yes

 Rebuttal of adverse evidence: yes
 Cross-examination: yes
 Appearance throughout hearing: yes

7. Decision: Written: yes, in form of licence or statement of refusal
 Only by tribunal members at hearing: no subs.21(3) (S)
 Evidence used in decision: yes
 Extra-curial information used in decision: yes
 Sent to parties: yes
8. Reasons: Written: yes, if refusal of or conditions on licence
 Sent to parties: yes, if rendered
9. Disqualification of member for bias or other cause: yes
10. Record or file of proceedings:
 Initiatory document: yes
 Pleadings or correspondence: yes
 Notice of hearing and other notices: yes
 Motions: yes
 Evidence: yes
 Objections to evidence: yes
 Decision: yes
 Reasons: yes

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1. The amendment relevant to the provisions examined is:
 R.S.C.1970(2nd Supp.), c. 10, s.65.

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