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FINAL REPORT

REFORM OF

THE ADMINISTRATIVE JUSTICE SYSTEM

IN NOVA SCOTIA

Law Reform Commission of Nova Scotia

January 1997

The Law Reform Commission of Nova Scotia was established in 1991 by the Government of Nova Scotia under an *Act to Establish an Independent Law Reform Commission.*

The Commissioners are:

William Charles, Q.C., Co-President
Dawn Russell, Co-President
Theresa Forgeron
Jennifer Foster
Justice David MacAdam
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Law Reform Commission of Nova Scotia

TO: The Honourable J. Abbass
Minister of Justice

In accordance with section 12(3) of the *Law Reform Commission Act*, we are pleased to present the Commission's Final Report *Recommendations for Reform of the Administrative Justice System in Nova Scotia*.

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Theresa Forgeron, Commissioner

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“E” List of suggestions in Discussion Paper 1996.

REFORM OF
THE ADMINISTRATIVE JUSTICE SYSTEM
IN NOVA SCOTIA

SUMMARY

In 1991, a Task Force reviewing the structure of courts as part of the system of delivery of justice in Nova Scotia found that:

> *Little is written about Nova Scotia's administrative tribunals. We were unable to find anyone who knows exactly how many there are...There are no uniform powers and practices for administrative tribunals or minimum protection for parties except as are provided by the common law. The members of these agencies are often part-time, untrained and unfamiliar with the practices required by administrative law. Few of them have access to independent legal counsel. Few tribunals publish rules of practice. The Task Force was told that decisions of some tribunals are difficult to find. Certainly there is no central repository for rules, decisions and other directives issued by agencies... [There is also] the lack of a standard procedure for judicial review of tribunal decisions...[and a] lack of uniform procedural standards by which administrative tribunals conduct themselves.*

In response to these concerns, the Minister of Justice requested (by a formal letter of Reference) that the Law Reform Commission of Nova Scotia undertake a project to:

> ".... consider the state of administrative law in the Province and in particular, to develop draft legislation that:
>
> (a) standardizes the powers and procedures of administrative tribunals;
> (b) guarantees parties appearing before the tribunals basic procedural rights and safeguards;
> (c) simplifies administrative law, particularly with regard to judicial review and appeal; and
> (d) ensures the requisite degree of independence when a tribunal is required to act in a judicial fashion."

The Commission carried out research on all of these issues and in 1996 published a *Discussion Paper* called, *Agencies, Boards and Commissions: The Administrative Justice System in Nova Scotia* which sets out the Commission's preliminary suggestions for reform. The Commission received a number of comments from members of the public responding to its suggestions. Its *Final Report* is based on these suggestions which have been revised in light of these public comments and further research.

A number of key concerns emerged from both the Commission's research and the public comments including the following:

- It is clear that there is concern about the fact that the administrative justice system is difficult for people to understand and there is a concern about the lack of public faith in the system.

- At the same time there is concern that altering existing structures and standardizing procedures in the name of "legal rights" may cause more problems and delays and not necessarily achieve better results. In addition, there is concern that creating new rules simply involves more cost, particularly where existing procedures may meet the concerns that new rules would be addressing.

- Many people feel that if you have "good appointments and good people" you will get good results. There are a variety of ways people feel that you can have "good appointments", including a transparent or open appointment process where people are appointed on the basis of qualifications which are related to publicly stated criteria. However, there will always be some difference of opinion as to the criteria for who is a "good appointment" and whether "political" or patronage appointments are always wrong or are a matter for the democratic process. The fact that the appointees are often either volunteers or sectoral nominees or, in many cases, simply a government staff person carrying out another role adds another layer to the problem.

- There is concern that many appointees to agencies, boards and commissions ("ABCs"), particularly those that carry out hearings and manage public resources, are not given training to help them carry out their responsibilities. One way to ensure better decisionmaking is to provide some training and information to help these people make better decisions and to fulfill their responsibilities.

- In connection with consolidation and simplification of the appeal processes, there is a concern that the expertise and flexibility that many feel exists in their current structures should not be lost in any changes. There is a need to consider whether creating a new "super" board will in fact reduce costs and improve efficiency or whether it will simply create more delay in the system before people can go to court to obtain "administrative justice".

- There is a concern that the legal rules governing judicial review in Nova Scotia are not written in a way which can be easily understood by anyone including those with legal training.

The main recommendation of the Commission in this *Report* is that the Government adopt the draft *Administrative Justice Act* which it has developed. The *Act* sets a "floor" of minimum procedural requirements and powers for administrative tribunals but allows for adjustments by the agency or the legislature, when appropriate, so as to better achieve government's objectives in creating the agency. The *Act* requires that administrative tribunals develop procedures and rules consistent with the minimum procedures in the *Act* which must be communicated to the people involved in a hearing. This will ensure that the administrative tribunal develops rules which address these issues and it will also help ensure that people are informed about the process

they will encounter. It will still allow each agency flexibility to make the process as formal or informal as deemed appropriate, subject to natural justice requirements.

The Commission's *Report* emphasizes the point that passing a law will not assist greatly if people do not have the training to implement it, in fact and in spirit. Therefore, and perhaps more importantly, the Commission is recommending that appointees to agencies, boards and commissions, particularly those which function as administrative tribunals, receive basic training from the Government in proper hearing procedures, and other procedural training. This need not be a large expenditure but it should be delivered several times a year, over the course of one or two days, throughout the province. The training should be a mandatory requirement or basic qualification for people, including supporting staff**,** carrying out public functions. Ideally, training in governance and accountability will also be required for people appointed to all ABCs including advisory boards and those responsible for managing public resources.

The Commission notes in this *Report* that a lack of information about the administrative system gives rise to a public perception of unfairness or arbitrariness in the process, and also causes frustration on the part of the community members being asked to make these decisions. In addition, the process can have delays and be costly if incorrect or unfair decisions are made and have to be corrected either in the courts or through an appeal process to another agency or to a Minister.

Where there is little or no guidance as to what procedures a board or decisionmaker should use in making the decision, or what factors can properly be considered in making the decision, it can create uneasiness on the part of the public and on the part of the people being asked to exercise this authority. The problem is made worse when the public also has concerns about the qualifications of the individuals who are making the decisions or are not sure as to whether their case will be considered fairly by that individual or the agency.

The Commission believes that improving the administrative justice process through education and training will be one of the best ways to provide for better decisionmaking. The objective of this training is to provide for fair, impartial and efficient procedures. This should in turn reduce recourse to the courts and reduce the need for appeal agencies to rectify problems within the process which could have been avoided. The Commission's emphasis in its recommendations is to seek to prevent problems arising in the administrative justice system rather than to focus on more procedures to remedy a lack of natural justice.

The other central recommendation of the Commission is that the Government, in making decisions as to how to achieve objectives, should develop a more planned approach to the creation and design of all agencies. This means that the framework and mandate for each agency, including the appointment process and appointment criteria, should be tailored to achieve the particular purpose for which it is being created irrespective of whether the purpose is advisory, adjudicative or regulatory.

For example, the Commission recommends that administrative tribunals should be designed to ensure that the agency and its appointees are:

- Impartial
- Accessible
- Expert
- Efficient
- Accountable

The purpose of the administrative justice system should be to achieve decisionmaking that is fair, consistent, and which ensures that the policy objectives for creating that particular agency are achieved. These characteristics will create an environment in which the principles of natural justice can operate. In fact, many of these characteristics are integral to natural justice or fairness.

Where agencies are providing advisory opinions or are not acting as administrative tribunals but may be making decisions which affect members of the public, the Commission suggests that the design of the agencies and their relationship to Government and the public should, to the degree necessary to fully achieve their purpose, ensure independence, accessibility, representativeness, efficiency and accountability.

The Commission's recommendations in this *Final Report* include the following:

- There should be reform of the administrative justice system in Nova Scotia to ensure that it is impartial, accessible, expert, efficient and accountable.

- The structure of agencies should be carefully designed to support the purpose for which the agency is created.

- The appointment process for agencies must also be designed to ensure that the purpose for which the agency is created is achieved and that there is public confidence in the agency. The appointment process should be "transparent", in that the criteria or qualifications for an appointment should be consistent with the purpose of the agency and should be publicly available. The process for identifying and selecting people for appointments should be equally transparent.

- Any reforms must include education of the public and members of the public acting as decisionmakers and must take into account the need to provide easy access to information about administrative procedures.

- When the Government adopts the draft *Administrative Justice Act* it should also provide basic training for all ABC appointees and staff supporting ABCs. This should be a minimum requirement for all appointees. Training should be provided several times a year throughout the province.

- The training should ensure that there is a minimum level of information about the role and responsibilities involved in being appointed to an ABC. Where the ABC is a tribunal, or has as part of its function administrative tribunal work, then appointees should be given additional training to assist them to develop and interpret the requirements of natural justice, fairness, human rights law and modern caseflow management practices.

- The Government should adopt the draft *Administrative Justice Act*, which sets out a number of minimum procedures and standard powers that will apply to proceedings before administrative tribunals.

- Administrative tribunals must be required to develop rules of procedure for making decisions affecting rights and entitlements. These rules must be communicated to parties coming before them.

- The rules and practices of administrative tribunals must reflect as much as possible the requirements set out in the draft *Administrative Justice Act* for improving accessibility and achieving fairness.

- All final decisions of administrative tribunals in Nova Scotia should be filed in one central office, public registry or library so they are easily accessible to the public.

- An administrative tribunal should be able to control its own procedures, subject to the natural justice rights of people appearing before it, its statutory mandate, and the supervisory power of the courts through judicial review.

- There should be minimum standard powers provided in the draft *Administrative Justice Act* for all administrative tribunals which can be adjusted by the Government in creating an ABC.

- The law relating to judicial review should remain the common law as stated in the Civil Procedure Rules, however, the Civil Procedure Rules should be reviewed by the Judges of the Supreme Court to make the language more accessible to individuals who may wish to decide if they have recourse under the Civil Procedure Rules. In reviewing the Civil Procedure Rules, consideration should be given to the relationship between a caseflow management approach and the current ability of judges to alter time limits for all remedies except *certiorari*.

- The Minister of Justice should, as an aspect of the Government's current Access to Justice Initiative, obtain a cost/benefit assessment of three issues:

    * The direct and indirect cost of <u>eliminating</u> a number of statutory appeals to courts and administrative tribunals combined with mandatory training for first level decisionmakers;

* The direct and indirect cost of having more statutory appeals to the courts including assessing the options for expanding court resources and decreasing the formality of the court process (similar to the Small Claims Court); and

* The direct and indirect costs of creating a new Administrative Appeal Board as a final decisionmaker to carry out all administrative appeals after first level hearings.

- The Government should request that the office of the Legislative Counsel develop a standardized protocol or practice for all statutes involving administrative appeals in terms of appeal periods, the basis of appeals and to whom the appeal should be directed.

- In terms of ensuring independence, the Commission specifically recommends that:

  * The appointment process for administrative tribunals should ensure that appointments and the appointment process reflect the requirement for impartiality;

  * Appointees and staff including government staff working with the agency or administrative tribunal must be trained to ensure an understanding of the meaning of conflict of interest and procedures must be developed for ensuring that this is respected. Where administrative tribunal members are not appointed by the Government there should be an attempt to ensure that persons coming before a tribunal are confident that it has an open and impartial mind with respect to the issue it is to consider;

  * In cases where the institutional arrangement *vis-a-vis* the Government may suggest that otherwise independent decisionmakers are not able to act independently, then there should be a clear provision to meet this concern if the agency is expected to be acting independently of Government or of a particular interest. This might include stated terms of appointment and secondment of staff whose primary obligation is to the agency in question;

  * Where an individual's liabilities, rights or entitlements are affected, then impartiality on the part of the decisionmaker should be paramount; and

  * Access to information and fairness in decisionmaking, particularly where the same agency might carry out several roles including investigation, must be respected and are critical components of a credible administrative justice system.

REFORME DU REGIME DE DROIT ADMINISTRATIF
EN NOUVELLE-ECOSSE

SOMMAIRE*

En 1991, un groupe spécial d'étude chargé d'examiner l'organisation des tribunaux dans le cadre de la mise en oeuvre du système judiciaire en Nouvelle-Ecosse conclut que:

> *Le sujet des tribunaux administratifs en Nouvelle-Ecosse a fait l'objet de peu de commentaires écrits. Nous avons été incapables de trouver quelqu'un qui savait exactement combien il y en avait...Sous réserve de ce qui existe dans le droit coutumier et jurisprudentiel (Common Law) aucun ensemble de pouvoirs et pratiques des tribunaux administratifs ou de règles de protection minimale des parties n'a été élaboré. Les membres de ces bureaux n'y travaillent souvent qu'à temps partiel, ne possèdent aucune formation et connaissance des pratiques relatives au droit administratif. Très peu d'entre eux ont accès à un conseiller juridique indépendant. Peu de ces tribunaux publient leurs règles de pratique. Le groupe spécial d'étude fut informé que les décisions de certains de ces tribunaux étaient difficiles à trouver. Il ne fait aucun doute qu'il n'existe aucun registre central des règles, décisions et autres ordonnances délivrées par ces tribunaux...[On note aussi une absence de procédure uniforme en ce qui concerne la révision judiciaire des décisions de ces tribunaux...[de même] qu'une absence de normes de procédure concernant la réglementation interne de ces tribunaux.*

Afin de trouver des solutions à ces problèmes, le Ministre de la Justice a demandé (par demande officielle de Renvoi) que la Commission de réforme du droit de la Nouvelle-Ecosse entreprenne un projet visant à:

"...étudier l'état du régime de droit administratif dans la Province et en particulier, à élaborer un projet de loi visant à:

(a) uniformiser les pouvoirs des tribunaux administratifs et la procédure devant ces tribunaux;
(b) garantir aux parties comparaissant devant les tribunaux administratifs des droits de protection au niveau de la procédure;
(c) simplifier le droit administratif, particulièrement en ce qui concerne le droit d'appel et de révision judiciaire; et

***** Traduit de l'anglais par Me Nathalie Bernard, LL.B. (Université Laval), LL.B. (Dalhousie University), LL.M. (Dalhousie University).

(d) assurer un niveau d'indépendance approprié lorsqu'un tribunal est appelé à exercer sa compétence judiciaire."

La Commission mena des recherches sur tous ces points et en 1996, publia un *Document de réflexion* intitulé *Bureaux, Comités et Commissions: Le régime de droit administratif en Nouvelle-Ecosse*, lequel contient les suggestions de réforme préliminaires de la Commission. La Commission reçut un certain nombre de commentaires de la part de membres du public en réponse à ses suggestions. Le *Rapport Final* de la Commission est basé sur ces suggestions, revues à la lumière des commentaires des membres du public, et sur des recherches additionnelles.

Un nombre de problèmes principaux ont été identifiés grâce aux recherches de la Commission et aux commentaires des membres du public, notamment:

- Il appert évident que le système de justice administrative n'est que difficilement compris par la population et que le public a peu confiance en ce système.

- Malgré cela, certains pensent que l'altération des structures existantes et la normalisation des procédures au nom des "droits juridiques" risquent de causer plus de problèmes et de délais sans nécessairement en arriver à de meilleurs résultats. De plus, l'élaboration de nouvelles règles implique des coûts additionnels, particulièrement lorsque la procédure existante couvre déjà des aspects qui seraient traités par ces nouvelles règles.

- Plusieurs personnes pensent que "si les bonnes nominations sont données aux bonnes personnes, les résultats seront bons". Les gens pensent qu'il y a plusieurs façons de faire de bonnes nominations, notamment grâce à une procédure de nomination ouverte et transparente où les personnes nommées le sont en raison de compétences entrant dans le cadre de critères connus publiquement. Néanmoins, il existera tigers une controverse en ce qui concerne les critères déterminant les "bonnes nominations" et relativement à la question de savoir si les "nominations politiques" sont tigers mauvaises ou font partie du processus démocratique. Un autre aspect de la question consiste en ce que les personnes nommées sont souvent des bénévoles, des personnes spécialisées dans un domaine particulier ou simplement des fonctionnaires remplissant un autre rôle.

- Un autre point réside dans le fait que plusieurs personnes nommées à ces bureaux, comités et commissions ("BCC"), particulièrement celles qui tiennent des audiences et gèrent des ressources publiques n'ont pas reçu de formation afin de les aider à remplir leurs fonctions. Une façon d'assurer la prise de bonnes décisions serait de fournir à ces personnes de l'information et des cours de formations afin de les aider à remplir leurs fonctions et prendre de bonnes décisions.

- En ce qui concerne la consolidation et la simplification du processus d'appel, certains s'inquiètent du fait qu'avec ces changements, les compétences et la flexibilité existant dans l'organisation actuelle, pourraient être perdues. Avant de décider, il faut se demander si la création d'un "tribunal d'appel unique" contribuera en réalité à réduire les coûts et

augmenter le taux d'efficacité ou plutôt si cela créera des délais supplémentaires retardant l'exercice par la population de leur droit d'être entendu devant un tribunal administratif.

- Il semble aussi que les règles concernant la revision judiciaire en Nouvelle-Ecosse ne sont pas rédigées de façon à pouvoir être facilement comprises par le public, incluant les personnes ayant une formation juridique.

Les recommandations principales de la Commission présentées dans le présent *Rapport* sont l'adoption du projet de *Loi sur les tribunaux administratifs* qu'elle a élaboré. Cette loi prévoit un "plancher" de règles de procédure et de pouvoirs minimum relatifs aux tribunaux administratifs mais prévoit des ajustements par le bureau ou par le législateur, dans les cas appropriés, afin de mieux rencontrer les objectifs fixés par le gouvernement lors de la création du bureau. Cette *loi* oblige les tribunaux administratifs à élaborer des règles et procédures respectant les règles de procédure minimales stipulées dans ladite *loi* et à en informer les parties impliquées dans une audience devant eux. Ceci vise à assurer que le tribunal administratif en question élabore des règles traitant de ces questions et que les personnes concernées soient informées du processus auquel elles doivent faire face. Sous réserve des règles de justice naturelle, cela permettra à chaque bureau de préserver la possibilité de rendre le processus aussi formel ou informel que nécessaire.

Le *Rapport* de la Commission s'attarde sur le fait qu'adopter une loi ne règlera en rien la situation si les personnes concernées ne possèdent pas la formation nécessaire pour mettre en oeuvre cette loi, dans son esprit et dans son application. Par conséquent, la Commission recommande que les personnes nommées pour oeuvrer au sein des ces bureaux, comités et commissions, particulièrement ceux tenant lieu de tribunal administratif, recoivent une formation de base de la part du gouvernement dans le domaine des règles de procédure relatives aux audiences et autres règles de procédure. Cette proposition n'implique pas nécessairement des dépenses importantes; il s'agit simplement de tenir des séances de formation quelques fois par années, durant une journée ou deux, à la grandeur de la province. Cette formation ou ces compétences de base devraient être obligatoires pour toutes les personnes remplissant des fonctions publiques, incluant le personnel de soutien. Idéalement, la formation en matière de responsabilité et de gestion devrait être requise de la part de toutes les personnes nommées à un bureau, comité ou commission, incluant les conseils consultatifs et ceux chargés de gérer les ressources publiques.

La Commission mentionne dans le présent *Rapport* que l'absence d'information concernant le régime administratif est à l'origine de la perception du public à l'effet que le processus est arbitraire et inéquitable. Cela crée aussi des frustrations chez les membres de la communauté appelés à prendre ces décisions. De plus, le processus risque de souffrir de délais et de coûts additionnels si des décisions erronées ou injustes sont prises auxquelles on doit remédier par une intervention devant les tribunaux ou par une procédure d'appel devant un autre bureau ou devant un Ministre.

Cette absence ou quasi-absence de directives quant à la procédure à suivre par les comités ou les personnes devant prendre des décisions ou quant aux critères à prendre en considération au cours du processus décisionnel, créée une situation de trouble chez le public et les personnes appelées à exercer cette autorité. La situation s'envenime lorsque le public n'est pas rassuré quant aux compétences des personnes prenant ces décisions ou lorsqu'il n'est pas convaincu que la personne ou le bureau chargé du dossier sera impartial.

La Commission est d'avis que l'amélioration du régime de justice administrative par le biais de la formation et de l'éducation constitue la meilleure façon de garantir un processus décisionnel adéquat. Le but de cette formation devrait résulter en des règles de procédure justes, équitables et efficaces. Ceci aura pour conséquence de réduire les recours aux tribunaux et aux bureaux d'appels afin de rectifier des problèmes de procédure qui auraient pu être évités. L'approche adoptée par la Commission dans ses recommandations vise à prévenir les problèmes pouvant exister dans le régime de justice administrative plutôt que de créer des règles de procédure dans le but de remédier à une absence de justice naturelle.

L'autre recommandation principale de la Commission est à l'effet que le Gouvernement, lorsqu'il prend des décisions quant à l'atteinte d'objectifs, élabore une approche bien pensée relativement à la conception et à la création de tous les bureaux. Ceci signifie que le cadre d'intervention et le mandat de chaque bureau, incluant le processus de nomination et les critères de nomination, doivent être conçus dans le but d'atteindre l'objectif particulier pour lequel il a été crée, indépendamment de son caractère consultatif, réglementaire ou judiciaire.

Par exemple, la Commission recommande que les tribunaux administratifs soient conçus de façon à assurer que le bureau et les personnes qui y ont été nommées soient:

- impartiales
- accessibles\franches
- compétentes
- efficaces
- responsables

Le but du régime de justice administrative devrait être de rendre le processus décisionnel juste, logique et capable d'atteindre les objectifs de politiques à l'origine de la création de tel ou tel bureau. Ces caractéristiques créeront un cadre dans lequel les principes de la justice naturelle pourront opérer. En fait, plusieurs de ces caractéristiques forment une partie intégrante de la justice naturelle.

Dans le cas des bureaux qui remplissent un rôle consultatif ou qui n'agissent pas à titre de tribunal administratif mais prennent des décisions pouvant affecter des membres du public, la Commission suggère que la conception de ces bureaux et leurs relations avec le gouvernement et le public garantissent, jusqu'au niveau requis pour remplir pleinement leur rôle, l'indépendance, l'accessibilité, la représentation des divers groupes, l'efficacité et la responsabilité.

La Commission recommande, notamment, dans ce *Rapport Final* que:

- La réforme du régime de justice administrative en Nouvelle-Ecosse, prenne place afin que cette justice soit indépendante, accessible, compétente, efficace et responsable.

- L'organisation des bureaux soit conçue avec soin afin de soustendre la raison pour laquelle le bureau a été crée.

- Le processus de nomination soit aussi conçu afin d'assurer que l'objectif pour lequel le bureau a été crée soit atteint et que le public ait confiance en ce bureau. Le processus de nomination doit être "transparent", en ce sens que les critères ou compétences requis pour être nommé doivent être en harmonie avec le but du bureau et doivent être rendus public. Le processus d'identification et de sélection des personnes en vue de nomination doit aussi être transparent.

- Toute réforme inclue l'éducation du public et des membres du public ayant un pouvoir décisionnel et prenne en considération la nécessité de rendre l'information relative aux procédures administratives facilement accessible.

- Lorsque le Gouvernement adoptera le projet de *Loi sur les tribunaux administratifs*, qu'il fournisse aussi une formation de base aux personnes nommées à des bureaux, comités et commissions de même que leur personnel de soutien. Il devrait s'agir d'une exigence minimale pour toutes les personnes nommées. Cette formation devrait être dispensée plusieurs fois par an à la grandeur de la province.

- La formation contienne un minimum d'information concernant le rôle et les responsabilité incombant aux personnes nommées à des bureaux, comités et commissions. Dans le cas où le bureau, comité ou commission constitue un tribunal ou remplit des fonctions de la nature d'un tribunal administratif, les personnes nommées devraient recevoir une formation additionnelle afin de les aider à développer et interpréter les exigences de la justice naturelle, l'équité, les droits fondamentaux et les pratiques modernes de gestion des dossiers.

- Le Gouvernement adopte le projet de *Loi sur les tribunaux administratifs* lequel stipule un nombre de pouvoirs et de règles de procédure minimum applicables aux causes devant les tribunaux administratifs.

- Les tribunaux administratifs soient obligés d'élaborer des règles de procédure relatives à la prise de décisions affectant les droits et les privilèges. Ces règles de procédure doivent être communiquées aux parties se présentant devant eux.
- Les règles et pratiques des tribunaux administratifs reflètent le mieux possible les exigences stipulées dans le projet de Loi sur les tribunaux administratifs visant à améliorer l'accessibilité et à atteindre un haut niveau d'équité.

- Toutes les décisions des tribunaux administratifs de la Nouvelle-Ecosse soient enregistrées dans un bureau central, un registre public ou une bibliothèque afin d'être accessibles pour le public.

- Un tribunal administratif soit capable de gérer ses propres règles de procédure, sous réserve des droits découlant de la justice naturelle des personnes se présentant devant lui, son mandat légal et le pouvoir de contrôle des tribunaux par le biais de la revision judiciaire.

- Le projet de *Loi sur les tribunaux administratifs* prévoit des normes minimales pour tous les tribunaux administratifs, lesquelles pourraient être ajustées par le Gouvernement lors de la création d'un bureau, comité ou commission.

- Le droit relatif à la revision judiciaire demeure le droit coutumier et jurisprudentiel (Common Law) tel que codifié dans les *Règles de procédure civile* (*Civil Procedure Rules*) mais que ces *Règles* soient revisées par les juges de la Cour Suprême afin d'en rendre la formulation plus accessible aux personnes désirant savoir si elles possèdent un recours en vertu de ces *Règles*. Au cours de la revision de ces *Règles de procédure civile*, une attention particulière devrait être donnée à la relation entre l'approche de gestion des dossiers et la capacité actuelle des juges de modifier les délais pour tous les recours, sauf le recours en certiorari.

- Le Ministre de la Justice, dans le cadre de l'initiative gouvernementale actuelle *d'Accès à la Justice (Access to Justice Initiative*), obtienne une évaluation des coûts et bénéfices reliés à trois questions:

  * Les coûts directs et incidents de l'élimination d'un nombre de recours en appel devant les cours et les tribunaux administratifs prévus par la loi, combinés à la formation obligatoire des personnes ayant un pouvoir décisionnel au bas de la hiérarchie.

  * Les coûts directs et incidents d'avoir plus de recours en appel devant les cours et les alternatives visant l'expansion des ressources des cours et la diminution de l'ensemble des formalités reliées au processus judiciaire (ex: la cour des petites créances); et

  * Les coûts directs et incidents à la création d'un tribunal d'appel administratif agissant comme arbitre final de toutes les causes entendues au premier niveau.

- Le Gouvernement demande au bureau du Conseil Législatif (Legislative Counsel) d'élaborer des normes de pratique applicables à toutes les lois prévoyant des recours en appel de nature administrative en ce qui concerne le délai d'appel, les motifs d'appel et la personne qui entendra l'appel.

- Afin d'assurer spécifiquement le critère de l'indépendance:

* La façon dont les nominations sont faites garantisse que les nominations et le processus de nomination reflètent le souci d'impartialité;

* Les personnes nommées et le personnel, incluant le personne gouvernemental travaillant de concert avec le bureau ou le tribunal administratif, soient formés afin de pouvoir bien comprendre la notion de conflit d'intérêt et que des procédures relatives à la notion de conflit d'intérêt soient élaborées afin de garantir que les règles relatives aux conflits d'intérêt soient respectées. Dans le cas des tribunaux administratifs dont les membres ne sont pas nommés par le Gouvernement, il faudrait s'efforcer de s'assurer que les personnes se présentant devant ces tribunaux soient confiantes que ces tribunaux sont impartiaux et ouverts quant aux points qu'ils devront considérer.

* Dans les cas où la relation avec le Gouvernement suggère que les personnes chargées de prendre des décisions indépendantes ne peuvent agir de façon indépendante, une disposition devrait exister afin de régler ce problème pour permettre au bureau d'agir de manière indépendante du Gouvernement ou d'intérêts particulier. La solution pourrait comprendre une description des conditions de nomination et la présence d'un personnel de soutien devant rendre compte au bureau en question lui-même.

* Dans le cas où les droits, responsabilités et privilèges d'un individu risquent d'être affectés, l'impartialité de la part de la personne détenant le pouvoir décisionnel devient souveraine; et

* L'accès à l'information de même que l'équité en matière de prise de décision, particulièrement lorsque le même bureau remplit plusieurs fonctions dont celle de mener des enquêtes, doivent être respectés et constituent des composantes essentielles à un régime de justice administrative crédible.

I INTRODUCTION

1. The Administrative Justice Project

In its *Discussion Paper*: *Agencies, Boards and Commissions, the Administrative Justice System in Nova Scotia*, the Law Reform Commission noted the increasing interest in the issue of "public governance" and the impact of administrative decisionmaking on our lives. The extent of this on a national level is reflected in the following comment:

> *Every year 200,000 Canadians make decisions that affect every one of us. The role they play has an impact on more than 3,700 health care facilities, nearly 14,000 educational institutions, many thousands of charities and social service providers.*
> *They direct 4,000 cities and towns, and federal and provincial Governments. They affect a multitude of corporations and about 100 professions.*[1]

Organizations created by the Government and known by a variety of names such as agencies, boards, commissions, councils, societies, committees and even corporations (called "ABCs" in this *Report*) make many important decisions every day. These organizations are usually governed by members of the public who are appointed, either on a part-time or a term basis by Government or, in many cases, such as the self-regulating occupations, are nominated, elected or volunteered by the organization or the regulated activity. Some of these people are employed full time but more frequently they are purely voluntary or are paid an honorarium for their time.[2] Their activities can range from providing advice to Government, advocating on behalf of particular issues (for example, Advisory Council on the Status of Women, Disabled Persons Commission) and making decisions about policies, money, rights, property or other interests (for example, Crown (Government) Corporations, health care facility boards). In all of the roles, these organizations, along with the relevant government departments, form what is known as the administrative system. These organizations can profoundly affect the lives of Nova Scotians.[3] This is particularly the case for those ABCs described as "administrative tribunals" - that is, agencies authorized by the Government to make decisions, usually after a hearing in some form, which can affect a person's equality, property and political rights as well as their liberty or their

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[1] P. Trueman, see comments in video script for "*In Search of Effective Governance*" produced by the Canadian Comprehensive Auditing Foundation, 1994.

[2] For example, the Office of the Ombudsman of Nova Scotia is a full-time official (and an agency) appointed by the Government specifically to ensure that Nova Scotians receive fair treatment from their Government and Government agencies. For part-time appointees to ABCs, the amount paid varies from agency to agency, however, amounts such as $50-$150 per board meeting plus any direct expenses incurred are fairly standard in Nova Scotia.

[3] Concerns about the role of ABCs, and their impact on peoples' lives is not new, nor is it confined to Nova Scotia. As noted by one authority over ten years ago: "Reform of administrative procedure has been sought for a long time", R. Dussault & L. Borgeat, *Administrative Law: A Treatise,* vol 1, 2d ed. (Toronto: Carswells, 1985) at 125.

economic and social entitlements.[4] In terms of the number of people affected, the influence of some decisionmakers is far greater than that of the courts, for example, human rights tribunals, labour boards, workers' compensation boards, social benefits boards, and disciplinary or licensing committees for a number of occupations.[5]

In 1991, a Task Force reviewing the structure of courts as part of the system of delivery of justice in Nova Scotia found that:

> *Little is written about Nova Scotia's administrative tribunals. We were unable to find anyone who knows exactly how many there are...*
> *There are no uniform powers and practices for administrative tribunals or minimum protection for parties except as are provided by the common law. The members of these agencies are often part-time, untrained and unfamiliar with the practices required by administrative law. Few of them have access to independent legal counsel. Few tribunals publish rules of practice. The Task Force was told that decisions of some tribunals are difficult to find. Certainly there is no central repository for rules, decisions and other directives issued by agencies ..[There is also] the lack of a standard procedure for judicial review of tribunal decisions...[and a] lack of uniform procedural standards by which administrative tribunals conduct themselves.*[6]

In response to these concerns, the Minister of Justice requested (by a formal letter of Reference) that the Law Reform Commission of Nova Scotia undertake a project to:

> .... consider the state of administrative law in the Province and in particular, to develop draft legislation that:
>
> (a) standardizes the powers and procedures of administrative tribunals;
> (b) guarantees parties appearing before the tribunals basic procedural rights and safeguards;
> (c) simplifies administrative law, particularly with regard to judicial review and appeal; and
> (d) ensures the requisite degree of independence when a tribunal is required to act in a judicial fashion.

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[4] Entitlements can include various kinds of licences or benefits such as workers' compensation benefits or occupational licences.

[5] Ratushny Task Force on Appointments to Federal Administrative Tribunals, *Independence of Administrative Tribunals*, (Canadian Bar Association Meeting, Montreal, August 1988) at 3 (on file).

[6] *Report of the Nova Scotia Court Structure Task Force*, March 1991 at 236, 240-241, 243 and 244.

The Commission carried out research on all of these issues and in 1996 published a *Discussion Paper* called, *Agencies, Boards and Commissions, The Administrative Justice System in Nova Scotia*. The *Discussion Paper* set out the Commission's preliminary views on the need for reform and contained a number of suggestions for reform. Although the *Discussion Paper* did not receive a great deal of media coverage, there was tremendous individual interest. Over 1100 copies were distributed in Nova Scotia and many readers viewed it electronically. In addition, the *Discussion Paper* was reviewed in other provinces and by the Federal Government since many other governments are also in the process of restructuring their administrative systems. The Commission received a number of comments responding to its suggestions. A list of people or organizations that have commented is found at the end of this *Report* in Appendix "A". In addition, the Commission's work on this project benefitted from the advice and comments of a number of people who met as an Advisory Group for this project. They are also identified in Appendix "A" and their time and contributions are gratefully acknowledged.

In 1993, as part of its research for this project, the Commission sent out a comprehensive survey to 382 ABCs then authorized under the laws of Nova Scotia and received 198 responses. The list of agencies that responded is found in Appendix "B" to this *Report*. The survey asked questions relating to the institutional structure of the ABC as well as whether standard procedures would be useful. Aside from information received on the survey, the Commission has also reviewed the appeal and review procedures set out in the Nova Scotia statutes and regulations in 1996. A chart which illustrates the range of procedures currently in place for appealing administrative decisions is set out in Appendix "C" to this *Report*. It should be noted that these are only the procedures found in the consolidated statutes of Nova Scotia (and regulations). There are also a number of agencies and boards created by laws called Local and Private Acts, which are indexed in alphabetical order, but are located throughout the statutes of Nova Scotia since the 1800s. Many of the *Acts* are historical only, in the sense that they reflect the development of the legal system in Nova Scotia. For example, at one time a law had to be passed to incorporate or create a company.[7] Many of these *Acts* are not reproduced in the consolidated or revised statutes of Nova Scotia although they may still be in force. The Commission did not conduct a review of all these laws, but notes that it is quite a difficult process for members of the public to locate information about the agencies and it is difficult to estimate the number of agencies actually operating under the authority of law in Nova Scotia.

The Commission also found that there was a lack of awareness or understanding of the administrative system as part of the justice system itself. This is consistent with the view of the Court Structure Task Force. Although decisions of many administrative boards or decisionmakers can be registered and enforced as an order of the court, the procedures for making decisions and the Government and public expectations of these decisionmakers, are not well known when compared to the court system. Many administrative agencies act in what might be regarded as a judicial role and make decisions affecting the rights or privileges of others. These people often bring a great deal of expertise to this process; however, they may not

[7] For example, the *Truro Golf Club Act* S.N.S. 1906, c.234 still applies today and in October 1996 regulations were adopted by the Government concerning its by-laws: *Truro Golf Club By-laws* N.S. Reg. 159/96.

necessarily be aware of some of the requirements that the law imposes on them regarding fair procedures. Similarly, people appearing before these decisionmakers are also not sure what their rights are or what procedures to expect. Often the decision goes to a court for review where the matter is clarified, but at great expense to all involved. There is a social cost as well, in that people may feel they are not being treated fairly and develop cynicism about these procedures and the people making the decisions. This, in turn, encourages more people to make use of the court system and defeats the purpose of the administrative justice system, which is to provide for fair and rapid decisions without going to the courts. The Commission notes that a similar concern about the court system in Canada has been expressed by the Canadian Bar Association's Civil Justice Task Force. It commented that:

> *Lack of public understanding about the operation of the civil justice system undermines its credibility and public confidence in it. When caused by the nature of the system itself or its procedures and complexities, this lack of understanding is sometimes referred to as a 'lack of transparency'. Inadequate transparency - resulting in limited public understanding - often gives rise to suspicions that something is being hidden or obfuscated. Improved transparency would ensure that citizens understand the rationale for the system and its procedures and would help achieve greater public awareness of the performance standards developed for their benefit.*[8]

A serious question for many people is whether or not it is useful to retain this system at all if it does not provide for fairness. It may, in fact, be costly and add an extra layer of bureaucracy which simply delays the final contact with justice in the courts. At the same time, there is a view that better decisions are made by people with specific expertise in the particular subject matter who simply need some basic training on process and procedures. This is so, particularly where the agencies are essentially self-regulating occupations or industry-based groups (such as marketing boards). There is, however, also a concern that the system not end up "legalized", particularly since decisionmaking through the courts is a resource that is costly and increasingly in demand.

This *Final Report* contains a draft *Administrative Justice Act* setting out minimum procedures and powers for administrative tribunals and reflects the Commission's preliminary suggestions as modified in light of public comment. This *Final Report* also contains the Commission's recommendations on the other questions it was asked to consider by the Minister of Justice as well as some general recommendations on the reform of the administrative justice system. These are also based on the preliminary suggestions set out in the *Discussion Paper*, as amended by the Commission after reviewing public comments and carrying out additional research.

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[8] Task Force Report on Systems of Civil Justice, (The Canadian Bar Association Meeting, August 1996) at 19.

The main recommendations of the Commission in this *Report* are that the Government adopt the draft *Administrative Justice Act* which sets a "floor" of minimum procedural requirements and powers, but allows for adjustments by the agency or the legislature in specific cases when appropriate so as to better achieve the government's objectives in creating the agency. The Commission has also included in this *Act* a specific requirement that agencies develop procedural rules and publish them. The Commission wishes to emphasize, however, that passing a law will not be of much assistance if people do not have the training to implement it, in fact and in spirit. Therefore, and perhaps more importantly, the Commission is recommending that appointees and supporting staff to boards and agencies, particularly those on ABCs which function as administrative tribunals, receive basic training from the Government in proper hearing procedures, and other procedural training. This need not be a large expenditure but it should be delivered several times a year throughout the province. People carrying out public functions should be required to take training in basic procedures for carrying out hearings or for making decisions. Ideally, training in governance and accountability will also be required for people appointed to <u>all</u> ABCs including advisory boards and those responsible for managing public resources.

The Commission believes that improving the administrative justice process through education and training will be one of the best ways to provide for better decisionmaking. The objective of this training is to provide for fair, impartial and efficient procedures. This should, in turn, reduce recourse to the courts and reduce the need for appeal agencies to rectify problems within the process which could have been avoided. The Commission's emphasis in its recommendations is to seek to prevent problems arising in the administrative system rather than to focus on more procedures to remedy a lack of natural justice.

The other central recommendation of the Commission is that the Government, in making decisions as to how to achieve objectives, should develop a more planned approach to the creation and design of all agencies. This means that the framework and mandate for each ABC, including the appointment process and appointment criteria, should be tailored to achieve the particular purpose for which it is being created, irrespective of whether the purpose is advisory, adjudicative or regulatory.

2. Language

This *Final Report* attempts to present legal information as clearly as possible so that people who do not have legal training can understand and provide comments to the Government on the Commission's recommendations. There are still some situations, however, where the language relates to specific legal concepts and the words used will not be familiar to everyone. The following words in this *Final Report* mean:

appeal — this is a process provided for by law which allows a person to obtain a second decision from another agency, a court, an official, or a Minister, if he or she does not agree with

the initial decision of an administrative agency or an official. There is no right of appeal unless provided in the law which authorizes the original administrative decision. The basis on which an appeal can be made is also set out in the legislation. It is important to note that an appeal is not the same thing in law as "judicial review".

certiorari — a Latin word describing a legal process which is used when a court reviews the decision of an administrative decisionmaker to "certify" the record of the decision to ensure there is no error.

common law — this is sometimes called case law. It is the law which is made by judges and is found in cases and decisions rather than laws passed by legislators. Much of administrative law is common law.

intervenor — this is a term used to refer to a person or a group who is not one of the parties to a hearing, but who may be given limited rights to participate because they may be affected by the outcome. For example, often citizens or a group representing a public interest might seek to intervene in a hearing on the basis that the decision might affect a broader community of people whose views should be considered (for example, a decision on increasing utility rates).

judicial review — this is an application (based on the common law) to the courts to review the decision of an administrative decisionmaker to see if it was made within its authority, fairly, and without bias or apparent error on the record. The procedure for obtaining judicial review is found in the Civil Procedure Rules of the Supreme Court of Nova Scotia. Judicial review is not the same process as an appeal allowed by a statute and in many cases a person could make use of both processes in the same case. In some provinces, the common law has been replaced by legislation codifying judicial review.

jurisdiction — this is the term used to describe the range of issues over which a particular decisionmaker or a court has legal authority. For example, a person on a rent review tribunal would not have jurisdiction to decide whether a licence to practice medicine should be suspended.

legislation — another word for written laws made by elected members of the legislature (or Parliament). This is sometimes called statute law.

mandamus — a Latin word describing a court order requiring a person or an agency to carry out a public duty.

parties — this is the phrase used to describe the people or groups directly involved in a legal case or hearing in a case.

prerogative writs — this is the term used to describe an historical form of legal orders used by the courts to regulate the behaviour of other lesser or "inferior" courts. They are still in use today in the process of judicial review of administrative decisionmakers although many of the rules governing when they can be used have been changed to make them more flexible. There were a number of these writs at one time, but the ones which are still primarily used today are *habeas corpus*, *certiorari*, prohibition and *mandamus*. In some provinces, all of these forms of court orders have been replaced by a law giving a statute-based form of judicial review where decisions of administrative agencies can be questioned.

prohibition — a court order used to prohibit a person or agency from carrying out an action on the basis that the proposed action will be beyond its legal authority.

regulations — these are rules authorized by, and made in conjunction with, statute law (legislation). They are usually more detailed than the statute and deal with more specific situations. Regulations are more easily changed than statutes because they do not need to be formally changed by political representatives in the legislature.

standing — this is used to mean the legally recognized right of a person to have a say or present a position in a case. Usually, it means that the person or group has established or has been recognized in the legislation as having a particular interest in the outcome of a proceeding.

statute — another word used to refer to law that is created by political representatives in the legislature. The word legislation is also used to mean this form of written law.

tribunal — this is the word used to refer to the person or agency making a decision or judging a case. It can include a court, although here it is used to refer to administrative decisionmakers such as the Workers' Compensation Board, the Labour Relations Board, the Utility and Review Board or other agencies which might have as one of their functions a "judging" role.

II THE ADMINISTRATIVE JUSTICE SYSTEM IN NOVA SCOTIA

1. *The Administrative System*

It is generally agreed that ABCs were not created as part of a well defined approach to government. They were not part of a grand design, but instead were created in an *ad hoc* way because of a need to respond to specific problems. For example, one of the first modern ABCs was the Board of Railway Commissioners which was created to handle problems associated with the new railway industry.[9] Two world wars, a world-wide depression and several recessions all served to demonstrate the need for the government to control and regulate a wide range of activities. Economic and social pressures, as well as technological change, have resulted in the expansion of government intervention into almost all aspects of life. In Canada, there is also a great deal of government involvement in social and economic life through programmes intended to redress inequalities and to seek to ensure minimum standards of health and social security:

> *As a result, it [the administrative system] plays a predominant role in political, economic and social life, so much so that it constitutes the main reality of State power for the majority of citizens. This shift in the balance of power in favour of the Administration has not occurred without arousing reactions: a new evolution has begun... Critics... [claim] that the very essence of the democratic system is at stake...*[10]

While many would argue that the growth of the administrative system has created a costly and ineffective system, in some cases it has also provided an opportunity for the participation of individuals in developing and implementing government policy in their communities by contributing their expertise, often on a part-time (or for nominal compensation) basis.

A variety of reasons for creating these agencies have been suggested[11], including the following:

- *The time to monitor on a day-by-day or regular basis all of these policies and to implement them at the local level working through a government department. There is a need for some external body to deal with repetitive detail on a case-by-case basis using experts.*

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[9] The evolution of administrative tribunals including a description of the various theories about them is outlined very thoroughly in R.W. Macaulay & J. Sprague, *Practice and Procedure Before Administrative Tribunals,* vol 1 (Toronto: Carswell, 1988) at Chapter 1.

[10] R. Dussault & L. Borgeat, *Administrative Law A Treatise,* vol 1, 2d ed. (Toronto: Carswell, 1985) at 9.

[11] See generally, R.W. Macaulay & J. Sprague, *Practice and Procedure Before Administrative Tribunals,* vol 1 (Toronto: Carswell, 1988) at Chapters 1 and 2.

- *If such external agencies are not created, Ministries or departments would have to grow in size if they are required to monitor and implement a wide range of specific policies at the local level. Larger staff, composed to some extent of experts in various fields, would be needed with the possibility that these experts might be fully employed but only needed part of the time.*

- *Ministries or government departments are unsuitable as a vehicle for public participation or the representation of the views of various interested and affected groups. Public participation, in this sense, is distinguished from organized advocacy as it is currently carried out in connection with senior civil servants or government Ministers.*

- *From the government's point of view, it is easier to overturn, if necessary, the decision of an agency rather than that of a Minister or department without questioning the integrity and wisdom of the department or Minister involved.*

- *There is a perceived need to relieve the courts from having to provide decisions in a substantial number of cases involving similar facts. There is also the need to have decisions made where the deciding tribunal could take broader policy issues and the public's interest into account more than a court could and would do. Also, administrative agencies present a less costly alternative for people with problems that fall within the administrative area.*

- *Technological developments, such as atomic energy, and social problems, such as environmental pollution, require special expertise.*

- *From the government's point of view, there is much to be said for diverting responsibility for the resolution of politically sensitive areas to specialized (discrete) non-partisan government bodies.*

- *There is a perceived need to create bodies that can legislate, administer and adjudicate as well as fashion adequate substantive remedies in the public interest. There is a need for flexibility in the daily administration of government operations - an opportunity to implement creative government strategies through innovation and experimentation, rather than the more cumbersome legislative or judicial process.*

- *It might also be argued that there is a need for the dispersal of power in a system which would otherwise concentrate too much government authority in a limited group of actors. It is possible that this diffusion of power through the use of administrative tribunals,* *__may__* *enhance democratic or participatory values in*

society in a way that has ceased to be possible or feasible in the more traditional representative institutions.[12]

It can be seen that these reasons reflect benefits to both government and the public which may be achieved by an administrative system. At the same time, there may also be costs associated with such a system from both perspectives. From the Government's perspective, some of these costs include:

- Lack of accountability for decisions which may affect public funds and a lack of control when compared to a government department;
- Detrimental effect on morale of departmental employees;
- Need for individual support staff for each agency plus costs of the agency itself.

From the public's perspective some of these costs include:

- The added cost of another layer or arm of government;
- Concern with the quality and qualifications of personnel appointed to the agencies;
- Concern about the degree of independence exercised by the agencies;
- Concern about the lack of uniformity and information regarding procedures employed by these agencies or the lack of rules in individual agencies.

2. The Administrative Justice System

The Government's Reference for this project, which asks the Commission to "consider the state of administrative law in the province", might seem to be a project specifically oriented to a legal audience and of little interest to the general public. As pointed out already, however, it is an area of law reform which touches more people than any other area of law because it deals with the system which governs the relationship between the Government and individuals. Courts are one way to make legal decisions; however, long before cases reach the court system, laws, rules and policies are applied by administrative decisionmakers. In some cases, the administrative decisionmakers are full time government employees. In other cases, they are people appointed for a term by the Government to make these decisions (for example, licensing boards). Finally, in some cases, they are individuals chosen by their colleagues to make some decisions that affect them (for example, in many occupations there are licensing or registration and disciplinary processes involving members of the same occupation).

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[12] D. Mullan, "Administrative Tribunals: Their Evolution in Canada from 1945 to 1986" in I. Bernier & A. LaJoie, eds., *Regulations*, *Crown Corporations and Administrative Tribunals* (Toronto: University of Toronto Press, 1985) at 155. Mullan reviews a number of the major studies of administrative tribunals and the policy issues involved in their creation.

Most individuals have little or no direct contact with the court-related system of justice because contact only occurs when there is a specific conflict or problem (for example, a crime has been committed or a legal conflict arises between two people). Despite the fact that the court system is directly encountered by a relatively small number of people, it is a well developed system with formal practices and procedures which generally apply to all courts. By contrast, the "administrative justice system" also deals with conflicts and problems and a much broader range of legal issues and policies but it has less well-established practices. For example, in the court-related justice system, when a decision is made by community members regarding a crime (the jury), the process for selecting those decisionmakers, while by no means a perfect system,[13] is known to most participants in the process. There are formalized rules protecting the rights of the participants in the case, and the jury is instructed by a judge on the legal information that might properly affect its decision. This contrasts with the administrative justice system which might also involve decisions which fundamentally affect peoples' lives either on an individual basis or as a group (for example, occupational licensing, discipline procedures, access to social assistance or zoning decisions on property). The administrative decisionmakers will often be members of the public, but the process for selecting these decisionmakers as well as their roles, backgrounds, and the rights of all parties within this system, are not well known to most of the participants, including the people making these decisions. This does not mean that there are no rules or established principles governing the administrative justice system, but knowledge about these rules is largely confined to the legal community.

The body of law governing the operation of the administrative system is called "administrative law" which is, for the most part, a series of common law rules and principles developed by the courts. Where administrative tribunals act in a judge-like role and make decisions which directly affect rights and entitlements, as opposed to developing policy or implementing a resource mandate, they can be considered to be part of the administrative justice system. Much like the criminal justice system, it involves an agency created by government or under statute implementing the law in particular cases. Although they are distinguished above from the "court related" system, in fact, they operate under the overall supervision of the Supreme Court through its process of judicial review of decisions to see that they accord with the common law rules of natural justice, constitutional requirements and interpretation of the law creating the agency.

The administrative justice system and the laws governing it sometimes appear complex and even incomprehensible to many people because there are a number of different institutions and participants in the system, sometimes with overlapping or similar concerns. In addition, the system itself, unlike a court, operates to achieve many different goals, aside from simply settling disputes.

Some of the participants in the administrative justice system include:

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[13] See comments in the Law Reform Commission of Nova Scotia's Final Report *Juries in Nova Scotia*, June 1994.

1. The Government, which determines a policy objective to be achieved and makes the law providing authority to an administrative decisionmaker.

2. Government departments, either as the decisionmaker or as the department which provides resources and support services to administrative decisionmakers.

3. Administrative agencies and tribunals, which make decisions or recommendations affecting groups, public resources and individuals.

4. The courts, which have a role in ensuring that the administrative agency is acting within its legal mandate and that the process used by all these participants is fair and meets natural justice requirements.

5. The public, who may be affected individually or collectively by decisions or recommendations.

It is important to understand that while in some cases this system is dealing with complaints between individuals, one of the more important roles of the administrative justice system is to provide a place to review government administrative decisions affecting individuals and the public interest. This also serves to enhance government accountability. A recent Australian Law Reform Commission Paper noted that:

> *Government regulation affects many aspects of modern life. For example, access to natural resources, a person's use of his or her own assets, the provision of benefits and services by Government and the conduct of commercial and corporate activity are all subject to administrative control. Public interest in good administration is concerned with the regular flow of consistent decisions, made and published with reasonable dispatch and in accordance with the law,*
> *as well as in the members of the community knowing where they stand and how they can order their affairs in light of relevant decisions*.[14]

Lack of information about the procedures in the administrative justice system can give rise to a public perception of unfairness or arbitrariness in the process, and frustration on the part of the community members being asked to make these decisions. In addition, the process can have delays and be costly if incorrect or unfair decisions are made and must be corrected either in the courts or through an appeal process to another agency or to a Minister.

At the same time, it is important to understand that the administrative justice system is not, and was never intended to be, the same as the court-related system of justice. In fact, it is often thought of as exactly the opposite in that use of legal rules, formality and even the involvement of lawyers, is often expressly discouraged. In general, the focus has been on making things work

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[14] Australian Law Reform Commission, Report No. 78, *Beyond the Door-Keeper: Standing to Sue for Public Remedies,* (1996) at 21.

efficiently and achieving some policy or programme purpose rather than being a system devoted to dispute resolution. When a problem arises, the concern has been to resolve the particular issue rather than to make a general determination of legal rights. The emphasis has been on individualized decisionmaking by people who have some expertise or knowledge in an area whose decisions may be guided by a range of concerns and are not confined to legal precedents. In general, the concern of individuals is to have their particular situation or experience understood in light of the existing rules. For example, rules governing the availability of social or economic benefits may seem straightforward, but to achieve their purposes, they sometimes require a case-by-case determination since they are designed to apply to a broad range of people.

Equally, there is a concern that decisions should be fair and that they should also be made fairly. While fairness has a particular meaning in law, from the point of view of a member of the public, some elements of fairness might include: the belief that a decision will be made on a matter reasonably quickly; that his or her point of view on an issue will be heard and considered; and that he or she will be treated similarly to another person in a similar situation. From the point of view of Government, the concern is to ensure that the policy purpose of the particular programme or agency is being achieved. For example, the purpose of a marketing board is not developing or allocating quotas as such but rather it is to ensure an efficient, fair and competitive marketing approach for promotion of a product. The Government and the public also need to have some assurance that unfair factors, such as discriminatory attitudes, or economic status or the personal likes and dislikes of the decisionmaker will not determine the outcome and that there are some criteria which can explain the decision that is made.[15]

Where there is little or no guidance as to what procedures a board or decisionmaker should use or what can properly be considered in making the decision, it can create uneasiness on the part of the public and on the part of the people being asked to exercise this authority. The problem is made worse when the public also has concerns about the qualifications of individuals who are making the decisions or are not sure whether their case will be fairly considered by that individual or the agency.

3. *Existing Legal Principles Relating to the Practice of Administrative Law in Nova Scotia*

Although the law and practices governing the administrative justice system are not widely known or easily accessible to people without legal training, there are well established legal concepts and principles which do govern the system. It is not possible in this *Report* to do more than briefly outline some of the main principles that exist and operate, usually through the courts, to regulate the practices of ABCs, particularly when they make decisions affecting the rights or entitlements of individuals.

[15] For a discussion of the issue of discrimination see the articles collected in W. Tarnaplosky, J. Whitman & M. Ouellette, eds., *Discrimination in the Law and the Administration of Justice*, Canadian Institute for the Administration of Justice (Les Editions Thémis: 1993).

Natural justice

The most important concept in administrative law is called "natural justice". In law, the concept of "natural justice" has some specific elements, although it can be understood more generally as fairness. Natural justice is usually concerned with two main issues - fair procedures and bias, both of which reflect the idea that justice must not only be done but must also be seen to be done.

(a) Fair Procedures

There are a number of procedural rights established either by common or judge-made law or by legislation. All of these elements are sometimes described by a Latin phrase *audi alteram partem*, which means, "listen to the other side". These rights generally include: the right to notice when a decision is being made that directly affects a right or entitlement of an individual; the right to have each side of the issue presented to the decisionmaker; the right to know about the information being considered by the decisionmaker and to comment on it; and finally, the right to have the decision made on the information presented and not on some other material. These are general procedural rights which can apply in a variety of circumstances and can take different forms. For example, there may not always be a right to an oral hearing and decisions may be made, as they often are, on the basis of a written record. In those cases, there would be a right to know of the material being considered by the decisionmaker and to have an opportunity to respond but it would not necessarily take the form of questioning and cross-examining witnesses. In other cases, there may be an oral hearing where there is a right to examine and cross-examine witnesses. In general, the courts have found that the greater the effect on a person's rights or the more "court-like" the function of the agency in making a decision, then the greater the procedural requirements.

It is important to realize that an interest in informality does not equate with a loss of procedural protection or rights. Section 7 of the Canadian *Charter of Rights and Freedoms,*[16] enshrines these concepts as constitutional rights in some cases. Section 7 states:

> *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

Although the exact meaning of the "principles of fundamental justice" has been debated, it has been understood by the courts to mean, at a minimum, a duty of fairness in procedures and

[16] Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982, (U.K.), 1982, c.11 [hereinafter the *Charter]*.

decisionmaking where government-authorized actions affect the life, liberty or security of a person.[17]

A Nova Scotia case provides an example of concerns about procedural fairness. In *Walker* v. *Nova Scotia Board of Registration of Embalmers and Funeral Directors*,[18] Mr. Walker, a funeral director, was suspended by the Board for one month because of a public complaint. It appears that Mr. Walker continued to practice while his licence was suspended and he was given a second suspension. Mr. Walker then sought a judicial review (by *certiorari*) of the decision in the Supreme Court of Nova Scotia on the basis that he had been denied "natural justice". In particular, he argued that, contrary to the *Embalmers and Funeral Directors Act*, not all members of the Board were notified of the meeting where he was suspended and, in addition, he was not allowed to speak to the nature of his punishment once the Board had concluded there was misconduct. The trial judge agreed with this concern and also found that the Board's process violated Mr. Walker's rights under s.7 of the *Charter*. The trial Judge's decision was later overturned, on an appeal to the Nova Scotia Court of Appeal but on another basis.

(b) Bias

In law, the issue of bias is concerned with the nature of the person or agency making the decision. A lengthy Latin phrase has been used to describe this concept which is found, for the most part, in common law: *nemo debet esse judex in propria causa,* which means, no one can be a judge in his or her own cause. This usually involves two ideas. First, the "judge" cannot have a material interest in the outcome of the case which might affect the decision. Second, there must not be a reasonable likelihood or apprehension that there may be bias in the decision. "In order for justice to be done, avoidance of actual bias is not sufficient: circumstances must not give rise to a reasonable apprehension of bias."[19] This often arises in the context of the ABCs involvement in the investigation of a complaint or other issues which suggest it could not make a decision with an open mind. It is also a fairly complex issue where people have been appointed to public boards because they represent an interest or bring some specific knowledge or expertise to a situation.

Another case gives a second example of a situation where procedural rights and bias were involved, although there was no right to an oral hearing. It also serves to illustrate the

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[17] A useful review of the debate and case law is found in T. Singleton, "The Principles of Fundamental Justice, Societal Interests and Section 1 of the *Charter*" (1995), 74 *Can. Bar Rev*. 446. Recent case law has expanded the *Charter* to apply to situations where non-governmental organizations are involved. In those cases, the concept of "*Charter* values" has been applied as an approach to evaluating the behaviour of non-governmental organizations: see *Hill v. Church of Scientology of Toronto* (1995), 126 D.L.R. (4th) 129 (S.C.C.).

[18] (1994), 137 N.S.R. (2d) 362 (S.C.) (per Tidman, J). The decision was overturned on appeal: Re *Walker and Board of Registration of Embalmers and Funeral Directors et al*. (1995), 126 D.L.R. (4th) 549 (N.S.C.A.).

[19] D. Ginn, "Recent Developments in Impartiality and Independence", Paper presented at 1996 Conference Administrative Law, Inside, Outside and Around Tribunals: Administrative Law for Today at 1 (Paper on file).

importance of the concept of bias and how that has been interpreted by the courts in a situation where there has been an investigation by the agency making the decision. In *Re Miramichi Agricultural Exhibition Association Ltd. and Lotteries Commission of New Brunswick*,[20] casino and bingo licences were cancelled by the Lotteries Commission because it found that the Agricultural Exhibition Association broke one of the conditions of the casino licence. The Association applied to the court for a review of the decision. The court found that although there was no right to a hearing, the Association did have a right to be informed and to be given an opportunity to defend itself against allegations, and to be assured the decision was taken by proper authorities. In the case, the fact that there had not been a proper process raised an apprehension of bias. The concern with bias arose because the process was secret and had not been discussed with the Association. There was also a concern that the person making the decision may also have been involved in investigating the complaints. The New Brunswick Court of Appeal commented:

> *It is not acceptable that a public authority issuing licences proceed in an arbitrary fashion in this area. The requirements of procedural justice are such that the investigated party must be informed of the allegations against it and given the opportunity to present its case, no matter how tenuous its position is thought to be by the licensing authority. The licensee must also be assured that the decision will be taken by the proper authorities: it is necessary that those responsible for the investigation not be the persons making a final determination on revocation of the licence.*[21]

Judicial review and Statutory appeals

To most people, the terms "review" and "appeal" mean the same thing - someone to reconsider or check to ensure that a decision is correct and has been made properly. In law, however, these are two different concepts, even if both happen to be carried out by a judge of the Supreme Court. Appeal is strictly a *statutory* right which only exists if it is expressly provided for in the governing statute or law. Judicial review is quite different - it is the common law authority of superior courts to review the decisions of administrative decisionmakers and tribunals. This means that if you have a problem with an administrative decision, you may be able to appeal this decision, but only if the statute says that the decision can be appealed. However, even if the statute does not allow for an appeal, what is known as “judicial review” by the court may be possible.

(a) Judicial review

The historical core of judicial review is found in the English common law principles relating to legal documents called prerogative writs. These writs were the formal means by which the King, and ultimately the courts, were able to review the decisions of local administrative authorities,

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[20](1995), 126 D.L.R. (4th) 557 (N.B.C.A.).

[21] *Ibid.* at 566.

such as justices of the peace and sheriffs.[22] Although there have been technical changes and even elimination of these writs in some provinces, today they still form the basis of the inherent authority of the court to review the decisions of administrative tribunals and decisionmakers.

The rules and principles in Nova Scotia regarding judicial review are found in several laws, the Civil Procedure Rules[23] and the common law. For example, certain rules and principles can be found in Civil Procedure Rule 24, and various statutory provisions such as those found in the *Judicature Act*[24] and the *Proceedings Against the Crown Act*.[25] The main development in Nova Scotia coming close to a reform of these judicial review procedures occurred in 1972 when Civil Procedure Rule 56 was made by the courts. This Rule was part of a general reform of the Civil Procedure Rules in Nova Scotia. Under Rule 56, the procedures, if not the language, for obtaining the prerogative writs have been simplified and the courts have allowed combinations of orders which seek to avoid the problem of someone applying for the wrong order.[26]

The more important of the prerogative writs are *certiorari*, prohibition and *mandamus*. These forms of legal proceedings are used when a person affected by a decision applies to a court arguing that an administrative tribunal or decisionmaker has made a decision which is considered to be "outside of its jurisdiction" (or authority) or has committed other jurisdictional errors. *Certiorari* is an examination of the record of proceedings of an administrative tribunal whereby it is determined whether it has acted within its jurisdiction. There is a six month limitation period for applying for *certiorari* in Nova Scotia and the Civil Procedure Rule for extension of time (Rule 3.03) does not apply. If it is determined that the tribunal did not act within its jurisdiction the courts can correct the mistake and/or refer the matter back to the decisionmaker. The writ of prohibition is used to prevent (ie., prohibit) administrative decisionmakers from committing jurisdictional errors, or more specifically, from continuing with a proceeding in a matter outside of its powers. *Mandamus* is a specialized writ used to compel a person or body exercising powers delegated under statute to perform an act or do something which they are required to do by mandatory provisions in a statute.

There are a number of complex legal issues relating to the meaning of jurisdictional error or acting "within jurisdiction". One of the important points to understand is that where natural justice or procedural rights are not followed, this is considered a jurisdictional error which will entitle a person to judicial review of the decision. There is another complicating historical anomaly which applies to the prerogative writ of *certiorari* which is used to show that a legal

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[22] S.A. de Smith, *Judicial Review of Administrative Action,* 2d ed., (Stevens:1968) at 363.

[23] The Civil Procedure Rules are the Rules made by the Justices of the Supreme Court of Nova Scotia and Nova Scotia Court of Appeal for procedures in court.

[24] R.S.N.S. 1989, c.240.

[25] R.S.N.S. 1989, c.360.

[26] See, for example, *Lord Nelson Hotel* v. *City of Halifax* (1972), 33 D.L.R. (3d) 98 (N.S.C.A.) at 111.

error has been committed by the decisionmaker in question. The problem is that the court, in determining whether a legal error has been committed or not, is restricted to making this determination based on the "record" of the tribunal or decisionmaker. The question of what constitutes the "record" is controversial. It obviously includes any written decision made by the tribunal, but questions arise in cases where, for example, the decisionmaker has kept a recording of the proceeding or has made notes during the hearing of the evidence and argument. There is no general common law duty for a tribunal or administrative decisionmaker to give written reasons or reasons at all.[27] If this is the case, then the remedy of *certiorari* for legal error on the face of the record is a hollow remedy, because it will be difficult for a person to establish a legal error in the absence of a written record of the reason for the decision in question.

(b) Statutory appeals

The Law Reform Commission's research in 1994-95 which was outlined in its *Discussion Paper* (figures are now updated to September 1996) found over 254 statutory appeals from administrative tribunals and decisionmakers in Nova Scotia statutes and regulations.[28] These appeals are to government officials and Ministers, courts, and administrative appeal bodies. Approximately 31% of the statutory appeals are directly to the Supreme Court of Nova Scotia. An additional 5.5% are appeals directly from administrative tribunals to the Nova Scotia Court of Appeal while 33% of the provisions allow for appeals to other administrative appeal boards. The Nova Scotia Utility and Review Board is the appeal or reviewing body in approximately 12.5% of the statutory appeal provisions. Various provincial Ministers are allowed to review decisions of boards or officials in approximately 12.5% of these appeal provisions. The remaining 5.5% is divided between the provincial cabinet, probate court, internal appeal process, the Governor in Council, and government officials.

What is perhaps surprising about these percentages is the number of statutory appeals which go directly to the Supreme Court of Nova Scotia or the Nova Scotia Court of Appeal (a total of approximately 36.5%). By far the most popular administrative appeal tribunal in Nova Scotia is the Supreme Court of Nova Scotia which is also, as noted above, the place where people may also seek judicial review of decisions.

Almost all of these statutory appeals differ depending on the different powers of the appeal board or court to reconsider the first decision. In some cases, the appeal tribunal is given the right to hold what is called a hearing *de novo*. In these situations, the appeal body makes no reference

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[27] Although the court has implied a duty in particular cases; see *Re: Yarmouth Housing and Rent Review Commission* (1985), 139 D.L.R. (3d) 544 (N.S.C.A.) where Cooper, J.A. commented at 553 that: It [the Commission] should not confine itself merely to a recital of information before it and its conclusions, but it has a duty to set out why it has rejected the information and evidence produced before it by the Applicant.

[28] The research was carried out in December 1994 and circulated to the Government for any additional appeal procedure. As with the list of ABCs, there are changes occurring regularly and these percentages, while useful for purposes of illustration, alter as new Bills are proposed. A chart outlining these procedures is found in Appendix "C".

to, and can ignore, the lower or first decision. As this category suggests, they must hear the evidence anew, and base their decision strictly on the evidence they have heard.

In other cases, the appeal is actually a rehearing. In these situations, the appeal tribunal has the right to hear and consider new evidence concerning the matter in question, but at the same time the purpose of the hearing is to consider the correctness of the conclusions and decision reached by the first level decisionmaker. Finally, in still other cases, the appeal tribunal does not have the authority to hear new evidence, but must review and reconsider the decision of the first tribunal based on the evidence presented at the initial decisionmaking stage, or at least based on whatever record is available of the earlier decision.[29]

As indicated above, it would be helpful if the various statutory appeal mechanisms could be categorized but this is not the case. Not only are there literally hundreds of different pieces of legislation with different wording as to the authority of the appellate body, but there are also a multitude of different informal and formal practices followed by these appeal tribunals. Consequently, if a member of the public, with or without a lawyer, embarks on one of these statutory appeals it is never precisely clear, unless he or she can become familiar with the actual practices of the administrative tribunal, as to the nature and scope of the appeal hearing itself, or the ultimate jurisdiction of the appeal body to deal with the first decision. There is also a significant variation in the procedural requirements and details of each agency.[30]

In theory, the standard or threshold of review differs between appeals and judicial review. This difference is supported in theory, since the court should be reluctant to exercise its inherent jurisdiction to overturn administrative decisions, while a statutory appeal is by definition statutory permission to "second guess" administrators and tribunals. However, in practice, and because of relatively recent developments in the common law, the difference between the two is often unclear. Currently, in the absence of express wording, the courts are reluctant to interpret their powers expansively on appeal.[31] In other words, the courts are reluctant to imply that they

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[29] For example, the *Cosmetology Act*, S.N.S. 1995, c.5:

> s.21 *Any person whose licence is suspended or revoked, or any person who feels aggrieved or is affected by any order or decision of the Committee, may appeal to a judge of the Supreme Court of Nova Scotia at any time within three months from the date of the suspension, revocation, order or decision and the judge may make an order varying, confirming or reversing, either in whole or in part, the suspension, revocation, order or decision appealed from.*

[30] For example, s.5 of an *Act Respecting Court Reform and Administrative Reform Act*, Bill 8, 3rd reading November 1996, provides that if an ABC's enabling legislation has no provision providing that the ABCs decision may be enforced as a Supreme Court order, then a regulation may be passed to that effect. Therefore, an individual concerned with the enforceability of an ABC's decision would not only have to check the ABC's enabling legislation but must also be aware of the *Court and Administrative Reform Act* and any regulations made pursuant to the enabling legislation.

[31] For example, *Scott Maritime Ltd. v. Labour Standards Tribunal (NS)* (1994), 135 N.S.R. (2d) 58 (C.A.), the court took the view that, on appeal, deference should be given to decisions of specialized tribunals even where there is no privative clause unless the interpretation of the law is obviously incorrect.

have the authority to hold hearings *de novo* or rehearings at the appeal level. The courts also shy away from implying an authority to rehear evidence because of the practical problem of limited court time and resources. For example, in *Pezim* v. *British Columbia Securities Commission,*[32] the Supreme Court of Canada considered the standard of an appeal to a court from a "specialized" administrative tribunal. There the Supreme Court held that the British Columbia Securities Commission was entitled to "considerable" deference from the courts on questions of interpretation of the securities law falling squarely within their mandate. In cases where there are appeals from "expert and specialized" administrative tribunals, the Supreme Court of Canada felt that courts should not interfere with the exercise of discretion unless the tribunal's decision was clearly unreasonable.[33] This is a fairly recent decision of the Supreme Court of Canada, and its future effect on administrative law is somewhat uncertain although it has already been adopted by the Nova Scotia Court of Appeal.[34]

It should, however, be noted that the Supreme Court of Canada has also stated that, although there should be deference to specialized tribunals:

> *... on the other side of the coin, a lack of relative expertise on the part of the tribunal vis-a-vis the particular issue before it as compared with the reviewing court is a ground for refusal of deference.*[35]

Powers of administrative tribunals

The powers of most administrative tribunals are set out in the statute which originally gives them authority. In Nova Scotia, people who are required by law to make decisions or hold hearings are

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[32] (1994), 168 N.R. 321 (S.C.C.).

[33] The test is usually stated as "patently unreasonable". Although the Supreme Court of Canada has described this test a number of times it is not easy to assess when a court will find a decision "patently unreasonable": see *A.G. Canada v. Public Service Alliance of Canada,* [1993] 1 S.C.R. 941 at 963.

[34] *Scott Maritime Ltd.* v. *Labour Standards Tribunal* (NS) (1994), 135 N.S.R. (2d) 58 (C.A.). In determining whether the tribunal is "expert and specialized" the Supreme Court of Canada concentrated on the specific statutory provisions in question. It concluded that, because the British Columbia Securities Commission was given such a broad discretion in the statute, this supported the conclusion that it was "expert and specialized". It is also important to note that "curial deference" will only apply in cases where the tribunal is dealing with the interpretation of its own policies, regulations or enabling statute. Therefore, once it goes beyond these parameters in reaching a decision, then "curial deference" no longer applies, and presumably the court can consider the "correctness" of the tribunal's decision. For example, a recent decision of the Supreme Court of Canada, *Cooper v Canada Human Rights Commission* suggests that an administrative tribunal does not have the authority to determine constitutional law questions. Decision released November 21, 1996.

[35] *United Brotherhood of Carpenters and Joiners of America Local 579 v. Bradco Construction Ltd.,* [1993] 2 S.C.R. 316 at 335, per Sopinka, J.A.

usually given the powers of a Commissioner under the *Public Inquiries Act*[36] and will be able to issue an order requiring witnesses to attend a hearing as well as take information under oath. An administrative tribunal often has the ability to register its decision with the court so it can be enforced as an order of the court and some decisionmakers can also award costs.[37] There is a great deal of variation in the kinds of powers given to administrative decisionmakers but, in general, it depends on the wording of the law which creates the agency. For example, under the *Utility and Review Board Act*,[38] the Board members have:

- all the powers and immunities of a Commissioner under the *Public Inquiries Act*;
- the power to administer oaths and affirmations and certify official acts;
- the power to issue subpoenas (failure to comply will be considered contempt);
- the power to take evidence;
- the power to adjourn hearings;
- the power to order costs to be taxed and fees to be paid to witnesses; and
- the power to have its orders enforced as if they are orders of the Supreme Court.

Independence of administrative decisionmakers

Independence is tied closely to the concept of bias and to the idea of impartiality which has been addressed above as part of natural justice. Independence of administrative tribunals and agencies can involve issues relating to both the personal independence of the decisionmaker and the independence of the agency itself.[39]

The existing case law settles the point that administrative decisionmakers have a duty to act fairly, which includes an unbiased decisionmaker.[40] In addition, it establishes that actual bias need not be proved but rather the question is one of perception and reasonable apprehension of

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[36] R.S.N.S. 1989, c.372.

[37] Although this was unclear in some cases in Nova Scotia. Recently, legislation has been put forward which allows the Governor in Council to pass regulations for administrative tribunals which have statutes which do not expressly provide this power. Bill No. 8, *An Act Respecting Court Reform and Administrative Reform* s.5, 3rd reading November, 1996.

[38] S.N.S. 1992, c.11.

[39] In terms of variations on the kinds of considerations that arise R. Dussault & L. Borgeat, *Administrative Law A Treatise*, vol 4, 2d ed. (Toronto: Carswell, 1990) at ix. lists the following:

1) Attitudinal Bias (Prior to the Hearing; During the Hearing; At the Time the Decision is Made).
2) Interests and Relationships (Pecuniary Interest; Family Relationship and Personal Friendship; Professional Relationship).
3) Institutional Bias (Bias in Favour of a Departmental Agency; Predetermined Guidelines; Previously Stated Position; Exercise of Functions of Prosecutor and Judge; Appeal from One's Own Decision; Bias Arising from the Institutional Scheme).

[40] See, for example, *Energy Probe v. Atomic Energy Control Board,* [1985] 1 F.C. 563.

bias.[41] Recent case law has gone perhaps even further in its evaluation of systemic bias and concerns about institutional biases. For example, the linkage between appointments and these two issues was highlighted in a decision of the Quebec Superior Court dealing with a decision of a Liquor Licensing Board.[42] In that case, the Judge overturned the decision of the Board on the basis that the Board members lacked expertise and were "patronage appointments". In the Judge's opinion, this lack of independence constituted a denial of the complainant's right to a fair and impartial tribunal. Further, the involvement of the government prosecutors as inspectors, constituted a further problem.[43] This Quebec Superior Court decision was appealed to the Supreme Court of Canada. The Supreme Court supported the reasoning behind the lower court decisions and differed only with respect to the remedy.[44] They held that the Board's structure and multiple functions raised a reasonable apprehension of bias on an institutional level. Furthermore, the Supreme Court of Canada held that although this particular case was based on Section 23 of the Quebec *Charter of Human Rights and Freedoms*, even in cases not involving this provision, administrative tribunals may still be required to comply with general common law rules. The purpose of the principle of natural justice is to ensure, in certain ways, the impartiality and independence of the decisionmaker. Justice Gonthier, writing the majority reasons for the Supreme Court of Canada noted, in connection with the concept of independence, that while administrative tribunals do not have to be comparable to a court, the same factors, albeit interpreted with flexibility, should be considered, since independence is a guarantee of impartiality.

In examining the agreement between the Chair of the Board, which provided a fixed term of appointment with removal only for specific reasons, he commented (at para 67) that "fixed term appointments which are common are acceptable. However, the removal of adjudicators must not simply be at the pleasure of the executive".

In reviewing the appellant's concern about the large number of contacts between the Board, the Minister (for example, an annual report, a requirement that rules and recommendations must be

[41] *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105 at 1116.

[42] *La Régie des permis d'alcool du Québec et Raymond Boulet,* [1993] R.J.Q. 1877 at 1907 (C.S.). In this case the agency had what would appear to be fairly clear or traditionally recognized decisionmaking powers; it had a right to grant or withhold liquor licenses. This fits within a category of decisionmaker which has traditionally been recognized as "quasi judicial" even if they have additional responsibilities.

[43] The judge listed many factors which led to the conclusion that the Board was an administrative tribunal in some of its functions. As with many agencies, it had educational and operational mandates as well. The Judge also identified a list of problems leading to the conclusion that the Board and its members were not independent. Among the matters raised were the lack of selection process for the members, the fact that the nominations were in secret, the discrepancy in terms, the instability and insecurity of terms of the appointments, the fact that the Government could abolish the board, there was no obligation for impartiality imposed on the Board, there was sufficient financial security, the dependence of the Board on the government department and the lack of an appeal process: see the decision at 1901.

[44] The decision of the Supreme Court of Canada was released on November 21, 1996.

approved), Justice Gonthier did not address the question of appointments, but concluded that under the legislation, the appellant had not shown how the Minister might influence the day to day decisions which were the specific responsibility of the Chair, particularly as each of the directors had taken an oath to do their duty honestly and fairly (para 70).

This concern for independence is not new, and as noted by the Judge in the Quebec case, Lord Denning commented in 1949:

> *The uneasiness which has been felt about the tribunals is undoubtedly due to the fact that their development is closely linked with the enforcement of policy; and on that account their independence is suspect. It is felt rightly or wrongly that, as the government Departments appoint the members, they have power indirectly to influence the decisions of the tribunals.*[45]

At the same time, the concern for independence in these terms may be misunderstood, since, to some extent, any agency will not be independent such that it will have its budget controlled by the Government. The issue really is one of impartiality in the decisionmaking process and an inquiry as to whether something in the structure suggests that the decisionmaker may not be able to make a decision which is impartial. The terms independence and impartiality are sometimes used interchangeably but in light of Government and public concerns about ensuring accountability, it may be that it is more useful to focus on the term impartiality in this context since that is the objective of the exercise rather than achieving independence *per se*.[46] This is perhaps one of the most difficult areas to discuss in any analysis but it is key to the notion of fairness and administrative justice.

4. ***Summary***

Commentary about the administrative system and the operation of the administrative justice system are both old and new concerns. The review by the courts of government decisions affecting individuals to ensure natural justice has a long history. The concerns about the administrative system, which now includes a range of autonomous semi-governmental organizations, is somewhat newer and is linked to the rise of the administrative state both in Canada and globally. The need to ensure expertise and sectoral representation also brings with it concerns regarding bias, partiality and lack of accountability. The response of the courts in taking a functional approach to administrative review may be related to what appears to be the rise of stakeholder representation and interests rather than particular expertise as the theme in the composition of agencies. Since the notion of stakeholder or interest representation inherently includes the idea that the person has a particular perspective based on some group interest, the

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[45] *Freedom Under the Law* (Stevens and Sons: 1949) 8, as cited in the decision of the Court at 1880-1881.

[46] See R. Devlin, "The Honourable Mr. Justice David Marshall: Judicial Conduct & Accountability: Friedland; A "Place Apart", Judicial Independence and Accountability in Canada" (1996) 75 *Canadian Bar Review* 398.

decisionmaker may not, in fact, have more expertise than a court in the particular matter. This is highlighted in the recent move to alternate or appropriate dispute resolution (A.D.R.) processes as the answer for troubles in all aspects of the justice system, including the administrative justice system (which at one time was the "A.D.R." process to court system). Increasingly, courts and administrative tribunals are viewed as costly and overly legalized, and the trend is to less formal party-controlled “private” processes which encourage the parties including government officials, to settle the issue themselves.[47] These are all matters which require recognition in the planning of administrative agencies and in the government approach to creating and determining the process for administrative decisionmaking. These are matters than can be possibly addressed in the context of law but already require a broader reflection on the nature and role of the governmental process.

As pointed out in the Introduction, concerns about the administrative justice system and its operation are not new concerns nor are they confined to Nova Scotia. These concerns largely reflect the problem of trying to have a system which has some flexibility to respond to a myriad of human experiences while also desiring consistency, predictability and accountability in discretionary administrative decisions.

[47] See comments in the Canadian Bar Association, Systems of Civil Justice Task Force Report, August 1996, at 9-27.

III RECOMMENDATIONS FOR REFORM

A. *Overview of the Commission's Research and Preliminary Suggestions and Public Commentary to the Discussion Paper*

1. *The Discussion Paper*

In its *Discussion Paper* the Law Reform Commission identified a number of problems in the administrative system and in the administrative justice system, in particular. The Commission found that:

- There is an uncertainty about rights, delays, a lack of training and a public perception of some unfairness in the system arising out of these factors.

- Questions of efficiency and cost to individuals and to the Government arising out the administrative justice system (which like a court system, is also expected to provide "justice") are a fundamental concern. In some cases, particularly involving individuals' rights or entitlements, delays in the system can result in injustice and undermine the credibility of the system.

- There is a concern that the Government, in carrying out reform, should try to avoid making decisions more expensive or "court-like".

- Decisionmakers which generally operate as one kind of agency are sometimes required to carry out other functions for which they are not always prepared.

- Some occupational associations, which often determine whether a person is able to carry on a particular trade, occupation or profession in Nova Scotia, are concerned because they feel they are asked to carry out a role that is not really within their expertise (for example, disciplinary proceedings), and their decisions are often appealed or reviewed. This is expensive and distressing to members of these associations who emphasize the need for training for those asked to carry out this function. In general, where people on agencies or boards perceive themselves to be making decisions affecting individuals, they have developed some procedures but are concerned about possible appeals and reviews and also about the perception on the part of either their colleagues or the public that they are not acting fairly.

- The question of appropriate procedures often seems hard for people to understand, particularly in relation to appeals and judicial review. The relationships between the courts and decisionmakers, and between the Government and the appointed decisionmakers are not always understood.

- There appears to be an *ad hoc* approach to procedures used by ABCs in making decisions. Some agencies create their own procedures, some are governed by regulations, and others have none. This is not surprising and is probably a necessary part of administration since one of the values of an administrative system is flexibility and tailoring of the process to meet the specific needs of the situation.

In its *Discussion Paper* the Commission noted that the administrative justice system in Nova Scotia was not developed on the basis of a well-planned design but rather has tended to develop in response to particular concerns. This lack of design creates concerns about consistency, access to information, and fairness, resulting in a lack of public confidence in the system.

The Commission in its *Discussion Paper* invited public comments on the following preliminary suggestions on reform of the system:

- There should be reform of the administrative justice system in Nova Scotia in order to better ensure independence, accessibility/openness, expertise, representativeness, efficiency and accountability.

- The relationship between the administrative structure and operation of an ABC as well as natural justice concerns must be fully recognized in any new law and in the system creating administrative agencies.

- Any reforms must include education of the public and members of the public acting as decisionmakers and provide simple access to information about administrative procedures.

- Although ABCs can come in many different forms, all ABCs should, in their role, structure and personnel, reflect an analysis of the degree to which independence, expertise, efficiency, accessibility, representativeness and accountability are required to achieve the mandate of the ABC.

- Each government department responsible for an ABC must have as part of its legal mandate a requirement that it carry out an assessment of the specific structural and personnel needs for all agencies it administers. Departments must specifically outline the needs of each ABC and develop criteria for appointments in accordance with those needs. Although it should not be a basis for an appeal of a decision of the ABC unless bias is established, a new law should say that the appointment process should be transparent and accountable.

- There should be a new *Administrative Justice Act,* which sets out a number of minimum rights, powers and procedures that could be expected of most ABCs when making decisions that affect others. The *Act* and the administrative justice system must be simple and as accessible as possible for members of the public.

- The *Act* should say it covers all decisionmakers including those carrying out deliberations and providing recommendations to another agency unless their statute specifically excludes operation of the *Act*. This *Act* would cover all self-governing agencies which are specially created by statute.

- The Commission suggests that all final decisions of ABCs, including reasons for the decision, should be filed in a central public office easily accessible to the public.

- The *Administrative Justice Act* should require agencies to develop and communicate standardized rules of procedure for making decisions affecting rights and entitlements. The standardized rules should reflect minimum procedural rights including traditional natural justice rights and emerging fairness rights such as the rights to access to justice, information, expedition, efficiency and resolution as well as substantive rights to written reasons within a reasonable time and to a decision based on principles of evidence.

- The enactment of a new law should be combined with the implementation of a training program and the adoption of comprehensive guidelines (which are not law) to assist decisionmakers in each ABC to develop and interpret the requirements of natural justice, fairness, human rights law and modern caseflow management practices.

- An administrative tribunal should be able to control its own process, subject to the rights of people who are affected by its decisions and subject to the supervisory power of the courts through judicial review. There should be minimum standard powers provided in an *Administrative Justice Act* for all administrative tribunals which can be adjusted by the Government in the law creating the agency, if appropriate.

- The law relating to judicial review should remain as it is currently operating with some amendments to the Civil Procedure Rules regarding a time limit.

- The Government should create a single consolidated Administrative Appeal Board for all administrative appeals in Nova Scotia, which would play a role similar to that currently played by the Utility and Review Board. This Board should have standardized times for appeals and a standardized basis of appeal. The Administrative Appeal Board should have full and part-time people appointed to it who can meet the public need for expedition, informality and expertise combined with sufficient training to ensure that principles of natural justice and fairness are complied with.

- The appointment process for members of any agency which is making decisions and particularly to the Administrative Appeal Board should ensure, where independence from Government and from any particular interest is important to the agency mandate and to fairness, that appointments reflect this requirement. Appointees must be trained to ensure an understanding of the meaning of conflict of interest and procedures must be developed for ensuring that this is respected. In cases where institutional bias may suggest that

otherwise independent decisionmakers are biased, then there should be a clear separation from Government and provisions for tenure or other mechanisms of accountability, including stated terms of appointment and secondment of staff whose primary obligation is to the agency in question. In addition, the right to information and respect for fairness, particularly where the same agency might carry out several roles including investigation and hearings, are paramount.

2. ***Public Comments on the Suggestions in the Discussion Paper***

The Commission received a number of comments on these suggestions from members of the public, from current and former ABC administrators and from administrative law lawyers. The list of commentators is found in Appendix "A".

The comments, which are explored in more detail in this section, generally focused on one or more of the following issues:

(a) The need for better information and training for administrative tribunals and other ABC appointees and staff on matters such as conflict of interest, governance, role of the statutory mandate and hearing procedures.

(b) The scope of an *Administrative Justice Act* and whether it should apply to self-regulating occupations and organizations which select the members and do not administer public resources.

(c) The role of expertise at hearings and whether adding a new administrative appeal board would simply add another layer of bureaucracy.

(d) The lack of general accessibility for the public to judicial review as it is currently dealt with in the Civil Procedure Rules.

(e) The need for an open and transparent selection process for government appointees.

(f) The need to avoid creating requirements that upset existing procedures which are functioning well (that is, the need to avoid "reinventing the wheel").

(g) There were also some specific suggestions regarding hearing procedures, tribunal powers, and concern that hearing procedures not become inflexible.

(a) Reform, education and training

There was general support for the idea of reform of the administrative system, particularly if it involved training of personnel on administrative tribunals. The need for training of appointees and staff, including government staff working with ABCs, was strongly endorsed in almost every

response. Some commentators were, however, concerned that the Commission's suggestions regarding reform not get “watered down” by trying to deal with advisory groups or agencies which are self-regulating. That is, while the overall reform of the administrative system as a whole was important, it seems as important for the Commission to focus on reform of the agencies delivering "administrative justice" (administrative tribunals). The main reform that was supported was that all appointees under statutorily created agencies, self-regulating or otherwise, receive some form of mandatory training as to their role, their responsibilities and appropriate procedures. In the case of some self-regulating occupations and organizations, commentators indicated that training was already provided by the organization to their members and was seen as helpful. These groups supported the idea of training, but they were concerned that agencies, which already operate largely on a voluntary basis, should not be required to carry out a great deal of training or development of new procedures. There was support for the idea of regular government sponsored training seminars and information sessions for new appointees, especially in agencies where appointments are not staggered and there is the potential for a lack of continuity in decisionmaking.

In terms of values identified by the Commission, several commentators felt that, particularly where the agency was implementing delegated government authority, there had been an over-emphasis on "independence", perhaps in some cases to the detriment of efficiency or accountability. On the other hand, another commentator felt independence was essential to credibility and public confidence. Both commentators seemed to agree that tribunal structure and appointments must not undermine the credibility of decisions because of concerns that the tribunal cannot decide impartially, and that there must be accountability on the part of agencies both to Government and to the enabling statute.

(b) The scope of the draft *Administrative Justice Act* and whether it should apply to self regulating occupations/industry associations which select their members on the basis of expertise.

Many agencies have more than one function and make decisions which affect the interests of the public and individuals. These agencies, however, are not necessarily required by statute to hold hearings or, alternatively, would not be considered to be administrative tribunals because they do not make final decisions but only make recommendations or findings. The Commission had originally proposed an inclusive law which would impose a legal requirement on any organization created by statute to develop procedures which accord with the requirements of natural justice. There were a number of comments on two aspects of this recommendation. As noted above, some commentators felt that advisory agencies or other kinds of organizations which were not adjudicative tribunals should not be covered by a new law. There were also comments to the contrary, which indicated a concern that often advisory agencies or task forces provide advice which ends up as policy thereby affecting individuals without ensuring a fair or representative process. There was also concern that this inclusiveness provided some uncertainty to the applicability of the new law. One commentator suggested that the phrase "statutory power of decision required by law to hold a hearing" (which is found in Ontario law) would clarify those to whom the draft *Act* would apply. In addition, many organizations felt that, although they were created by statute, their appointees were often "volunteers" or were elected by the membership, and that their internal procedures probably would meet the purpose of a law.

It was emphasized that organizations, particularly those operated by members as opposed to government departments administering public monies, should not have to incur additional expenditures in order to comply with a draft *Act* or procedures. There was, however, general agreement with the idea that tribunals should be impartial and that decisions should be made fairly and in a way which secures confidence on the part of the people affected by the decision and the public. Recognition of the diversity of agencies was seen as important but some commentators urged that the Commission not try to respond to this diversity and miss making some strong recommendations.

(c) Whether a single Administrative Appeal Board would simply add another layer of bureaucracy and detract from existing expert processes without necessarily simplifying the process.

There was a mix of views on the Commission's initial recommendation to establish a new Administrative Appeal Board. In general, however, there was support, with some reservation, for consolidation and reducing the number of appeals. For example, one commentator felt that there should be an Administrative Justice Council charged with responsibility for all aspects of the system including appointments to boards, training and management of appeals. At the same time, it was urged that a careful analysis be given to the cost of such an agency versus the cost of using the court system, since any changes or creation of new agencies must be justified in terms of long term efficiency. Other commentators felt that some consolidation of sectoral appeal boards might be useful, but they were concerned about maintaining expertise in the subject matter of the appeal. Still others felt that if expertise, training and fair procedures characterizes a hearing at the first instance, and judicial review is available to deal with errors of law or improper practices, then statutory appeals were not necessary at all. There was some concern expressed that, unless the appointment process ensured that expertise and training existed, creating a "superboard" would simply set up yet another layer of poor or inexpert decisionmakers. On the other hand, many others felt that appeals to court seemed to impose a high cost to the public and that most courts were overloaded with cases and were not necessarily in a better position to hear appeals than were administrative agencies. In addition, there were some concerns that where the appeal is to a court, it is difficult for a person to appear without a lawyer or an advocate because of the formality of the court itself. There were also some concerns voiced about the scope of any appeal - that is, on what basis an appeal could occur and whether it might violate constitutional limits on the provincial authority to pass laws.

(d) The accessibility of the current process for judicial review under the Civil Procedure Rules.

There was very little comment on judicial review and whether there should be reform in this area. Contrary to the Commission's proposal, one commentator suggested that the six month limit on *certiorari* should be retained in order to ensure expedition. Some commentators felt that there should be a new law setting out the availability of review because the language and procedures in the Civil Procedure Rules are not accessible to most people, including lawyers. It

was suggested a law or changes to the *Civil Procedures Rules* could include provisions such as that found in the *Federal Court Act*. [48]

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[48] That *Act* states at ss.18 and 18.1;

18. (1) Subject to section 28, the Trial Division has exclusive original jurisdiction
(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and
(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.
(2) The Trial Division has exclusive original jurisdiction to hear and determine every application for a writ of habeas corpus ad subjiciendum, writ of certiorari, writ of prohibition or writ of mandamus in relation to any member of the Canadian Forces serving outside Canada.
(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1 S.C. 1990, c.8, s.4.

Application for Judicial Review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.
(2) An application for judicial review in respect of a decision or order of a federal board, commission or other tribunal shall be made within thirty days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected thereby, or within such further time as a judge of the Trial Division may, either before or after the expiration of those thirty days, fix or allow.
(3) On an application for judicial review, the Trial Division may
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.
(4) The Trial Division may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal
(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
(b) failed to observe a principle or natural justice, procedural fairness or other procedure that it was required by law to observe;
(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
(e) acted, or failed to act, by reason of fraud or perjured evidence; or
(f) acted in any other way that was contrary to law.

(5) Where the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Trial Division may

(e) The need for a transparent appointment process for government appointees.

There was strong support for this notion although the difficulties of enforcing it were noted, particularly where people are nominated by specific sectors. Often the people nominated are volunteers or are deemed by their group as able to represent the group's interest. It was suggested that in these cases a more transparent process was not possible for the Government to enforce. In general, the ideas that appointees should have apparent qualifications for the position, that the process of identifying and appointing people be open, and that there be specific training to ensure that they have the skills to carry out the appointment were supported. The idea of competence, irrespective of other factors, was seen as important to the credibility of the system. As noted above, there was also a suggestion that the appointees be handled by an agency such as a new "Administrative Justice Council". There was some comment on the question of whether independence was essential if the concern was impartiality with respect to all parties and issues coming before the decisionmaker. It was suggested that where the Government was not a party to any hearings, independence from Government would not necessarily be required.

(f) The need to avoid creating requirements that upset existing procedures which are functioning well or provide an inflexible standard (that is, the need to avoid "reinventing the wheel") as well as specific suggestions regarding hearing procedures.

In its *Discussion Paper*, the Commission suggested that the draft *Administrative Justice Act* should be a "minimum procedures" law which is broadly inclusive and that there should also be model rules developed to provide guidance for decisionmakers holding hearings. In general this was supported, although one commentator queried whether a new law was needed at all. It was suggested that training and good appointees were required along with a Council to oversee this. It was felt that simply passing an *Act* would not necessarily create any more fairness if these other factors were not present.

A number of people made specific comments on what should be in a new law. Most agreed with the concepts identified as minimum rights but one commentator urged caution in using the word "rights" to describe these minimum procedures. It was felt that the word "rights" was overused to describe standardized procedures. Another commentator felt that, in addition to the minimum procedures identified, there should also be a right to counsel, a right to examine and cross-examine, and the right to know the case against you. There was some commentary on the issue of privacy rights and openness. In general, people seemed to feel the courts protect privacy in some cases through *in-camera* hearings. Privacy should not outweigh an individual's right to

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(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or order, make an order validating the decision or order, to have effect from such time and on such terms as it considers appropriate.

know the case against them, but could outweigh the public's right to know. There were also concerns about protecting confidential information (for example, business information).

In terms of expedition and how to deal with tribunals or tribunal members who do not comply with timing requirements, there were a number of suggestions ranging from performance reviews, replacement, having decisions declared void or having something equivalent to the Judicial Council.

The Commission had also suggested that decisions should be filed in a centralized location so that they are accessible. There seemed to be support for this idea although one commentator pointed out that it would be a waste of time unless they are properly catalogued and reasonably accessible.

There was a suggestion that the rules for standing (the legal right to participate in a hearing) should be liberalized, perhaps in the Civil Procedure Rules, to make it easier for people to have their concerns or interests considered in a case.

With respect to the powers of tribunals, there was support for the idea that tribunals should be able to control their process for the most part, subject to rules of fairness. It was suggested that there should be rule-making procedures in a new law for agencies. One commentator also noted the need to realize that in some cases agencies have to act unilaterally to protect public safety.

There were a number of comments on whether it was appropriate to allow a tribunal to correct its own errors in a decision without having to have an external appeal. There was concern that the members of the public should not have to keep going through hearings to correct errors, in which case there should be some power to correct some decisions or even re-hear cases. It was also suggested that an Appeal Tribunal should be able to correct an error in a lower board's decision without sending it back for re-hearing. At the same time, there was concern that there be an assurance of a fair decision and that this might not be possible if the case was reheard by the same tribunal.

The issue of whether tribunals should be able to award costs as a uniform or standard power also received a number of comments. In general, there seemed to be support for some limited power to award costs. One person felt availability of costs should be clearly stated, including the criteria and amounts, so people could plan their cases accordingly. Other people felt it should be a power only available to some tribunals or only available with clear guidelines and not available against people involved in a hearing by reason of their office. There was concern that it might be a power which could be easily abused by a tribunal.

3. Summary

A number of key concerns emerged from both the Commission's research and the public comments including the following:

- It is clear that there are concerns about the fact that the administrative justice system is difficult for people to understand and about the lack of public faith in the system.

- At the same time, there is also concern that altering existing structures and standardizing procedures in the name of "legal rights" may cause more problems and delays and not necessarily achieve better results. Creating new rules may simply involve more cost, particularly where existing procedures may meet the concerns that new rules would be addressing.

- Many people feel that if you have "good appointments and good people" you will get good results.

- There is concern that many appointees to ABCs, particularly those who carry out hearings and manage public resources, are not given training to help them carry out their responsibilities. One way to ensure better decisionmaking is to provide some training and information to help these people make better decisions and fulfill their responsibilities.

- In connection with consolidation and simplification of the appeal processes, there is a concern that the expertise and flexibility that many feel currently exists should not be lost in any changes. There is a need to consider whether creating a new "super" board will reduce costs and improve efficiency or create more delay in the system before people can go to court to obtain "administrative justice".

- There is a concern that the legal rules governing judicial review in Nova Scotia are not written in a way which can be easily understood by anyone, including those with legal training.

B. The Commission's Recommendations For Reform

The Commission considered all of these comments and its initial views in detail before coming to its final recommendations in this project. The final recommendations respond specifically to the four part Reference from the Minister of Justice for Nova Scotia which is set out in the Introduction of this *Report*.

1. The Administrative Justice System

(a) The need and purpose of reform

The Reference requested that the Commission draft a law which standardizes the powers and procedures of administrative tribunals and guarantees basic procedural rights and safeguards to parties appearing before them. The Commission first considered whether any reform is needed in the existing system and, if so, whether a new law is the best way to respond to these needs. By

asking the Commission to write a new law, the Government has apparently concluded that a new law is needed. However, the Commission feels that it is important to consider the question with an open mind and ask first whether any change is, in fact, required. The Commission also feels it is important to consider what values and objectives should be achieved in any reform. It is only by specifically identifying what objectives are sought by legal and institutional change relating to administrative tribunals that any model for change can be proposed.

The impact of a lack of a systematic approach to the design of administrative agencies, particularly in the context of decision making procedures, has been noted in a recent proposal for reform of the federal administrative system:[49]

> *There is currently no common procedural structure for federal administrative decision-making. Procedural directions in statutes, where they are found at all, are vague. Agencies are required to develop procedures in an ad hoc manner. The consequences of this approach are:*
>
> *(i) uncertainty, both within the agencies and outside, as to the extent of procedural rights;*
> *(ii) increased difficulty in accessing administrative justice;*
> *(iii) duplication of effort in the drafting, development and amendment of procedure;*
> *(iv) delay in the implementation of new programs;*
> *(v) direct and indirect costs resulting from that duplication, as well as from training costs;*
> *(vi) judicial challenges; and*
> *(vii) a failure to fully utilize the abilities of individuals who are not formally trained in procedures.*

The law which the Government asked the Commission to draft refers to "basic procedural rights and safeguards" and is based on the idea of the administrative system as dispensing "administrative justice". To some extent, this is already in place in Canada with the common law concept of natural justice and the application of s.7 of the *Charter* which provides that a person can only be deprived of life, liberty and security in accordance with "principles of fundamental justice".

As pointed out in a recent report of the Ontario Law Reform Commission,[50] access to justice in the administrative context must mean that people find the administrative system a useful and viable alternative to the court-related system for resolving a problem. Where systems are not

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[49] *Proposal for a Federal Administrative Hearings Powers and Procedures Act* (Department of Justice Canada, 21 December 1995) at 13.

[50] Ontario Law Reform Commission, *Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Work Place Disputes*, April 1995, at 13.

perceived as fair or useful, this creates an access to justice problem because people may make use of less acceptable alternatives such as violence, or remain dissatisfied with the system. Issues of efficiency and cost to individuals and to the Government in the administrative system are also fundamental matters of concern. In some cases, particularly involving an individual's rights or entitlements, delay in the system undermines its credibility. The idea that delay can in itself create an injustice is as much a problem in Nova Scotia as in other provinces.[51] The Department of Justice has specifically identified access to justice as a problem to be addressed in the justice system generally. A recent public tender[52] soliciting proposals to prepare a business case document for the Access to Justice Initiative Phase I stated that:

> *The Minister of Justice recognizes that the effective management of the justice enterprise requires more co-ordination and co-operation among the key justice players.*

Among the problems identified in the Tender is a lack of access to information for the public because, *"[W]e are not able to provide easy public access to information about court cases, court processes or any other justice system activities."*

The Commission suggests that the problem is even greater if the justice system is seen to include the administrative justice system, since it is less structured and less understood by the public than the court-related system.

Based on the comments it received in the survey, public commentary, and in reviewing research carried out by other agencies and academics, the Commission suggests that an administrative justice system involving adjudicative agencies should be:

- Impartial
- Accessible
- Expert
- Efficient
- Accountable

The purpose of the administrative justice system should be to achieve decisionmaking that is fair, consistent, and which ensures that the policy objectives for creating that particular agency

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[51] For example, problems are often encountered across Canada in relation to human rights decisions and decisions relating to employment and the workplace. See Ontario Law Reform Commission Report, *Avoiding Delay and Multiple Procedures in the Adjudication of Workplace Disputes,* April 1995; See also, S. Chotalia, "Human Rights Legislation - Does the Administrative Structure Enhance the Objectives of the Legislation" (1993-94)*, Can. J. of Admin. Law and Practice* 67. The Commission has received commentary indicating that the problem is exacerbated in cases where a collective agreement and decisionmaking procedures under the agreement also operate in conjunction with the statutory system.

[52] Public Tender 1995-000421, Dept of Finance/ Procurement Branch: *The [Halifax] Chronicle Herald*, 17 September 1996.

are achieved. These characteristics will create an environment in which the principles of natural justice can operate. In fact, many of these characteristics are integral to natural justice or fairness.

Where agencies are providing advisory opinions or are not acting as administrative tribunals but may be making decisions which affect members of the public, the Commission suggests that the design of the agencies and their relationship to Government and the public should, to the degree necessary to fully achieve their purpose, ensure independence, accessibility, representativeness, efficiency and accountability.

As evident in the comments received, the issue for many people is the qualifications of appointees and the way in which appointments are made. There are a variety of ways people feel that you can have "good appointments", including a transparent or open appointment process where people are appointed on the basis of qualifications which are related to publicly stated criteria. However, there will always be some difference of opinion as to the criteria for who is a "good appointment" and whether “political” or patronage appointments are always wrong or are a matter for the democratic process. The fact that the appointees are often either volunteers or sectoral nominees or, in many cases, simply a government staff person carrying out another role adds another layer to the problem.

Clearly, however, there is a serious concern that people who are asked to carry out functions should be people who, on their records, are people who bring to the agency skills, expertise or backgrounds which are relevant to the purpose of the particular agency.

The Commission also struggled with the difficult question of which administrative decisionmakers are to be regarded as "administrative tribunals". In the *Discussion Paper* it was pointed out that historically there have been various "tests" which attempt to identify administrative tribunals, such as whether the agency makes a "final decision" affecting rights or entitlements or whether it is required to hold a hearing. These tests include an after-the-fact functional analysis; that is, irrespective of the wording in a statute, did the effect of the decision of the agency mean that some procedural requirements should have been applied. Determinations of disciplinary “committees", for example, might require some level of fairness in procedures because of the impact of decisions on individuals. It must also be remembered that there are a large number of agencies that carry out a range of functions. An ABC such as a Liquor Commission, might primarily be a retailer but also have regulatory and licensing functions regarding some activities as well as dealing in its administration with some disciplinary functions and processes involving staff in the context of a collective agreement.

The issue is even more complex where the body is either functionally or effectively a decisionmaker, but is constituted as advisory: for example, where the final decision is the Minister's but where the Minister almost inevitably acts on the advice of the agency. In this situation, should the agency be considered advisory only or should it be considered an administrative or regulatory body making decisions that affect rights? Should the same considerations apply to these bodies in terms of concern for natural justice?

The Commission is also concerned, in developing a new law and determining to whom it should apply, that it avoid turning all decisionmakers into administrative tribunals which are required to comply with court-like procedures. When an investigation or fact-finding process is being carried out or administrative decisions are made regarding public resources, there should be concerns about conflicts of interest, accountability and public interest in the decision but the procedures for decisionmaking are not of the same type as an adjudicative or administrative tribunal.

In discussing the importance of procedures it is important not to lose sight of the purpose of the administrative system itself which is to achieve certain policy objectives, often regarding group matters rather than individual concerns. To focus too extensively on procedures for resolving a problem or making a decision may, in some cases, fail to achieve the overall purpose. A study of the criminal injuries compensation system in Nova Scotia is illustrative[53]. In 1991, victims of crime received compensation through a hearing process before an administrative tribunal. In 1992, this board was replaced by a government official and the awards, including awards for counselling were standardized. The estimated administrative cost per decision in 1991-92 was $769. The majority of cases in 1991-92 were for physical assault (not including sexual assault) and 57% of the cases were in Halifax. Data from 1995/96 indicates that the number of women receiving awards has increased significantly and the number of claims throughout the province had increased relative to Metro claims (with Halifax cases at 31.8%). The number of claims relating to sexual assault have also increased significantly relative to claims for other forms of physical assault. Although it is not possible to draw firm conclusions from this, it does suggest that the change in procedures had some impact on the kinds of claims and the geographical location of claimants.

Some provinces have resolved the question of applicability by listing agencies that the *Statutory Procedures Act* applies to or alternatively, defining the agencies as those required by law to have a hearing. This approach is not necessarily helpful to the public or the agencies, in that schedules rapidly go out of date, particularly with the frequent creation of new ABCs and the merging of others. The Commission concluded that the underlying point is to ensure that, irrespective of the forum, where someone's rights or entitlement is being affected, somewhere in the process and prior to a final decision, there is an opportunity to have his or her side of the issue considered.

The Commission notes that the legal understanding of the appropriate procedural requirements will still, in some cases, be determined after the fact through a court determination on a case by case basis. In some respects, this is both the frustration and the benefit of our legal system. The common law has both the merit of flexibility and change but may give rise to some frustration in terms of lack of clarity. While a law may assist in clarifying the issue, ultimately the court will be interpreting the law so that there is always a level of unpredictability. This is frustrating for people seeking, for example, a clear rule on natural justice, but it is also a process which seeks to

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[53] Study presented by D. Keefe at Canadian Bar Association Legislation and Law Reform Section, Fall Forum on Law Reform (Halifax, 26 October 1996).

ensure some flexibility, through the balance of power between the court, with its ultimate supervisory role and the legislators that wish to provide for certainty and clarity and pursue policy objectives, to deal with cases that are not foreseen by lawmakers. This dynamic relationship is one which is built into the Constitution of Canada and is the basis of the Canadian legal and political system. On balance, the Commission concluded that it would make the draft *Administrative Justice Act* applicable to all administrative tribunals required to hold hearings. This has some element of uncertainty for agencies, however, the Commission suggests that it is not harmful to the public if an agency concludes that is should comply with the requirements of the *Act*.

In addition to debate over what will constitute an administrative tribunal, the Commission found that there is no systemized approach to agency powers in Nova Scotia. In most cases, the powers of a particular agency or decisionmaker reflect the concerns of the time. Some ABCs have the power to award costs (for example, Registered Nurses' Association and the Utility and Review Board under some *Acts*) and some do not. As well, some boards can have their decisions enforced as a court order while others cannot.[54]

The Commission considered what the scope of its recommendations should be, given that the reference relates to administrative law as an area of practice which deals with appeals and judicial review as opposed to the administrative system and its structures. At the same time, the Reference referred to independence and emerging case law which indicates that impartiality does take into account the structural relationship of agencies to Government and the appointment process for boards. An expanding obligation to consult or "participatory rights" under the *Charter* is also present in the law. These trends suggest that the Commission's recommendations should be somewhat broader than simply the law regarding procedures and appeals and reviews. This was also the approach urged in public comment.

After considering its research, the Commission believes that the existing law and the system providing administrative justice in Nova Scotia is in need of reform to create a more accessible and efficient system for making decisions affecting individual and public interests.

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[54] For example, *Residential Tenancies Act*, R.S.N.S. 1989, c.401, s.21 provides that the decision or order of the Residential Tenancy Board may be made an order of the court. Similarly, under the *Police Act*, R.S.N.S. 1989, c.348, s.23, the decision of the Police Review Board can be made a court order. See also, *Utility and Review Board*, R.S.N.S. 1992, c.11, s.29.

> The Commission recommends that:
>
> 1. There should be reform of the administrative justice system in Nova Scotia to ensure that it is impartial, accessible, expert, efficient and accountable.
>
> 2. The structure of agencies should be carefully designed to support the purpose for which the agency was created.
>
> 3. The appointment process for agencies must also be designed to ensure that there is public confidence in the agency. The appointment process should be "transparent", in that the criteria or qualifications for an appointment should be consistent with the purpose of the agency and should be publicly available. The process for identifying and selecting people for appointments should be equally transparent.
>
> 4. Any reforms must include education of the general public and members of the public acting as decisionmakers and must take into account the need to provide easy access to information about administrative procedures.

(b) Mandatory training of appointees and staff

Although this *Report*, recommends that the Government adopt the draft *Administrative Justice Act*, the Commission wishes to emphasize the fact that its main recommendation regarding the "guarantee" of minimum rights and standardization of procedures is the provision of training by the Government to people appointed to or working with ABCs. More so than uniform rules or laws, there is a need for training to ensure that people who make decisions affecting other people or public resources understand the meaning and operation of the principles of natural justice. Despite a long history of legal interpretation regarding the meaning of "principles of natural justice", there is no settled set of minimum rules which could be provided to people regarding procedures which guarantee natural justice in every single case. Following a set of rules will, to a large degree, meet this concern but it will not do so in every case because while consistency is part of an idea of justice, appropriate exercise of discretion in response to the facts is equally important. Ideas of what constitutes fairness are quite complex, even for people with legal training. This is often frustrating for individuals and organizations who may hire a lawyer to design their procedures and still find that the courts determine that a denial of natural justice has occurred.

It is for this reason that training and support is as important, if not more important, than a new law setting out some of the procedures. This suggestion was endorsed by all those who commented on the *Discussion Paper*. There was concern expressed that agencies or occupational associations, which largely operate on a volunteer basis, should not be expected to provide extensive training. Where appointees to the administrative tribunal are largely volunteer and the organization is neither funded nor otherwise regulated by Government then it may not be

possible to require training beyond a recommendation. However, where the Government is appointing people to ABCs, there should be some training in minimum procedures. Where the issue is one of resource allocation or governance then government sponsored seminars on conflict of interest and proper accountability and governance practices should be automatic and required of all appointees. Even more importantly, where the appointee is acting on an administrative tribunal, she or he should have training in minimum procedural matters. This training should be extended to include the staff supporting these agencies irrespective of whether they are governmental or non-governmental. These training sessions need not be a large enterprise, but should be offered regularly throughout the province. Continuing education seminars for people on boards that have a large administrative tribunal function in matters such as writing reasons for decisions or dealing with evidentiary issues could also be provided from time to time. If the training is government sponsored and consistent throughout the province it will provide consistency between ABCs as well.

The Commission understands that this recommendation may have some impact on public resources but feels that it is more than warranted given the fact that often people on ABCs are making decisions which affect individual rights, liberties, entitlements, ability to work, receipt of benefits, or allocation of resources. Many people on ABCs are not full-time, paid "employees" but are volunteers. Increasingly, there are demands placed on people in these positions to ensure that decisions are made fairly and responsibly. Many people on these agencies and boards are concerned about the lack of guidance they receive about their mandate and potential liability for their decisions.[55] Although the Reference focuses on procedural reforms to the existing system, the single largest problem identified by the Commission on the part of members of ABCs, government staff supporting them and members of the public dealing with them, is the lack of training and information. Many people end up in this role because of their expertise or because they represent a particular perspective on the matter rather than because they have the training to make decisions affecting other people. A common example is occupational associations, such as the medical profession, where the expertise of the individuals lies in health care rather than the decisionmaking process. For many people without legal training, and even for those with legal training,[56] how to make sure natural justice occurs is often a mystery. Often ABCs making such decisions are instructed by their operating legislation that they must develop procedures for making such decisions. This means either they must employ a lawyer to give them advice or

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[55] The Commission notes that, although this is not a specific issue for this project, there appears to be a lack of clarity in the Government practice regarding liability of appointees. The Commission heard, for example, from members of a facility operating board about their concern for personal liability. While insurance is one answer, it often is a problem for people if disputes come to light after they are no longer on an ABC. The Commission notes a recent regulation adopted by Government which specifically provides indemnification in cases of a legal action: *Indemnity Agreement with Members of Regional Health Boards,* N.S. Reg. 142/96. In addition, defending a legal claim, irrespective of outcome, can be as costly, if not more costly, than the claim itself. The Government should be providing people who are appointed to ABCs with written information about this issue on appointment, even if the person is a sectoral nominee.

[56] For example, a recent case before the Supreme Court of Canada involved a complaint by one judge that a Judicial Disciplinary Committee was biased against her and infringed her *Charter* rights: *Ruffo v. Conseil de la magistrature* (1995), 130 D.L.R. (4th) 1.

else they are forced to deal as well as they can. If a decision is made unfairly or perceived as so, it may be reviewed by the courts. This can create further costs and problems for many people.

In its *Discussion Paper* the Commission considered whether there should be a separate procedural right to have decisions which are not based on or affected by factors contrary to human rights. In considering this, the Commission concluded that this right already exists in the *Human Rights Act* [57] and the *Charter* and that to provide for it separately would be confusing rather than helpful. However, the importance of human rights as an aspect of access to justice and its implications in terms of bias and fairness should be part of any training programme for administrative decisionmakers.

The Commission suggests that there are many examples of courses offered now for training administrative tribunal members. These are often seminars and conferences but all of these tend to be out of province or quite costly or more complex than necessary given the part-time nature of ABCs in Nova Scotia. The Commission has outlined in Appendix "D" a number of issues that could be addressed in a one or two day training session provided throughout the province. These could be delivered by government staff trained to do so or the Government might choose to organize this in another way. One suggestion the Commission received was to create an Administrative Justice Council to make appointments and to run training courses. The Commission considered this suggestion at length, particularly in light of the comments it received suggesting that if it did not specifically identify a responsible agency or department to implement its suggestions, then it was likely little or nothing would happen. While this might be the case, the Commission felt that it was not necessary to attach its recommendations to a specific institutional form for several reasons. First, given concerns expressed about the costs and the appointment process for ABCs it seems contradictory to suggest creating another ABC to fix the problem. Second, the Commission feels that matters of resource allocation and programme implementation clearly involve a broad range of policy factors beyond its expertise including human and financial resource allocation decisions which will determine the form of implementation. Third, the Commission feels that in light of the large number of training facilities and expertise in universities and colleges throughout Nova Scotia, it is more sensible instead to recommend that the Government support the design and delivery of a training programme in the most cost effective manner possible which may include consultations with colleges and universities. In short, the Commission did not feel it was necessarily appropriate to create a new ABC to deal with ABCs but agrees that a coordinated approach to training is necessary.

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[57] S.N.S. 1989, c.214.

The Commission recommends that:

1. When the Government adopts the draft *Administrative Justice Act*, it should also provide training for all ABC appointees and staff supporting ABCs. This should be a minimum requirement for all appointees and training should be provided several times a year throughout the province.

2. Training should ensure that there is a minimum level of information about the role and responsibilities involved in being appointed to an ABC. Where the ABC has administrative tribunal work as part of its function, then appointees should be given additional training to assist decisionmakers in each agency to develop and interpret the requirements of natural justice, fairness, human rights law and modern caseflow management practices.

2. A Law Setting Out Minimum Procedures

(a) A draft *Administrative Justice Act*

The Government asked the Commission to draft a new law to respond to its concerns regarding procedures, powers and independence. Currently, the law that governs these issues is found in a variety of sources: the common law, the *Charter*, legislation (statutes and regulations) and in any procedures or by-laws that the agency might have created. In other words, there are laws and procedures that apply, but they are not standardized in their approach and are not easily available either to people making use of the system or making the decisions.[58]

Creating a new law to deal with some of these issues is one approach to creating reform. However, there are other models for reform which have been used in other provinces or suggested by other research agencies. For example, the Commission could propose an amendment to the *Human Rights Act* to provide for a right to administrative fairness. In Quebec this approach was used in the provincial *Charter of Human Rights and Freedoms* which provides a constitutional basis for human and civil rights.[59] Alternatively, as recommended by the

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[58]Currently, most regulations in Nova Scotia regarding procedures say something similar to the following:

> *Hearings may be conducted in an informal manner and need not follow the strict rules of practice and procedure required by a court of law.*
> *A hearing may be conducted by video conference or by telephone conference with the agreement of the parties*.

Excerpt from the *Utility and Review Board Regulations* N.S. Reg. 25/95.

[59] R.S.Q. c.C-12. It was amended in 1982 to prevail over other provincial statutes. In 1993 a Bill was also introduced to provide for appointments, conflict of interest, procedures and power of administrative tribunals but was not adopted as law: see Bill 105 *An Act Respecting Administrative Justice* introduced National Assembly 2nd

Manitoba Law Reform Commission, reform might involve developing a series of model regulations dealing with the procedures of various agencies and a separate *Act* dealing only with administrative appeals and judicial review.[60] Alternatively, it was suggested by some commentators that a new *Act* is not needed. Instead, training in the common law requirements of natural justice and an organized, systematic approach to agency development is needed.

If a new law is written to deal with some or all of these issues, there is also a second question as to whether the law should take the form of a detailed code for administrative decisionmakers, as initially proposed by the Department of Justice Canada for federal ABCs who hold hearings,[61] or whether the law should be fairly simple and provide some minimum rights and directions to decisionmakers, much as that proposed in a model law developed for the Uniform Law Conference of Canada.[62]

The Commission suggested in its *Discussion Paper* that a draft *Administrative Justice Act* should not be a technical and detailed code but that it should be as clear and informative as possible for members of the public. The Commission felt that rather than providing detailed rules, it was better to put in place requirements that agencies must develop their own procedures, taking into account certain issues and communicate these rules to parties or people involved in a hearing. This might well be combined with a "guide book" for administrative tribunals as well as mandatory training. The *Discussion Paper* suggested that the procedures set out in the draft *Act* should be considered as a *minimum* level of procedural fairness that must be addressed and should essentially reflect the existing principles of natural justice. These already apply as a matter of common law (and common sense) but have an educational value that arises from setting them out in law. This also helps decisionmakers who may not be lawyers.

The choice of approach in terms of procedural requirements, relates to the question of why there are administrative decisionmaking systems at all. The goals generally are efficiency, flexibility,

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Session, 34 Legislature. A similar approach has been suggested by the South African Law Commission: *Final Report on Group and Human Rights, Report No.82,* Project 58, Oct 1994. The Commission proposed that there be a *Bill of Rights* which included the following:

> 4.157 *Every person shall have the right - (1) to lawful and reasonable administrative action where any of his or her rights or interests is affected or threatened by such action; (2) to have the principles of natural justice applied in administrative actions; (3) to be furnished with reasons in writing for administrative action which affects any of his or her rights or interests unless the reasons for such actions have been made public.*

[60] Manitoba Law Reform Commission, Report #58, *Administrative Law; Part I: Procedures of Provincial Government Agencies* (1984); Manitoba Law Reform Commission, Report #69, *Administrative Law; Part II: Judicial Review of Administrative Action* (1987).

[61] *Proposal for a Federal Administrative Hearings Powers and Procedures Act* circulated in April 1995 and revised December 1995 which provided a very long and comprehensive code for practice (Dept. of Justice Canada, December 21, 1995). There is currently a revised version of this proposal to be circulated early in 1997.

[62] *Model Administrative Procedure Code* presented to the Uniform Law Conference of Canada, 1991, prepared by Y. Ouellette (although called a *Code* it is in fact a very short *Act*).

independence, and expertise, all in the context of fairness. The recent Report of the Ontario Law Reform Commission dealing with delay in the adjudication of workplace disputes (basically looking at the administrative law system under the *Human Rights Act* and other laws) commented on problems associated with seeking efficiency and informality.

The Ontario Law Reform Commission adopted as its fundamental value the idea of "accessibility":

> *To be accessible, therefore, administrative tribunals must provide a service that attracts those who wish to avail themselves of its jurisdiction... disputes must be resolved quickly and inexpensively... by those who are experts in such areas [in this case workplace issues]. Similarly, since no-one wants to have a dispute resolved in an arbitrary manner, administrative tribunals must have some of the characteristics of courts.*[63]

It is important to note that although the Ontario Report dealt with administrative law in connection with employment situations, it proposed that the analysis in the Report could also be a model for other *Acts* and other provincial agencies.

Model rules for statutory decisionmakers have recently been developed in Ontario by the Society of Ontario Adjudicators and Regulators.[64] These model rules are intended to provide a "template" which decisionmakers can adopt or adjust according to their particular needs. Such an approach provides guidance and information and has an educational value for decisionmakers, but will not necessarily create the same inflexibility as regulations or laws. The Commission understands that the federal proposal is now being revised to reduce the detail in the proposed *Act* in light of concerns that this practice might result in more litigation rather than less. The federal government is also suggesting a guide book for decisionmakers to assist them.

After reviewing all of these approaches, the Commission has developed a draft *Administrative Justice Act* based on the Uniform Law Conference model and legislation elsewhere in Canada. It is found in the Section V of this *Report*. The *Act* requires that administrative tribunals develop procedures and rules consistent with the minimum procedures in the *Act* which must be communicated to the people involved in a hearing. This will ensure that administrative tribunals develop rules that address these issues and it will also help ensure that people are informed about the process which they will encounter. It will still allow each agency the flexibility to make the process as formal or informal as deemed appropriate, subject to natural justice requirements. This provides for a form of standardized rules in that decisionmakers are told that they must develop rules regarding the various issues and make these rules known to individuals.

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[63] Ontario Law Reform Commission Report, *Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes*, April 1995, at 13.

[64] *Model Rules of Practice*, S.O.A.R., 1996 (on file).

The Commission recommends that:

The Government should adopt the draft *Administrative Justice Act*, which sets out a number of minimum procedures and standard powers that will apply to proceedings before administrative tribunals.

(b) Minimum Procedures

In its *Discussion Paper* the Commission suggested some issues that should be addressed by administrative tribunals in developing their rules. The Commission suggested that rather than seeking to standardize the rules themselves, it is more appropriate to create a minimum standard obligation that each administrative tribunal develop rules, and ensure that people involved in hearings have information about them.

The Commission noted a concern on the part of commentators that where an agency has developed procedures which seem to meet the objectives of the draft *Act*, then they should not have to alter these practices. The Commission agrees with this view and feels that since it is setting out a list of *minimum* issues to be addressed to ensure natural justice, ABCs that have processes which accord with these principles should feel confident that their procedures are consistent with the law. It is neither possible nor desirable in the common law system to completely insulate the procedures or decisions of any administrative tribunal from judicial review. To some degree, in every case, there may be differences in interpretation as to whether the process was fair or whether a rule or the spirit of a rule has been complied with and whether a procedure accords with natural justice. The purpose of setting out provisions in a law is to ensure some level of consistency in procedures which will in turn improve the likelihood that people will feel they had a fair or just hearing, even if they do not necessarily agree with the outcome.

In its *Discussion Paper* the Commission had used the term "rights" to describe the minimum procedures, as required by the Minister's Reference. The Commission notes some commentary which suggested that overuse of the language of "rights" creates problems unless it is expected that an ABC can have its decision overturned for failure to strictly comply with the technical provision. If one accepts the idea that a right is not truly a "right" unless there is a remedy (some legal result arising from failure to comply) than labelling something a "right" might result in a narrowing of the minimum procedures such that they include only those procedures that would already be grounds for judicial review or perhaps an appeal. The Commission feels it is important to include some directions in the draft *Act* which might not traditionally constitute a basis for judicial review because they reflect a more functional analysis of systemic fairness which, absent some express harm, will not necessarily constitute a basis for review.

In terms of which minimum procedures should specifically be included, there already exists a number of procedural requirements which are generally understood as part of natural justice and

might properly be considered "rights". There are also a number of practical issues which are part of an emerging duty of administrative fairness based on the accessibility of the administrative justice system and a developing understanding of systemic problems which may affect how fair the procedure is, but which are not traditionally recognized as “rights”.

As noted in Part II, the procedural guarantees more traditionally recognized as “rights” include:

- notice if one's rights/property/liberty may be affected by a decision;
- notice of a hearing if one is to take place;
- knowledge of the issues being considered and to be given sufficient time to prepare a response;
- the right of the person or interest whose entitlements or privileges are being affected to be heard, although this does not necessarily require that it be an oral hearing. It may be in person or on the basis of written submissions. It may include the right of the person to have a public hearing although not the right of the public to attend a hearing. It should be noted that historically the definition of interest being affected has been quite narrow and it has not extended to a "right" to public interest or intervenor standing;
- the right to call and cross-examine witnesses or give other evidence where there is an oral hearing;
- if no hearing in person or in writing is required under the statute or because of the nature of the decision, the right of the person affected by a decision to have prior notice of the facts on which the decision is based and the fact that a decision has or will be made; and
- a right to have decisions made without bias and with an open mind on the part of the person making the decision.

There are a number of requirements related to expectations about administrative fairness. As noted above, the failure to provide for these may not in itself provide a basis for overturning a decision of a tribunal or judicial review, however, they are a matter of administrative practice which seem to be required in order for the system and its procedures to be perceived as providing administrative "justice". These include:

- access to information;
- expedition, efficiency and resolution;
- written reasons for final decisions; and
- application of rules of evidence.

(i) Access to information

There is no common law requirement that an administrative tribunal develop procedures or even provide information about them beyond the notice requirement referred to above. It is, however, in the interest of ensuring a credible administrative justice system that ABCs, particularly those that can be considered administrative tribunals, determine or develop "a process" for making

decisions affecting others and make that information available to people that might be involved in the process. This will assist people seeking a decision and will help assure some level of consistency in decisionmaking. In this sense, it provides a form of accountability for decisionmakers. Although it is in the context of policy making agencies rather than tribunals, this requirement is similar to administrative rule making in the United States and in Canada in relation to interpretation bulletins regarding income tax laws. Administrative rule-making process agencies develop their views on implementation of their statutory mandate and make that information known to the public and/or affected individuals so that people may organize their affairs in light of this information. Where there is a change in the rules there is also a well developed process in place for advance warning so that people are not taken by surprise. This provision of information as to agency practice and approach to issues is helpful to members of the public and can assist in providing consistency in decisionmaking.

Issues regarding privacy and confidentiality also arise as part of a concern for access to information. In particular, this has been noted in connection with disciplinary proceedings in occupational associations and cases where business information or personal information is provided to the decisionmaker. The Commission is concerned about the need to protect confidentiality where appropriate, however, public concern about secrecy in the process is also important. Should the privacy concern be reconsidered with the right of a party in a hearing to have access to information provided to the decisionmaker and also a more general question regarding a public interest in information about these processes? Should a discipline committee be able to seek confidential comments which might not otherwise be provided to them if it was believed that these could be available for review?

The Commission notes that it received comments about the need to protect individuals from damage where allegations such as misconduct are made, and, ultimately, are unfounded. After reflecting on these comments, the Commission suggests that a person's right to know the case or complaint against them should take precedence over confidentiality of information provided to the administrative tribunal. However, the public interest in open proceedings may in some cases be properly addressed through confidentiality in a hearing so long as the outcome is available and made known to the public.[65] Where the basis of the decision is a matter of concern then requiring that the reasons be located in a centralized location which is accessible to the public, should meet concerns about ensuring that the complaint is properly investigated and that consumers are protected. In addition, the inclusion of a member of the public as an appointee to some boards may also be of assistance in reassuring the public/consumers that decisions are not "in house".

The specific requirements on these points are set out in the draft *Administrative Justice Act* at the end of this *Report* and reflect the following recommendations:

- an administrative tribunal should have a stated duty to provide individuals appearing before it or on request with the relevant legislation and any applicable

[65] Some occupational associations publish the outcome of disciplinary decisions.

rules they have developed. It should have an obligation to prepare and make available a brochure, handbook or a computer disc, outlining its function and the steps that an individual must take in preparing for a hearing before it. A staff person or persons should also be available to assist and answer questions;

- standard forms in clear language should be drawn up and made available to people who may be involved in a hearing by agencies. These forms will be particularly useful for the filing of initial documents such as a notice of appeal. They will expedite and simplify the process, particularly for the individual without a lawyer who is unsure as to how to proceed. Forms of this nature, in combination with increased public awareness, through information brochures and other material, will be of great assistance;

- where public interest in hearings is involved there should be public notice of any hearings or consultations, published in newspapers and electronic media. The notice should clearly state what the members of the public need to know to actively participate in the hearing;

- administrative tribunals and other agencies should develop procedures to protect personal and commercial privacy where appropriate, however, this protection is subject to the right of a person to know of any allegations made or information provided about them to the administrative tribunal; and

- these duties and responsibilities should form a part of its function and annual budget.

(ii) Expedition, efficiency and resolution

As articulated in the 1995 Ontario Law Reform Commission Report[66] on delay in the resolution of workplace disputes, it appears that the concept of administrative justice is starting to include the notion of delay as a barrier to justice.[67] This would mean that access to justice must include expedition in hearings so that access to the service is not denied by the fact that it is perceived to

[66] Ontario Law Reform Commission Report, *Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes*, 1995.

[67] One topic that has arisen in other jurisdictions is the relationship between delays in seeking remedies in the administrative system and the impact of a limitation period on the ability to pursue other legal remedies. A recent British Columbia Court of Appeal case found that a plaintiff's right to seek civil remedies, in this case for negligence against medical practitioners, was not prevented by a limitation period of two years, where he had spent five years seeking a remedy in the workers' compensation system: *Vance v. Peglar,* B.C.C.A.[*The*] *Lawyers Weekly* (6 September 1996). *The Limitation of Actions Act*, R.S.N.S. 1989, c. 258 s. 3(2) provides some discretion to the courts to allow action to provide limitation periods, however, this may be limited to actions brought within four years of the date on which the action arose (s.3(7)).

be useless as a remedial process.[68] The Commission realizes that this is not necessarily a basis for review of decisions but recommends that this should be part of a credible administrative justice system. The Commission notes that this is also in the public interest since if the process is unsatisfactory, people will seek to address concerns through other mechanisms such as courts or it may result in increased conflict among members of the public. Currently, failure to resolve problems expeditiously and efficiently in both the administrative justice system and the court system is manifesting itself in the form of the demand for "alternative dispute resolution" process. The Commission has included some provisions in its draft *Act* regarding this concern as well as noting the increasing interest in a case flow management approach in the court system.

The Commission also has a number of other recommendations which could equally be considered from the perspective of the power of a tribunal to control its own proceedings. One such example is pre-hearing conferences. Where a hearing is to take place, it is important to provide for an opportunity to have a conference or meeting with the decisionmaker before any oral hearing. A pre-hearing conference is a formal or informal meeting held prior to the hearing. It provides all involved with the opportunity to get a fuller understanding of the issues, thereby encouraging agreement wherever possible and perhaps settlement. It allows the tribunal or agency to get a clearer picture of the scope of the issues involved, allowing it to set aside realistic amounts of time. The meeting serves a valuable organizational purpose because the individuals involved discuss how the hearing will proceed and determine what needs to be done in preparation for the hearing. These meetings are only as successful as the parties make them, but they have the potential to save money and time for all involved. Any issues that are resolved at this conference, or facts which are uncontested, should be recorded on a document, signed by both parties, and submitted at the hearing. The agency should have the power to hold such meetings or pre-hearing conferences by telephone conference call. This will facilitate attendance in cases where the hearing is to be held in another part of the province. Different considerations on the "record" of the meeting would apply in the case of a meeting held by conference call.

The Commission has considered the recent interest in various forms of conflict resolution generally labelled "A.D.R." (alternative or appropriate dispute resolution) which includes processes such as mediation and counselling, third party neutrals and other forms of negotiated settlements. While the Commission believes that in some cases there may be situations where an administrative tribunal, particularly one which holds more formal hearings, might encourage parties to resolve all or some matters, this should be an enabling procedure rather than a requirement. This is important for situations where the legal right or the intervention of the law is part of a process whereby the legislature has attempted to balance powers between opposing interests. The Commission believes that since the administrative process is itself, in some cases, an alternative to the courts, further recourse to A.D.R. seems inconsistent. The Commission does note, however, in connection with the concern for expedition and resolution, that current

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[68] See also the recent development of standards for the timely disposition of litigation (cases in court) outlined in Canadian Bar Association Working Group on Court Delays, "National Time Standards for the Disposition of Civil Cases: A Discussion Paper", 11 December 1995 considered at the Canadian Bar Association, Systems of Civil Justice Task Force Workshop, Toronto, February 1-2, 1996.

caseflow management procedures often make use of negotiation and resolution of all or some issues to reduce the number of cases and delays in the system. This would seem, therefore, to be a process that many agencies might consider in managing their decisionmaking schedules.

In its *Discussion Paper,* the Commission noted a concern about expert witnesses. To some extent this overlaps with the issue of access to information, however, the specific context here is a concern for expedition and avoidance of undue delay arising from last minute access to the information rather than the absence of the information. Along with the ability to have witnesses, there must be a corresponding availability of information about expert witnesses ahead of time. Presently, there are few rules dealing with experts even though expert witnesses appear on a regular basis before many ABCs. Without pre-filing requirements for expert reports, there is potential for one side to undermine the other by presenting the information at the hearing. This inevitably leads to an adjournment for the other side to prepare, thereby increasing the delay and costs. Pre-filing of the expert report and the inclusion of a summary of what the expert will be speaking about at the hearing would reduce the element of surprise. In addition to the report, there should be a requirement that the qualifications of the expert be included with the report. Where an expert report will not be filed, but an expert will be called as a witness, the other parties involved should be notified. Pre-filing seems to be a logical step in ensuring a fair and efficient hearing where all parties are aware of what they will have to deal with at the hearing. Pre-filing of expert reports also allows the parties and the ABC time to read and understand the material.

The Commission also recommends that in developing its rules, all time restrictions for filing documents and serving notices should be clearly set out in the agency's procedures.[69] It is not possible in a general draft *Act* to standardize these for all tribunal functions. However, some standard functions such as notice times and appeal periods could be included. If rules of practice and procedure are viewed as providing information to the general public about what they can expect during the whole process, time requirements are certainly important. In addition, filing reports and forms using modern technology such as fax machines and electronic methods should be accepted without question.

The Commission suggests that it is appropriate that the rules relating to resolution, expedition and efficiency include the following:

- availability of a pre-hearing conference where a hearing is required;
- availability of information about expert witnesses and reports ahead of time to avoid delays in hearings;

[69] The use of caseflow management has now been introduced in Nova Scotia in the court process: See *Preliminary Report Nova Scotia Working Group* to the Canadian Bar Association System of Civil Justice Force presented February 1996; and G. Pohlkamp, "Caseflow Management: A Delay Reduction Tool", Issues Paper prepared for the Canadian Bar Association Systems of Civil Justice Task Force, January 1996, presented February 1996.

- there should be appeal periods and time restrictions for pre-filing documents and serving notices which should be clearly and openly stated;

- there should be provision for filing the Notice of Appeal and any other documents which can reasonably be filed in this manner, by fax machine or electronic methods; and

- there should be caseflow management rules with specified case management procedures and a time frame for hearings to ensure that matters are resolved as promptly and efficiently as possible.

(iii) Written reasons for final decisions

There are two matters which historically are not recognized as part of the requirement of natural justice but which have substantive impact on the outcome of a hearing and on an individual's perception of fairness. These are the requirement that there be written reasons for the final decision and that the principles, if not all the technical rules, of evidence apply to administrative tribunals.[70]

Under the common law, tribunals are generally not required to give reasons, although there may be a statutory requirement to do so. However, fairness necessitates that the affected party be informed of the reasoning that went into the final outcome so that he or she can understand the outcome and decide whether to appeal the decision. The Commission supports the need to have this requirement recognized as a statutory requirement. At the same time, however, the Commission notes a concern about possible delays in the process if there had to be a written decision on all matters in a hearing. In addition, there is some concern that this might make decisions more open to appeal and delay. After considering these matters and the need to give substance to the availability of judicial review based on the "record", the Commission recommends that in order to allow people to understand decisions, it is important to have the reasons for the final determination in a case available to people involved in a hearing.

Giving reasons means more than just stating the evidence and a conclusion. It involves the process of fact-finding as it relates to the evidence and the reasoning which went into the final decision. A clear statement of these steps is essential to aid the party who may wish to appeal the decision and it should be of assistance to the appeal board or agency itself.

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[70] For a helpful overview of this issue and the practical questions that arise see: I. Blue, "Common Evidentiary Issues Before Administrative Tribunals and Suggested Approaches" (1993), 14 *Advocates' Quarterly* 385. The author notes that a common misconception is that administrative tribunals are not bound by the rules of evidence. As a practical matter, however, tribunals *must* have procedures for adducing evidence, and, in most cases, the S.P.P.A. [*Statutory Powers and Procedures Act*] or constituting legislation of boards mandate such procedures (at 387).

Along with this requirement, there should also be a requirement that reasons be given within a reasonable amount of time. Prompt decision writing is beneficial in that it ensures that the evidence being considered is still fresh in the decisionmaker's mind. This can only serve to increase the accuracy and correctness of the decision. The Commission feels that the importance of having reasons and a decision within a reasonable time is often as important to individuals as the reasons themselves since often opportunities are lost or rights are affected by delays. One of the more difficult issues considered by the Commission is what form of remedy or sanction can be provided if a tribunal delays and does not comply with the requirement for expedition. Clearly, allowing the case to start over will not meet the needs of people who may have lost opportunities and incurred financial costs because of the delay. The Commission specifically invited public comment on this issue and received a range of suggestions such as having decisions voided after a specified number of days or making a tribunal member's record with respect to delays in producing written reasons a part of a performance appraisal which will be taken into account in reappointment decisions. The Commission suggests that this should be addressed as matter of management by the Chair of the administrative tribunal who should have authority over this issue.

(iv) Application of Rules of Evidence

The Commission's research also indicated an emerging requirement that principles of evidence apply to administrative proceedings. At the same time, it is important that rules designed to operate in a court system should not be imposed on the administrative system. It has been suggested by some writers that a good starting point when considering the specific rules of evidence in administrative proceedings is to state that they do not generally apply unless there are contrary statutory requirements.[71] However, the principles upon which the rules are based provide guidance to agencies in dealing with evidentiary issues.

When a tribunal is dealing with evidence it should inquire into whether the evidence will be helpful in reaching a decision and whether it will be fair to the other side if the evidence is admitted. For example, when the tribunal rules on an objection to evidence such as a document, it should clearly state for the written record the basis upon which the decision was reached.[72] Any further consideration, after admitting a document into evidence should be noted as going to the weight that the tribunal will give to the evidence. Therefore, even though the document is admitted into evidence it may not be relied upon greatly by the tribunal because the objection had some validity to it.

In its *Discussion Paper*, the Commission also considered whether or not there should be more requirements regarding participation, particularly in decisions affecting the public interest. The Commission is aware that there are some views which suggest, particularly where alternative dispute resolution processes and consultation are involved, that there may be a "right to

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[71] This is suggested in E. Ratushny "Rules of Evidence and Procedural Problems Before Administrative Tribunals" (1989), 2 *Can J. of Admin. Law and Practice* 157.

[72] E. Ratushny at 162.

meaningful participation."[73] At the same time, the Commission is concerned that in order to make this a meaningful requirement or "right" it may require some access to funding. In its *Discussion Paper*, the Commission suggested that it might be appropriate for decisionmakers to consider whether, in particular cases, some other participation in the hearing is useful. If so, they should have the power and budget available to provide for financial assistance to permit intervenor participation. The Commission notes the commentary it received suggesting that the Civil Procedure Rules for "standing"[74] should be altered by the court to allow for a larger range of participants to present views in public interest cases. One commentator suggested that concerns about abuse of process could be addressed through a rule dealing with frivolous and vexatious applications and through costs. The same commentator also argued for clarity and certainty in connection with the power of the tribunal to award costs, a matter discussed below. It was suggested that if members of the public had some certainty regarding costs and intervention then they might be encouraged to take part in cases, assuming rules for standing were altered. The Commission felt that while this might be true it might equally have a "chilling effect" on some people seeking redress against the Government if they felt it was likely or possible that they may be forced to pay costs if unsuccessful.

The Commission recommends that:

1. Administrative tribunals should be required to develop rules of procedure for making decisions affecting rights and entitlements. These rules must be communicated to parties coming before them.

2. The rules and practices of administrative tribunals must reflect as much as possible the requirements set out in the draft *Administrative Justice Act* for improving accessibility and achieving fairness, including: providing information to participants, protection of privacy, expedition efficiency, resolution, written reasons within a reasonable time and decisions based on principles of evidence.

3. All final decisions of all administrative tribunals in Nova Scotia should be filed in one central office, public registry or library so that they are easily accessible to the public.

[73] See comments in "Alternative Dispute Resolution Process The Legal Issues", *News Brief,* Environmental Law Centre, 1995, Vol.10, No. 2; and see M. Jackman, "Rights and Participation: The Use of the *Charter* to Supervise the Regulatory Process" (1990), 4 *Can. J. of Admin. Law and Practice* 23.

[74] Civil Procedure Rules of Nova Scotia, Rule 8.

3. Standard Powers for Administrative Tribunals

The powers of an administrative tribunal are important to its effectiveness in conducting hearings. Where agencies hold hearings or are considered administrative tribunals they are usually given the powers of a Commissioner under the *Public Inquiries Act.*[75] This provides them with the power to take oaths, subpoena witnesses and have the immunities and privileges of a judge of the Supreme Court.

The concern here is to ensure that the system is effective and does not result in additional delay and inconvenience as with the minimum procedural requirements set out above. This would suggest that a tribunal should be able to control its own process and enforce its decisions. However, there is also concern that decisionmakers might end up looking like courts, particularly where sanctions or liberties might be involved, but constitutionally may not be able to act as though they were courts.[76] The Commission notes that it received commentary expressing a concern that if the authority given to a tribunal, particularly an appeal tribunal, is too broad it might violate s.96 of the *Constitution Act* 1867, which only permits the province to create certain kinds of "courts". In most cases, tribunals need to have an order registered with the court to bring the force of "law" to the order such that failure to comply constitutes contempt of court.

In determining what hearing-related powers an administrative tribunal should have, it is important to remember that what is being sought are *minimum* powers. In some cases, an agency could have additional powers if it was deemed to be appropriate. The Commission suggested in its *Discussion Paper* that these could include:

1. the power to initiate and terminate proceedings and to carry out or initiate matters to expedite cases;

2. the power to hold hearings using modern technology (such as video or electronic hearings);

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[75] R.S.N.S. 1989, c.372.

[76] Prior to the most recent move to consolidate agencies, there had been a move to amend the Ontario legislation to provide more power to agencies to control their own process. The Ontario Law Reform Commission Report: *Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes* 1995 also recommended that the agencies should be able to develop and implement caseflow management rules which set deadlines to deal with problems of delay. In addition, the ability of agencies to interpret other statutes in making decisions was also seen as a matter of importance.

3. the power to seek and obtain expert advice when a decisionmaker needs more information[77] and to seek assistance from a department and a secretariat as long as rights of parties to the information are not affected;

4. the power to decide not to hear matters which it considers an abuse of process;

5. the power to decide to hear cases as "generic cases" to settle matters of more common concern, without necessarily having a "case" before it;

6. the power to control its process to the extent of being able to subpoena witnesses and enforce its own orders by registering them with a court and also through contempt proceedings (where it has authority to issue the particular substantive order); or where, given the statutory authority and it is an appellate board, to refuse leave to appeal;

7. the power to appear in court to argue matters in review or in appeals where its view is challenged;[78]

8. the power to determine, subject to the statute, who should be included (for example, intervenors and standing) in a hearing; and

9. the power to determine the panel size and what happens if a panellist's term expires.

The Commission also considered some powers that exist in other jurisdictions and in Nova Scotia and sought public comment on these powers. In order to allow for the expedition and simplification of the process, the Commission considered whether the agency should be able to

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[77] The Government of Ontario when revising its *Statutory Powers Procedure Act* received a number of submissions. Among the more comprehensive of these was a submission of the Society of Ontario Regulators and Administrators, which set out on behalf of its large membership some proposals which, in its view, would expedite the work of administrative decisionmakers. Included was the need to clarify the relationship between an agency and governmental or support staff. Often decisions are drafted by support staff who may be civil servants or, more commonly, research may be carried out for an agency by a Secretariat with a governmental staff person. This fact alone does not necessarily result in a lack of independence, although any information received by an agency which might affect the substance of decisions must, in all fairness, be communicated to the parties in the case. However, because it may cause problems of institutional bias or public perceptions as to bias, the ability of an agency to seek advice from a department staff person is a matter which should be clearly addressed in an *Act*: see J. Sprague, "The Role of Staff in Post-hearing Deliberations and Reasons Writing", 1994 a paper (on file) in which the author drew from Chapter 22 of R. W. Macaulay & J. Sprague, *Practice and Procedure Before Administrative Tribunals* vol 2 (Toronto: Carswell, 1988).

[78] Currently, there is a perception that a tribunal is similar to a court in that it determines matters before it and has no role in a proceeding regarding its decision in a case should the decision be appealed. However, this ignores the fact that in many cases this places an onus on one of the parties to support a broad argument on the jurisdiction and expertise of the agency rather than allowing the agency to speak for itself.

rehear cases itself instead of sending the matter on for appeal. At common law, there is a limited right to rehear in cases of problems such as typographical errors or fraud; however, in general an agency cannot rehear a case. In some provinces there is a right to have a rehearing. The Commission, while agreeing that this might speed up decisions, feels it results in concern about bias and also confusion over finality and timing of appeals. On balance, the Commission feels that while there might be some efficiency gained from rehearing matters, it is more appropriate to codify the narrow or common law position regarding correction of minor errors.

The other issue that the Commission sought specific comment on related to the power of administrative tribunals to award costs. It has sometimes been suggested that all tribunals should have the power to award costs to one or other of the parties in a case. This is a power available to courts and some administrative decisionmakers (for example, the Utility and Review Board or Registered Nurses Appeal Committee). The recent regulation regarding costs under the *Utility and Review Board Act* is very elaborate but instructive as to when and how costs might be administered.[79]

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[79] The URB regulation: N.S. Reg 131/96 states:

1. These rules are made pursuant to Section 12 and 28 of the Utility and Review Board Act and apply to all proceedings before the Board except those under the Expropriation Act, the Planning Act, and the Freedom of Information and Protection of Privacy Act.

2. These rules may be cited as the Cost Rules.

3. (1) The Board will not normally consider an award of costs unless at least one of the parties requests it.
(2) The Board may on its own motion ask a party whether it seeks costs where the Board feels that one party has acted improperly and the other party may be unaware of the right to request costs.

4. (1) The Board shall not make any order as to the payment of costs by either a party or counsel unless the person against whom the order is proposed to be made is given a reasonable opportunity to make representations to the Board.
(2) An award against counsel will only be made in extraordinary circumstances.

5. (1) The Board may award costs against a party whose conduct or course of conduct is found to be clearly unreasonable, frivolous or vexatious, having regard to all of the circumstances.
(2) Without placing any limitation on subsection (1), the Board may determine the following conduct to be clearly unreasonable, frivolous, or vexatious:
(a) where the action of a party or the failure of a party to act in a timely manner resulted in prejudice to any of the other parties;
(b) where an applicant or appellant fails to:
(i) attend a hearing, or
(ii) to send a representative to a hearing;
(c) where a party has failed to co-operate with other parties during preliminary proceedings or the hearing;
(d) where a party's failure to comply with a procedural order or direction of the Board has resulted in prejudice to another party; or
(e) where a party has continued to deal with issues which the Board has advised it are irrelevant.

The Commission received a range of comments on this issue. In general, it was thought that it might be useful in some cases, but there was some concern that it was also subject to abuse since no guidelines were given to decisionmakers as to when to make use of this power. One commentator urged, as noted above in connection with board participation requirements, that the availability of costs and the amount should be certain so that potential intervenors of interest could plan their cases accordingly. The Commission understands this point but is equally concerned that while this might encourage more public interest intervenors, the risk to having costs awarded against a public intervenor, particularly where the other party is the Government, might in fact have a "chilling effect".

The Commission also noted its concern that this may be a power that is easily subject to abuse and one which should, in general, be confined to the courts since it can result in punishment of a party. The Commission considered the comments it received and concluded that costs should only be available where there had been an abuse of process or where the tribunal concludes a person has acted unreasonably in the circumstances.

All of these minimum powers can be adjusted, increased or decreased in the enabling statute of an agency, if the Government expressly determines that it should be so. The advantage in providing standardized powers, is that it clarifies the situation in all cases where they are not stated. Where tribunals are dealing with matters affecting rights, there should be sufficient authority to ensure that they have sufficient power to carry out its strategy and policies without fragmentation of authority. The supervisory role of the courts would then be as suggested earlier: properly oriented to considering situations where it appears a mistake was made in law or where there was failure to provide for natural justice in the case (that is, judicial review).

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6. (1) The Board has no power to order intervenor funding or security for costs.

(2) The Board may consider awarding costs against a utility to non-profit, public interest intervenors with limited financial resources who

(a) have a substantial interest in the proceeding;

(b) will be affected by the proceeding;

(c) participate in the hearing in a responsible way; and

(d) contribute to a better understanding of the issues by the Board.

The Commission recommends:

1. An administrative tribunal should be able to control its own procedures, subject to the rights of people appearing before it, its statutory mandate, and the supervisory power of the courts through judicial review.

2. There should be minimum standard powers provided in a draft *Administrative Justice Act* for all administrative tribunals which can be adjusted by the Government in creating the agency.

3. Under the draft *Administrative Justice Act* there should be a very limited power on the part of the decisionmaker to rehear a case to correct an error.

4. Under the draft *Administrative Justice Act* there should only be limited power to award costs in cases of abuse of process, or where a person has acted unreasonably in the circumstances.

4. Simplifying Judicial Review and Appeals

The Reference asked the Commission to "simplify administrative law particularly as it relates to judicial review and appeal". The Commission considered this request in light of the fact that it assumes first, that the system can be simplified; and second, that simplifying a system necessarily improves a situation. In addition, it is not clear that a new law could achieve this goal of simplifying administrative law. The Commission has already suggested that a lack of information about the system, a lack of faith in the system and a lack of training to assist people to carry out responsibility means that the administrative system and the laws governing that system are seen as inaccessible, confusing and complex.

The law regarding judicial review and statutory appeals is a complex area of law, even for people with legal training. The fact that there is a broad range of appeal practices under the statutes creating agencies adds another layer of complexity. The range of procedures set out in the statutes of Nova Scotia is found at the end of this *Report* in Appendix "C". A review of this suggests that there is little consistency in matters such as the amount of time in which an appeal can be made or to whom an appeal occurs or on what basis. There may be good reason for this and, in fact, flexibility and specificity is an important feature of the administrative law system. The range of practice, however, makes it difficult for anyone other than persons familiar with the practice of each agency to know or follow the rules of practice or to know what their options are,

if any. This is particularly the case when information is not easily available or the information in the statute does not correlate with real practice.[80]

The legal differences between judicial review and a statutory appeal were outlined above in Part II. Although from a non-lawyer perspective the two issues might be seen as one because they involve having someone reconsider or rehear the decisionmaker's conclusion, they are legally different processes and will be discussed separately in this section. In its *Discussion Paper,* the Commission suggested that the law of judicial review should not be significantly reformed but that the system of statutory appeals should be altered significantly. In light of public commentary on the Commission's suggestion in its *Discussion Paper* the Commission feels that its initial view on the need of reform of judicial review should be modified to some extent although the substance of its conclusion as to whether review should be replaced by a new *Judicial Review Act*, remains the same. The Commission has, however, significantly altered its initial suggestion as to the best course of action to achieve reform in connection with statutory appeals.

(a) Judicial Review

The availability of judicial review (that is, review of a decision by a court which in general considers the way in which the decision is made rather than the substance of the decision itself) is dealt with on the basis of two models: 1) the existing common law (and Civil Procedure Rules); and 2) statutory judicial review. In Nova Scotia, aside from a few anomalies in the statutes, judicial review is available through the common law and the procedure for obtaining judicial review is found in the Civil Procedures Rules of Nova Scotia (Rule 56).

The second model of judicial review is called statutory judicial review. It involves replacing the common law process of judicial review with a statute dealing with judicial review. This model exists in several provinces such as Ontario,[81] British Columbia[82] and Prince Edward Island.[83] These laws are similar to the Nova Scotia Civil Procedure Rules in that they remove the former prerogative writs and call them all "applications for judicial review." This has some merit in terms of public education (the Civil Procedure Rules are even more unknown to most of the public than the statutes of Nova Scotia). However, the danger is that, ultimately, it ends up

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[80] For example, there are a number of statutes "on the books" in Nova Scotia which appear to have some substance or impact but which have none and are largely there for historical reasons. For example, there is no Rent Review Commission in Nova Scotia but there is a *Rent Review Act,* R.S.N.S., 1989, c.56, which is still in existence in the statutes of Nova Scotia. In order for the public to determine that the Rent Review Commission does not exist in Nova Scotia, one would have to read through a number of regulations under the *Rent Review Act*. Similarly, the Court of Divorce and Matrimonial Causes has been dormant since 1968 but it remains "on the books" in the event that the Government might wish to revive it. While it might be sensible to keep legislation which has been adopted "alive" in the event of need, it does create some confusion for members of the public seeking information.

[81] *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1.

[82] *Judicial Review Procedure Act*, R.S.B.C., 1979, c.209.

[83] *Judicial Review Act*, R.S.P.E.I., 1988, c.J-3.

creating yet another law to be interpreted by the courts. One of the concerns of the Commission is whether reform is needed or whether the current process generally works. While it is hard to get public comment on judicial review (given that the process is not one which is easy for people to follow) it appears to the Commission that the reforms made a number of years ago to the Nova Scotia Civil Procedure Rules eliminated many of the procedural problems that judicial review laws are intended to address. The result is that it is similar to the provisions of the *Judicial Review Acts* in other provinces in that it does not particularly matter if you ask for the wrong form of action (*certiorari or mandamus*) except for the time periods. It may be that the Civil Procedure Rules also have more flexibility in terms of amendments since they are reviewed and clarified frequently by the judiciary.

In its *Discussion Paper* the Commission suggested that the existing common law system should be retained, except for one change regarding removing a 6-month time limit on filing for *certiorari* under the Civil Procedure Rules. The Commission felt that the impediments involved with judicial review relate more to general questions regarding access to court time, delay and legal costs. The procedure involved in judicial review, while not completely inaccessible to non-lawyers, is an area which generally requires the assistance of legal counsel. Other models of reform do not really address these issues and, in fact, other approaches may provide more difficulty than clarity.

There were two specific comments responding to the *Discussion Paper* regarding the need to simplify the language associated with judicial review to allow better public access. It was suggested that the Federal Court provisions be adopted to clarify the various bases for judicial review. This suggestion was directed not so much at altering the basis of judicial review but at clarifying when judicial review is available. The *Federal Court Act* maintains the original common law writs but provides a statutory framework for the application process. The Nova Scotia Civil Procedure Rules have, in fact, done away with the old writs or forms of action in strict terms but have not modified it in statute form. This is an important point but the Commission is concerned that if a new *Act* is passed dealing with judicial review as a matter of statutory review it would provide for confusion if the existing common law provision remained. This is true even though some *Acts* already indirectly appear to do so in their wording.[84] Simply codifying judicial review in an *Act* may run the risk of superficially clarifying matters, but might also end up with two different processes, one under the Civil Procedure Rules and one under the new *Act*.

The Commission recommends that the Civil Procedure Rules should be rewritten to make the language describing the grounds of review more understandable to members of the public. The

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[84] The *Small Claims Court Act*, R.S.N.S. 1989, c.430 provides that:

Appeal

32 (1) A Party to proceedings before the court may appeal to the Supreme Court from an order or determination of an adjudicator on the ground of

(a) jurisdictional error;

(b) error of law; or

(c) failure to follow the requirements of natural justice,

by filing with the prothonotary of the Supreme Court a notice of appeal.

Commission concluded that given initial views on the need for expedition and the use of case flow management practices, it would not recommend removing the 6-month limit on *certiorari*, but recommends that time limits be reconsidered for all applications. It does, however, recommend that the Judges in reviewing the Civil Procedure Rules, consider whether judicial discretion regarding the extent of time under Rule 3.03 for *certiorari* should be available on the same basis as other orders.

Sometimes the idea behind passing such a law is to more clearly define and perhaps limit the basis of judicial review. The reality of court practice, however, is that it is still not possible to insulate an agency from review if the court feels that there is a legal problem involved. The Commission suggests that if the initial decisionmaking procedures are better developed and clarified, and the decisionmakers better trained, then this would be more helpful to the public than creating options for more recourse to the courts which requires legal assistance.

The Commission recommends that:

1. The law relating to judicial review remain under the common law as stated in the Civil Procedure Rules, however, the Civil Procedure Rules should be reviewed to make the language more accessible to individuals who may wish to consider if they have recourse under the Civil Procedure Rules. In reviewing the Rules, consideration should be given to the relationship between a caseflow management approach and the ability of judges to alter time limits for all remedies.

(b) Appeals (Statutory)

It will be recalled from the discussion in Part II of this *Report* that there are two methods of seeking a review or a new decision if a person is dissatisfied with a decision. The first of these discussed above is the common law of judicial review. The second of these is through an appeal of the first decision to some other person or agency or in some cases to a court. These appeal rights are usually provided in the rules or statute governing the organization. In some cases, there is more than one appeal process under the same statute for different issues, for example, suspension of licence as opposed to refusal of grant of licence. Simplifying this system of appeals is quite complicated largely because of the range and numbers of procedures and practices in place. This is clearly highlighted in the chart found in Appendix "C " which sets out the range of appeal processes available in Nova Scotia.

Aside from the fact that this may give rise to concerns about consistency across agencies, the Commissioners were troubled, given the backlog in the court system, by the fact that a large number of appeals go directly to the Supreme Court. It will be recalled that the Supreme Court also has an important supervisory role through judicial review of the operation of the administrative justice system. This seems to defeat many of the benefits of the administrative justice system and adds to the cost of the courts. In addition the courts are, in general, a process

that is less accessible to members of the public who may wish to have their concerns addressed without legal counsel.

In addition to an appeal the courts, there are a number of appeal agencies with varying powers. Often their function is not to rehear the case but to consider matters which might suggest that the decision was incorrectly made. The role of the appeal agencies is, in that sense, more like the role of the appeal courts in that often the role is not one of expertise in the particular issue but one of considering the first decision and how it was made. As noted in Part II, however, the basis of appeals in Nova Scotia varies greatly from agency to agency. In some cases appeals are in this form, in others they are "*de novo*" - or a complete rehearing of a case.

The Commission considered reforms in places such as Australia[85] and also the evolution in Nova Scotia of what appears to be a "super" board in the form of the Utility and Review Board which, aside from being the first level tribunal for some matters, is also the Appeal Board for a wide range of issues. The basis of appeals and the procedures before the Utility and Review Board differ depending on which statute it is dealing with. The Commission also notes a Bill introduced in the Quebec Legislature in December 1995, *An Act Respecting Administrative Justice*, Bill 130, which, if adopted, will create the Administrative Tribunal of Quebec.[86] This Tribunal will act as the single board for all third-party adjudication of complaints brought by citizens against decisions of the administration in Quebec. The Commission also considered the process of consolidation and streamlining of agencies which is currently underway in Ontario.[87]

In most places the issue that arises is similar: is there a way to reduce the number of agencies or range of appeal procedures involved and "simplify" the system? Some of this has taken the form of an interest in A.D.R. processes as alternatives to the administrative tribunal process. This is somewhat ironic given that the system is itself the original A.D.R. process to the court system. Inevitably, procedures seem to either become overly "legalized" and lengthy or end up going to court. Is it a lack of faith in the reliability or credibility of the people appointed? Is it owing to the increasing involvement of lawyers? Is it lack of training for first level decisionmakers? Or is it simply that there are appeals because the Government in passing laws creating an appeal, necessarily generates a need for the appeal? The Commission feels that it is probably a combination of all of the issues and others. The issue becomes how to make case by case decisions which are fair and at the same time develop a complaints "management" approach which deals with issues of expedition, consistency, policy development and communication of outcomes.

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[85] T. Ison, *The Administrative Appeals Tribunal of Australia,* Law Reform Commission of Canada *Study Paper 27* (Administrative Law Series) 1989.

[86] This Bill had second reading on May 2, 1996 and, subject to some changes, it is believed it will be adopted in 1997.

[87] Agency Review by the Management Board Secretariat, Government of Ontario.

In its *Discussion Paper* the Commission suggested that a consolidation of agencies would help simplify the process. That is, some consistency and simplicity might be developed through simply having fewer agencies involved in making decisions.

The Commission considered several models including consolidation and streamlining of first level decisionmaking boards and consolidation of appeal boards into one or several boards. The Commission considered dividing agencies along the lines of occupation or subject matter, such as having one board to deal with all complaints and appeals from occupational associations. The idea behind this approach is that very often the issues that arise on appeal, while differing in some specifics, are similar. In this case then, the procedure for hearings and processing concerns and appeal periods and the scope of the appeal could be standardized for a number of similar occupations or issues. This would allow for some full-time people to be involved with training who would develop expertise. In its *Discussion Paper* the Commission ultimately rejected the idea of consolidating first level decisionmakers because the need for specific expertise and flexibility suggests that it would not be useful to consolidate or create superboards for first level decisions, where most hearings occur.

The Commission suggested that, given the number of appeals currently going to either the Utility and Review Board or the courts, one way in which the appeal process might be simplified would be to consolidate all appeals and have them go to one new Administrative Appeal Board. The Commission in suggesting this, however, recognized that there would still be some internal appeal mechanisms that would operate. This suggestion primarily reflected an interest in reducing the appeals to the court system and providing a more standardized process for all administrative appeals. The Commission felt that there were good arguments for consolidation and creation of one Appeal Tribunal for all administrative appeals which would currently go to the Supreme Court in the province. Having one board dealing with appeals would enable better caseflow management and generate efficiency within the administrative system as a whole. Recourse to the court from decisions of this board would continue to be available in the form of judicial review, although the board would be the final decisionmaker and no statutory appeals to other boards, ministers or courts would exist. This would serve to ensure accountability and natural justice through general supervision by the courts while also ensuring finality in decisionmaking. The Commission also suggested that some resources would be required to ensure that the tribunal could properly meet public demands; however, the reduced cost and efficiencies elsewhere in the system would balance this initial expenditure. This consolidation may also provide for more training of people who make these decisions and write reasons. Arguably, as the quality of justice improves in agency decisionmaking, appeals and reviews would decrease.

As noted earlier, the Commission received a large number of comments on this suggestion. The Commission identified the general concern of commentators that consolidation into a new "super board" where people were still likely to be untrained or may not have any greater expertise than the first level decisionmaker, would only create another level of bureaucracy that people would have to deal with before getting to court for "real justice". The Commission also considered the view put forward in some commentaries that perhaps it should recommend that simplifying the system could be accomplished by simply reducing the number of appeals available and requiring training of the first level decisionmakers so as to ensure that people receive a fair and proper

hearing in the first instance. In cases where there is some perception of unfairness or problems with the process, then recourse could be obtained through judicial review in the courts. Since in many cases the courts are the appeal agency in any event this means the Government must provide some training to ensure better first level decisionmakers so that people are, in fact, getting a fair hearing and do not feel that there is a basis for an appeal. In addition, this would still allow people who are concerned about unfairness to seek judicial review.

The Commission also considered the fact that currently problems with decisions end up in court which has a cost to the parties involved and to the court system as a whole. There were comments suggesting that it is necessary in creating a new agency to ensure that the actual cost would be lower than costs of the current court system. The Commission understands that the court system itself is currently undergoing a process whereby it is starting to monitor and evaluate its costs. The cost of processing administrative appeals and related administrative law issues is not easily trackable since the court itself does not maintain its records on that basis. While, in principle, it seems likely that the cost of shifting appeals from the court to administrative agencies might be economically justified, this is a matter which needs to be addressed. In order to determine this, however, government departments need to evaluate the processing cost of administrative tribunals. Where the decisionmakers and internal appeal process are not publicly funded but are voluntary in all respects then the public cost is not high in terms of financial contribution. There may, however, be other indirect costs if judicial review is sought frequently because of concerns about the process or if there is public cynicism with the process.

The Commission debated this issue at length in light of the comments received. Ultimately, there is a division of opinion in the Commission as to the best approach to simplification of statutory appeals, although there is agreement on the final recommendation to the Government. Some Commissioners feel that there is merit in the idea that there should be few, if any, statutory appeals and instead there should be better training of the first level "expert decisionmakers" with clear availability of judicial review to deal with concerns about natural justice. Other Commissioners remain of the view that an Administrative Appeal Board as initially suggested is the best alternative, assuming appointees to such a board were qualified and well trained. There is, however, agreement among all Commissioners that should an appeal board be recommended, it should not disrupt the internal appeal systems but simply move appeals out of the Supreme Court to an administrative board. There is also concern about the need to recommend an assessment of the cost of court time and overall effect of creating a new board. Some Commissioners feel that creating such an institution is a policy decision for Government rather than a legal issue *per se*. After considering various options, the Commission concluded that: (1) it did not have a clear resolution on this issue; (2) that the decision to create a new agency is one of government policy in light of fiscal concerns rather than a legal decision *per se*; and (3) that it required more study, particularly in terms of a cost-benefit analysis. It is the Commission's view that it is preferable for the Commission to identify where the concerns seem to lie in the appeal process and what policy options exist for simplification rather than make a recommendation about which there was some hesitancy.

The Commission, however, remains strongly of the opinion that education of decisionmakers will reduce the number of appeals. The Commission also suggests that, in addition to

considering the cost and benefits of creating a superboard, the Government should require that the Office of the Legislative Counsel develop a "template" or standard policy regarding appeal periods, where the appeal is to go and the wording of the appeal provisions. The Commission was advised that currently the Legislative Counsel acts on the direction of the department involved as opposed to using a standardized format. The Commission's recommendations would have the effect of providing some level of uniformity and standardization across ABCs. The Government should review the number of cases that it sends to the courts and consider on the basis of costs and accessibility, the merits of either expanding court-related resources or creating a more expanded administrative appeal board to deal with a range of administrative appeals from first level hearings. Alternatively, the Government may wish to reduce the number of appeals that are available, combined with training of first level decisionmakers, to ensure fair hearings involving first level decisionmakers.

The Commission recommends that:

1. The Minister of Justice should, as an aspect of the government's current Access to Justice Initiative, obtain a cost/benefit assessment of three issues:

   - The direct and indirect cost of eliminating a number of statutory appeals to courts and administrative tribunals combined with mandatory training for first level decisionmakers.

   - The direct and indirect cost of having more statutory appeals to the courts including assessing the options for expanding court resources and decreasing the formality of the court process (similar to Small Claims Court).

   - The direct and indirect costs of creating a new Administrative Appeal Board as a final decisionmaker to carry out all administrative appeals after first level hearings.

2. The Government should request that Legislative Counsel develop a standardized protocol or practice for all statutes involving statutory appeals in terms of appeal periods, the basis of appeals and to whom the appeal should be directed.

5. Ensuring Independence of Administrative Tribunals

The Reference requires that the Law Reform Commission develop draft legislation that, amongst other things "(d) ensures the requisite degree of independence when a tribunal is required to act in a judicial fashion". There are a number of general points that can be made about this request. Perhaps the most important is that while independence is the term used, in fact, what is being sought here is a complementary aspect of natural justice - that is, the tribunal must be impartial. This can mean that it is able to deal with the case coming before it in an impartial manner and that there is no concern that the decision will be based on improper considerations or affected by

something in the structure of the agency or appointments which might suggest to the people involved in the case that it is not an impartial decision.

Aside from codifying this as an aspect of procedural fairness, this issue also needs to be dealt with in general recommendations. In fact, it is likely that it should be in the form of various recommendations and woven throughout any draft *Act*. Interpreted narrowly, it could be confined to a narrow group of tribunals which act in a judicial fashion and whose decisions are independent of (presumably) Government direction. To the extent that the right to an unbiased decisionmaker is fundamental to procedural or natural justice, it would normally be part of a law on administrative procedures. However, it is not clear from the Reference what is envisaged by independence which might distinguish it from procedural guarantees to an unbiased decisionmaker. It could be understood as going to the issue of institutional impartiality - that is, the structuring of the agency *vis-a-vis* the government department or organization which creates it, as well as the impartiality of the decisionmaker himself or herself. In addition, it may be referring to the notion of tenure or security such that the decisionmaker's decision will be truly independent.

Assuming that the idea of "bias" or "interest", which case law has now included in the concept of a duty to act fairly and impartially, is inherently related to independence, then it appears that there are two main issues to face: one is the need to ensure there is no conflict of interest in the structural relationship between an administrative agency/tribunal and any of its client bodies (for example, Government) including the way in which decisions are made; and, two, the relationship between the individual decisionmaker and the decision itself.

As noted earlier, independence is perhaps better understood to mean that the decisionmaker acts without bias, that is, he or she has an impartial or open mind on the case. Independence is a state of mind but also and equally important, those involved in the process must perceive it as being present.

While this may sound reasonably straightforward, the issues are quite complex. This is highlighted in the comments received by the Commission which note that, in some cases, the ABC is implementing government policy and is essentially accountable to the Government for its actions, whether it is in terms of dealing with public resources, regulating activities or making determinations as to entitlements. The Government is, in turn, accountable to the public for these decisions. To require "independence" ignores this aspect of accountability that is equally important to the public interest. The question then is "who should be independent from whom and to what end?" As noted by another commentator, in some cases it is in the public interest to consult or obtain advice from within government because there may be a need for its expertise. For example, some agencies are specifically designed to implement or further some government objective or policy and are, therefore, institutionally "biased" in some aspects. The fact that most, if not all, agencies and adjudicators are paid by the Government which may be one of the parties to a matter, adds a further level of complexity to the discussion. In some cases, concern about bias or lack of impartiality can extend back to the ways in which appointments occurred or people were selected which gives rise to the view that they are inherently biased. In addition, the procedure and process for making decisions might also seem problematic. In some cases, the process of investigation and the relationship between the

investigator or investigation process and the decisionmaker may give rise to concerns about independence.

The Commission feels that the relationship between accountability and independence is important. In the context of administrative tribunals, the issue is perhaps more correctly understood as the requirement of impartiality or an unbiased view *vis-a-vis* the decision to be made.

The Commission recommends, as part of the overall review of the administrative agencies, that the Government consider whether the need for independent decisions is one of the reasons for creating or restructuring an agency. If independence is important, then the ABC's relationship to the government department and the procedure by which it makes decisions (as well as the appointment process) should reflect this determination.

Independence or impartiality as an aspect of the functioning of administrative agencies in Nova Scotia seems to be affected by at least two factors. First, many agency members are part-time appointments. Being part-time means that these people do not rely solely upon their position as an agency member for their livelihood. They can, therefore, theoretically afford to take an independent approach to their part-time job and to resist any attempts by Government to influence their individual case decisions. This is not to say that their part-time income will not be of some importance to these people (depending on how much they are paid). Some will not want to see that income lost over the issue of independence but clearly their dependence upon agency-related income is far less than that of a full-time employee.

A second factor affecting independence concerns tribunal members who hold full-time appointments. In many cases, the appointment is at the Government pleasure or on a term of two or three years which can be renewed (in some cases only once). This arrangement hardly provides an adequate degree of the security of tenure and means that some people may be more susceptible to government influence should it be exerted, than would be the case if they were tenured. Tenure too has it problems unless there is a process of periodic appraisal of performance and the right to replace if the performance is not satisfactory. Term appointments probably have another consequence, that being the reluctance of good candidates to commit themselves to a position which may last for only two or three years and six at the most. Good candidates for appointment may never apply.

Independence can also be provided in a number of ways ranging from the government's decision not to intervene, tenure of appointees, separate funding, separation of agency staff from government departments, budgetary control, multiple funding sources, sectoral nominees and public reporting of agencies to ensure public awareness of the independence of the agency. The issue of independence of an agency, particularly when it is making "public interest" decisions, as opposed to decisions between individuals inevitably creates a tension for government. This is because government is, at the same time, accountable to the public for those decisions since they often result in public expenditures and actions for which the Government must ultimately account to the public. At the same time, there are often good reasons for separating some decisions from political influence and government decisionmaking to obtain expertise or the view of other interests in a matter. None of these concerns are inherently right or wrong or of

more value. They are simply factors which must be explicitly considered to ensure an efficient and credible administrative system. The Commission does, however, point out that the law in Canada is clear that where the ABC is an administrative tribunal responsible for delivering administrative justice and affecting an individual's liabilities, rights and entitlements, then ensuring impartiality in the sense of freedom from bias on the part of decisionmakers is paramount. The Commission has provided for this in the draft *Administrative Justice Act*. It can also be better ensured through training of all appointees and staff working with administrative agencies.

The Commission recommends that:

1. The appointment process for members of any agency which is making decisions and particularly administrative tribunals should ensure that appointments and the appointment process reflect the requirement of impartiality.

2. Appointees and staff, including government staff working with the agency or administrative tribunal, must be trained to ensure an understanding of the meaning of conflict of interest and procedures must be developed for ensuring that this is respected. Where administrative tribunal members are not appointed by the Government, there should be an attempt to ensure that persons coming before a tribunal are confident that it has an open and impartial mind with respect to the issue it is to consider.

3. In cases where an institutional arrangement *vis-a-vis* the Government may suggest that otherwise independent decisionmakers are not able to act independently, then there should be a clear provision to meet this concern if the agency is expected to be acting independently of Government or of a particular interest. This might include stated terms of appointment and secondment of staff whose primary obligation is to the agency in question.

4. Where an individual's liabilities, rights or entitlements are affected, then impartiality on the part of the decisionmaker should be paramount.

5. Ensuring access to information and fairness in decisionmaking, particularly where the same agency might carry out several roles including investigation, must be respected and are critical components of a credible administrative justice system.

IV SUMMARY OF RECOMMENDATIONS

The Commissioners recommend that:

1. There should be reform of the administrative justice system in Nova Scotia to ensure that it is impartial, accessible, expert, efficient and accountable.

2. The structure of agencies should be carefully designed to support the purpose for which the agency was created.

3. The appointment process for agencies must also be designed to ensure that there is public confidence in the agency. The appointment process should be "transparent", in that the criteria or qualifications for an appointment should be consistent with the purpose of the agency and should be publicly available. The process for identifying and selecting people for appointments should be equally transparent.

4. Any reforms must include education of the general public and members of the public acting as decisionmakers and must take into account the need to provide easy access to information about administrative procedures.

5. When the Government adopts the draft *Administrative Justice Act*, it should also provide training for all ABC appointees and staff supporting ABCs. This should be a minimum requirement for all appointees and training should be provided several times a year throughout the province.

6. Training should ensure that there is a minimum level of information about the role and responsibilities involved in being appointed to an ABC. Where the ABC has administrative work as part of its function then appointees should be given additional training to assist decisionmakers in each agency to develop and interpret the requirements of natural justice, fairness, human rights law and modern caseflow management practices.

7. The Government should adopt the draft *Administrative Justice Act*, which sets out a number of minimum procedures and standard powers that will apply to proceedings before administrative tribunals.

8. Administrative tribunals should be required to develop rules of procedure for making decisions affecting rights and entitlements. These rules must be communicated to parties coming before them.

9. The rules and practices of administrative tribunals must reflect as much as possible to the requirements set out in the draft *Administrative Justice Act* for improving accessibility and achieving fairness including: providing information to participants, protection of privacy, expedition, efficiency, resolution, written reasons within a reasonable time and decisions based on the principles of evidence.

10. All final decisions of all administrative tribunals in Nova Scotia should be filed in one central office, public registry or library so that they are easily accessible to the public.

11. An administrative tribunal should be able to control its own procedures, subject to the rights of people appearing before it, its statutory mandate, and the supervisory power of the courts through judicial review.

12. There should be minimum standard powers provided in a draft *Administrative Justice Act* for all administrative tribunals which can be adjusted by the Government in creating the agency.

13. Under the draft *Administrative Justice Act* there should be a very limited power on the part of the decisionmaker to rehear a case to correct an error.

14. Under the draft *Administrative Justice Act* there should only be limited power to award costs in cases of abuse of process, or where a person has acted unreasonably in the circumstances.

15. The law relating to judicial review remain under the common law as stated in the Civil Procedure Rules, however, the Civil Procedure Rules should be reviewed to make the language more accessible to individuals who may wish to consider if they have recourse under the Civil Procedure Rules. In reviewing the Rules, consideration should be given to the relationship between a caseflow management approach and the ability of judges to alter time limits for all remedies.

16. The Minister of Justice should, as an aspect of the government's current Access to Justice Initiative, obtain a cost/benefit assessment of three issues:

   - The direct and indirect cost of <u>eliminating</u> a number of statutory appeals to courts and administrative tribunals combined with mandatory training for first level decisionmakers.

   - The direct and indirect cost of having <u>more statutory</u> appeals to the courts including assessing the options for expanding court resources and decreasing the formality of the court process (similar to Small Claims Court).

   - The direct and indirect costs of creating a new Administrative Appeal Board as a final decisionmaker to carry out all administrative appeals after first level hearings.

17. The Government should request that Legislative Counsel develop a standardized protocol or practice for all statutes involving statutory appeals in terms of appeal periods, the basis of appeals and to whom the appeal should be directed.

18. The appointment process for members of any agency which is making decisions and particularly to the Administrative Tribunals should ensure that where appointments and the appointment process reflect the requirement of impartiality.

19. Appointees and staff, including government staff working with the agency or administrative tribunal, must be trained to ensure an understanding of the meaning of conflict of interest and procedures must be developed for ensuring that this is respected. Where administrative tribunal members are not appointed by the Government, there should be an attempt to ensure that persons coming before a tribunal are confident that it has an open and impartial mind with respect to the issue it is to consider.

20. In cases where an institutional arrangement *vis-a-vis* the Government may suggest that otherwise independent decisionmakers are not able to act independently, then there should be a clear provision to meet this concern if the agency is expected to be acting independently of Government or of a particular interest. This might include stated terms of appointment and secondment of staff whose primary obligation is to the agency in question.

21. Where an individual's liabilities, rights or entitlements are affected, then impartiality on the part of the decisionmaker should be paramount.

22. Ensuring access to information and fairness in decisionmaking, particularly where the same agency might carry out several roles including investigation, must be respected and are critical components of a credible administrative justice system.

V DRAFT *ADMINISTRATIVE JUSTICE ACT*

Part I - Purpose And Application

Purpose

1. The purpose of this Act is to better achieve fairness in administrative decisionmaking by guaranteeing parties appearing before administrative tribunals basic procedural rights and safeguards and by standardizing the powers and procedures of administrative tribunals.

Definitions and Scope

2. In this Act,

   (a) "administrative tribunal" means one or more persons, an agency, a commission, a board or a tribunal, authorized by statute or law to hold a hearing to decide matters affecting:

      (i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party; or
      (ii) the eligibility of any judicial or natural person to receive, or to continue to receive, a benefit or licence.

   (b) "hearing" includes an oral, written or electronic opportunity for the parties to present their case.

3. This Act does not apply to

   (a) a Court;
   (b) the Legislative Assembly;
   (c) a Coroner's inquest;
   (d) an inquiry under the *Public Inquiries Act*;
   (e) one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make, unless the statute authorizing the investigation provides otherwise.

Waiver of Procedures

4. The procedures in this Act apply unless otherwise provided by law or are waived by the parties with the approval of the administrative tribunal.

Part II - Minimum Procedures

5. An administrative tribunal shall act independently, fairly and in an impartial manner, and shall ensure that its procedures and practices reflect the principles of natural justice and fairness.

6. Subject to the minimum standards set out in this Act and any specific provisions in its own statute or regulations, an administrative tribunal shall

   (a) adopt procedural rules and descriptions of its practices and sample forms and make them available, on request, to the public and in all cases to the parties to a hearing;

   (b) ensure that a copy of any rules and any changes to rules are filed in [a public registry]; and

   (c) ensure that where its procedures are set out in regulations they are also filed [in a public registry] and available to the public and parties; however, failure to file or publish the rules will not affect the validity of the rules.

7. The procedural rules developed either by an administrative tribunal or by Government regulations should, to the extent appropriate for the purposes of the administrative tribunal or otherwise required by statute or regulation, address the following matters

   (a) the form, content and procedure for filing of all documents including electronic communications relevant to a hearing;

   (b) the method of serving documents, notice of a hearing and decisions;

   (c) the holding of pre-hearing and alternative resolution conferences, including electronic conferences;

   (d) the procedures for hearings;

   (e) the preparation, confidentiality and maintenance of the written or electronic record of any hearings and any provisions for the protection of trade secrets or proprietary information;

   (f) the procedures, if any, governing intervenor participation in proceedings including the availability and amount of funding when a request for funding is made by an intervenor;

(g) the procedures governing access to information, presentation of evidence, witnesses, including expert witness reports and behavior during a hearing;

(h) the procedure and time frame for filing and communicating a final decision; and

(i) the procedure for a review or an appeal of an interim and final decision of the administrative tribunal.

Minimum Hearing Rules

8. Specific procedural practices may vary between administrative tribunals but the following minimum practices must be reflected in all rules, regulations and practices of administrative tribunals

(a) an administrative tribunal shall deal with all matters before it as informally and expeditiously as is possible in light of the circumstances and the right to a fair hearing;

(b) an administrative tribunal or a member of an administrative tribunal conducting a hearing shall exercise her or his function personally and in an impartial manner.

Notice Requirements

9. (a) The parties and any other person entitled by law to be party to a hearing shall be given notice of the hearing by the administrative tribunal in accordance with its published rules;

(b) notice of a hearing shall include

(i) the date, time, format, and place of the hearing;
(ii) the purpose of the hearing and, in a reasonably precise manner, the issues involved;
(iii) the statute or law which authorizes the hearing; and
(iv) a statement that if a party does not attend the hearing, the administrative tribunal may proceed in his or her absence.

Open Hearings

10. (a) Hearings shall be open to the public, however, an administrative tribunal may, at the request of a party, order that the hearing be closed to the public, where the administrative tribunal is of the opinion that

(i) it is required in the interest of public security; or
(ii) an individual's personal or financial privacy or other matters may be disclosed and the harm of public disclosure of the information outweighs the principle of a public hearing;

(b) the decision of an administrative tribunal to hold a closed hearing must be provided in writing to the parties and filed in [the public registry].

Opportunity to be Heard

11. An administrative tribunal shall ensure that any party to a hearing has

(a) a reasonable opportunity to be heard, to present evidence and to make representations; and

(b) in an oral hearing or an electronic hearing, a reasonable opportunity to call and cross-examine witnesses, to the extent necessary to ensure a fair hearing.

Representation

12. (a) A party to a hearing before an administrative tribunal may choose to be represented or assisted by counsel or an agent;

(b) where a party is unrepresented the administrative tribunal shall ensure that he or she is aware of his or her procedural rights.

Principles of Evidence

13. (a) An administrative tribunal is not required to apply the technical rules of evidence but it must apply some principles of evidence to assess the reliability of evidence presented;

(b) decisions made by an administrative tribunal shall be based on evidence which has been heard, reviewed or otherwise available to the parties and considered credible or trustworthy in the circumstances of the case;

(c) an administrative tribunal shall not receive evidence outside a hearing or without the knowledge of the parties and without providing the parties with an opportunity to comment on it;

(d) where a member of an administrative tribunal has consulted with another member of the administrative tribunal who is not involved in a hearing or with staff of the tribunal or with any other person having technical or special knowledge at any stage in a hearing including the drafting of reasons, then any new evidence, facts or arguments received which affects the reasons or the result must be made

known to the parties and the parties must be given an opportunity to respond to the information.

Reasons in Writing

14. (a) An administrative tribunal shall give its final decision or order in writing and, unless otherwise prescribed by statute, shall include in the final decision reasons for its decision;

(b) subject to the considerations governing public hearings, the written reasons shall be filed [in a public registry];

(c) a final decision and reasons shall include

(i) a statement of findings of fact made from the evidence presented;
(ii) a statement of the rules of law and their interpretation, or of the policy used by the administrative tribunal in making its decision; and
(iii) a clear statement of the decision reached;

(d) an administrative tribunal in accordance with its rules shall provide the parties, or the representatives or agents for the parties to the hearing, with a copy of its final decision and reasons;

(e) where an administrative tribunal is of the opinion that the parties to the proceeding before it are too numerous or for any other reason it is impractical to give individual notice of its decision, then the authority may give notice of the decision, including notice of the place where copies of the decision may be obtained, to the parties by public advertisement or otherwise.

Record of Hearing

15. (a) An administrative tribunal shall compile a record of any proceeding in which a hearing has been held which shall include

(i) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
(ii) the notice of any hearing;
(iii) any interlocutory orders made by the administrative tribunal;
(iv) all documentary evidence filed with the administrative tribunal including faxes and other electronic communications, subject to any limitation expressly imposed by any law on the extent to which, or the purposes for which any such documents may be used in evidence in any proceeding;
(v) the transcript, if any, of the oral evidence given at the hearing; and
(vi) the final decision of the administrative tribunal and the reasons;

(b) irrespective of the provisions of the *Freedom of Information and Protection of Privacy Act*, the working papers and data in any format produced by a hearing Panel of an administrative tribunal including notes, internal notes or memorandum, draft decisions or orders in any format, are not subject to disclosure or production for any person and are not considered part of the record of a proceeding for purposes of appeal or review.

Part III - Standard Powers and Procedures

16. Subject to the right of the parties to a fair hearing, an administrative tribunal controls its own procedure.

17. The powers and procedures in this Part are available unless the enabling Act or regulations of an administrative tribunal provides otherwise.

18. An administrative tribunal may exercise any of the following powers on its own initiative or upon the request of a party to a hearing

(a) the Chair of an administrative tribunal may designate a panel of one or more members to conduct hearings;

(b) except where an administrative tribunal is to operate by consensus, a decision of the majority of a hearing panel is a decision of the panel;

(c) where a person's membership on an administrative tribunal expires during a proceeding or a hearing, the member may, at the discretion of the Chair, remain a member until a final decision on the proceeding has been made by the administrative tribunal;

(d) where a vacancy occurs in a hearing panel of more than one person, the remaining members may hear the case and make a decision or the Chair may assign a new member to the panel where no evidence has been heard;

(e) where there are two or more hearings pending which appear to the administrative tribunal to involve the same or similar questions of law, fact or policy, but not the same parties or where it would result in a more just and expeditious resolution, an administrative tribunal may order that

(i) the matters or parts of the matters be combined or heard at the same time;
(ii) the matters be heard immediately one after the other; or
(iii) one or more of the matters be stayed until after the determination of any other of them;

(f) an administrative tribunal may establish alternative resolution procedures including, but not limited to, mediation, fact finding and conciliation of any

matter or part of any matter and may determine with the parties the procedure to be used in each case.

Pre-hearing Conference

19. (a) An administrative tribunal or one of its members may order the parties, orally, in writing, or electronically, to appear before a member, the secretary or counsel, at a specified time, date and place for the purpose of holding a pre-hearing conference to

    (i) define the issues to be argued at the hearing;
    (ii) assess the advisability of amending the statement of issues for greater clarity or precision;
    (iii) encourage the parties to exchange documents before they are produced at the hearing;
    (iv) plan the manner in which the hearing will proceed and what evidence will be produced;
    (v) examine the possibility of admitting certain facts or accepting proof by affidavit;
    (vi) consider any other matter that may promote a simple and expeditious hearing;
    (vii) consider the possibility of reaching a settlement;
    (viii) consider alternative methods for resolving the issues;

(b) facts admitted at a pre-hearing conference shall be set out in a statement, signed by the parties or their counsel or agent and countersigned by the person who presided at the pre-hearing conference, which shall be entered on the record and shall be considered as evidence of the facts admitted, for all legal purposes.

Witnesses and Documents

20. (a) An administrative tribunal may summon any person, including a party to a proceeding

    (i) to give evidence on oath or affirmation at a hearing;
    (ii) to produce in evidence at a hearing such documents or items as required by the administrative tribunal;

(b) an administrative tribunal has the same power to enforce the attendance of a person as a witness as does a Commissioner under the *Public Inquiries Act*;

(c) an administrative tribunal may require at any stage of a hearing the following

    (i) the disclosure and exchange of relevant documents;
    (ii) pre-filing of expert witness reports;
    (iii) the examination of a party or witness;

(iv) an examination by written questions;
(v) the inspection of property;
(vi) the filing of witness statements;
(vii) the provision of particulars;

(d) an administrative tribunal may admit any document or, if it is an electronic transaction, evidence of the transaction, which it is satisfied is authentic and may admit as a copy any document certified as copied including a document which is a computer duplicate, a tel-fax or a printout of an electronic communication [as well as evidence of an electronic transaction].

Intervenors in Hearing

21. (a) On request, an administrative tribunal may grant status as an intervenor to any person, corporation or group of persons associated for the pursuit of a common interest, who have shown sufficient interest and are in a position to inform the administrative tribunal or assist it in making a decision;

(b) unless otherwise provided, an intervenor's procedural rights, including the right to apply for funding, shall be determined by the specific rules and statute of each administrative tribunal, or by an order of the administrative tribunal;

(c) a person who has been granted status as an intervenor may, at any time before the hearing commences, request intervenor funding, where the tribunal's enabling statute's rules or regulations so provide.

Adjournments

22. (a) An administrative tribunal or a panel may adjourn a hearing on its own motion or on request, on such terms at it may determine

(a) in order to prevent a denial of justice; and

(b) if it is satisfied that an adjournment would not unreasonably impede the proceedings.

Tribunal Control Over Process

23. (a) An administrative tribunal may make such orders or give such directions in proceedings before it as it considers necessary to prevent an abuse of its processes;

(b) where an administrative tribunal is of the opinion that a request for a hearing is an abuse of process or that the reasons in support of the request are frivolous or vexatious it may refuse to hold a hearing;

(c) before refusing the request for a hearing, the administrative tribunal shall notify the party making the request and afford him or her an opportunity to make representations as to why it should not be refused;

(d) an administrative tribunal may, on the request of one of the parties, award costs where it is of the opinion that a party's conduct is clearly unreasonable, frivolous or vexatious in the circumstances;

(e) an administrative tribunal may inquire into any issue or matter of general application within its jurisdiction by means of a generic hearing and permit or require any person it considers advisable to participate in the generic hearing;

(f) an administrative tribunal may retain any person with technical or special knowledge to assist it, subject to the right of parties to be informed and given an opportunity to comment on information being used in the proceeding;

(g) an administrative tribunal may issue policy statements, rules, guidelines, opinions, decisions or orders.

Enforcement of Orders

24. (a) An administrative tribunal, through its Chair, may state a case for the opinion of the [Supreme Court] and it shall be dealt with in the same way as if it was a judgement of the court and enforceable as such;

(b) the final decision of an administrative tribunal may be filed with the Supreme Court and enforced as an order of the court unless its statute provides otherwise;

(c) an order for the payment of money may be enforced by a written direction from the Chair of the administrative tribunal to the sheriff;

(d) where a party files an order with the court the administrative tribunal must be given notice of the filing within 10 days.

Correction of Errors

25. (a) An administrative tribunal may, within a reasonable time, on its own motion or on request, review its decision in order to correct any clerical error made in expressing the clear intention of the administrative tribunal;

(b) an application to an administrative tribunal for review for correction does not act as a stay unless otherwise ordered.

Appeal

26. Where a party appeals a decision of an administrative tribunal, the applicant or appellant shall notify the tribunal of its intention to appeal.

27. An administrative tribunal may choose to be a party to an appeal involving questions of law or its jurisdiction and is entitled to be heard, by counsel or otherwise, in the argument of any application for leave to appeal or in the appeal.

28. An appeal does not operate as a stay in the matter, unless otherwise ordered by a court.

General Matters

29. No legal proceedings lie against a member of an administrative tribunal for anything done, reported or said in the exercise of his or her functions, unless it is shown that the member of the administrative tribunal acted in bad faith.

30. Nothing in this Act relieves an administrative tribunal from complying with any requirements imposed upon it by any other law.

Appendix A

Advisory Group 1994/95

L. Cohen, Barrister
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A. Green, Utility and Review Board
W. Lahey, Department of Justice
K. MacDonald, N.S. Advisory Council on the Status of Women
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R. McGarva, Dalhousie Legal Aid
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D. Pothier, Dalhousie Law School
F. Richardson, N.S. Veterinary Medical Association
A. Scott, Department of Justice
M. Shears, Chair, Liquor Licensing Board
G. Steele, Workers' Compensation Board
B. Ward, Barrister

List of people or organizations who provided the Commission with comments on the Discussion Paper, published March 1996 (in alphabetical order). Some of these participants are no longer with the listed organizations. A number of other individuals also provided information at various stage of this project and their assistance is also gratefully appreciated.

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S. Horne, Dept of Agriculture and Marketing (on behalf of the managers of the Nova Scotia Farm Loan Board, the Dairy Commission, the Crop and Livestock Insurance Commission, and the Grain and Forage Commission)
J. Merrick, President, Nova Scotia Barristers' Society
C. Moore, Executive Director, Registered Nurses' Association
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Appendix B

Survey Responses (1993/94)

Acadia University Board of Governors
Advisory Board, Nova Scotia Youth Training Centre
Advisory Body - Shelburne Youth Centre
Advisory Commission on AIDS
Advisory Committee on Protection of Special Places
Advisory Environmental Control Council (now Environmental Assessment Board)
Amusements Regulation Board
Annapolis County Livestock Health Services Board
Annapolis District School Board
Annapolis General Hospital Board of Directors
Annapolis Valley Regional Library Board
Antigonish District School Board
Apple Maggot Control Board
Association of Professional Engineers of Nova Scotia
Association of Nova Scotia Hairdressers
Atlantic Provinces Special Education Authority
Atlantic School of Theology
Board of Chiropractors of Nova Scotia
Board of Examiners (*Coal Mines Regulation Act*)
Board of Examiners (Scaling)
Board of Examiners (Stationary Engineers)
Board of Management - Soldiers Memorial Hospital
Board of Registration of Embalmers & Funeral Directors of Nova Scotia
Board of Registration - Nursing Assistants
Bridgewater Home for Special Care (Hillside Pines)
Canadian–Nova Scotia Offshore Petroleum Board
Cape Breton County Livestock Health Services Board
Cape Breton Development Corporation
Cape Breton District School Board
Cape Breton Regional Hospital
Cape Breton Regional Library Board
Children's Aid Society of Halifax
City of Dartmouth Heritage Advisory Committee
Civil Service Employee Relations Board
Clare Argyle School Board
Clean Nova Scotia Foundation
Colchester Regional Hospital
Colchester East Hants Regional Library Board
Colchester North Livestock Health Services Advisory Board
Correctional Facilities Employee Relations Board
Criminal Injuries Compensation Board
Cumberland East/Cumberland West Livestock Health Services Board
Cumberland District School Board

Cumberland Regional Library Board
Dartmouth-Halifax County Regional Housing Authority
Dartmouth Hospital Commission
Dartmouth Police Commission
Denturist Licensing Board of Nova Scotia
Digby Livestock Health Services Board
Disabled Persons Commission
Eastern Counties Regional Library Board
Eastern Kings Hospital Board of Trustees
Eastern Shore Memorial Hospital
Eastern Shore Memorial Hospital Board
Eastern Kings Memorial Hospital Corporation
Elections Commission
Emergency Measures Organization
Energy & Mineral Resource Conservation Board (Energy Board)
Family Benefits Review Board
Gaelic College Foundation
Grace Maternity Hospital
Guysborough County District School Board
Guysborough Memorial Hospital
Halifax County - Bedford District School Board
Halifax County Board of Health
Halifax County Regional Rehabilitation Centre
Halifax Court House Commission
Halifax Dartmouth Bridge Commission
Halifax-Dartmouth Port Development Commission
Halifax District Real Estate Board
Halifax Heritage Advisory Committee of the City of Halifax
Halifax Housing Authority
Halifax Police Commission
Halifax Regional Library Board
Hants West District School Board
Health Services Association of South Shore
Health Services and Insurance Commission
Inverness Consolidated Memorial Hospital Board
Inverness Victoria Livestock Health Services Board
Izaak Walton Killam Hospital
Judgement Recovery (N.S.) Ltd.
Judicial Council
Kings County District School Board
Kings County Livestock Health Services Board
Labour Standards Tribunal
Liquor License Board
Literacy Nova Scotia
Livestock Health Services Advisory Body
Lottery Commission

Louisbourg District Planning and Development Commission
Lunenburg Home for Special Care Corporation
Management Board
Maritime Municipal Training and Development Board
Maritime Provinces Higher Education Commission
Metropolitan Area Planning Commission
Minister’s Substance Abuse Advisory Board
Natural Products Council
New Waterford Hospital Commission
Nova Scotia Advisory Council on Heritage Property
Nova Scotia Advisory Council on the Status of Women
Nova Scotia Association of Architects
Nova Scotia Association of Occupational Therapists
Nova Scotia Association of Optometrists - Discipline Committee
Nova Scotia Barristers' Society
Nova Scotia Beef Commission
Nova Scotia Board of Examiners in Psychology
Nova Scotia Board of Review (Criminal)
Nova Scotia Building Advisory Committee
Nova Scotia Business Development Corporation
Nova Scotia Chicken Marketing Board
Nova Scotia College of Physiotherapists
Nova Scotia Council on Higher Education
Nova Scotia Credit Union Stabilization Fund Board
Nova Scotia Crop and Livestock Insurance Commission
Nova Scotia Dairy Commission
Nova Scotia Dental Association
Nova Scotia Dietetic Association
Nova Scotia Egg and Pullet Producers Marketing Board
Nova Scotia Environment Trust Fund
Nova Scotia Fisheries Loan Board
Nova Scotia Government Purchasing Agency
Nova Scotia Grain Marketing Board
Nova Scotia Greenhouse Vegetable Marketing Board
Nova Scotia Home Care Advisory Committee
Nova Scotia Horse Racing Commission
Nova Scotia Hospital
Nova Scotia Human Rights Commission
Nova Scotia Institute of Agrologists
Nova Scotia Legal Aid Commission
Nova Scotia Liquor Commission
Nova Scotia Marshland Reclamation Commission
Nova Scotia Municipal Finance Corporation
Nova Scotia Museum Board of Governors
Nova Scotia Pharmaceutical Society
Nova Scotia Police Commission

Nova Scotia Police Review Board
Nova Scotia Primary Forest Products Marketing Board
Nova Scotia Provincial Exhibitions Commission
Nova Scotia Real Estate Association
Nova Scotia Rehabilitation Centre
Nova Scotia Research Foundation Corporation
Nova Scotia Residential Tenancies Boards
Nova Scotia Resource Recovery Fund Board
Nova Scotia Senior Citizens Commission
Nova Scotia Social Service Council
Nova Scotia Student Aid Higher Appeal Board
Nova Scotia Turkey Producers Marketing Board
Nova Scotia Utility and Review Board
Nova Scotia Well Drilling Advisory Board
Nova Scotia Wool Marketing Board
Nova Scotia Women's Directorate
Nova Scotia Youth Conversation Council
Nova Scotia Youth Secretariat
Novaco Limited
Occupational Health and Safety Advisory Council
Pay Equity Commission
Peggy's Cove Commission
Pictou Antigonish Regional Library Board
Pork Nova Scotia
Provincial Apprenticeship Board
Provincial Dental Board of Nova Scotia
Provincial Health Council
Provincial Library Council
Provincial Medical Board
Provincial Tax Commission
Public Accountants Board
Public Sector Compensation Restraint Board
Registered Nurses Association of Nova Scotia
Richmond County Health Services Board
Richmond District School Board
Rosedale Home for Special Care
Securities Commission
Senior Citizens Secretariat
Sherbrooke Restoration Commission
Shubenacadie River Grand Lake Watershed Advisory Board
South Shore Regional Library
St. Martha's Regional Hospital
Strait-Richmond Hospital
Surplus Crown Property Committee
Sydney Steel Corporation
Teachers’ Pension Commission

The Vegetable & Potato Producers Association of Nova Scotia
Trade Centre Limited
Traffic Control Authority
Twin Oaks Memorial Hospital
University College of Cape Breton
Veterinary Medical Association
Victoria General Hospital
Waterfront Development Corporation
Weed Control Advisory Committee
Western Counties Regional Library Board
Western Kings Memorial Hospital
West Nova Livestock Health Services Board
Wildlife Advisory Council
Womens Institute of Nova Scotia
Yarmouth Regional Hospital

Appendix C

Provisions identified in statutes and regulations regarding appeals and reviews of administrative decisions (1995 updated to 1996).

NB. These provisions and/or practices alter frequently and should be checked with the agency or latest editions of statutes and regulations. In addition, the agency may have developed its own rules. This Chart does not include appeals which may also exist in private *Acts*. It should also be noted that, although many of the *Acts* still refer to County Court, the appeal is now to the Supreme Court and is listed this way in these charts: see *An Act to Reform the Courts of the Province,* S.N.S. 1992, c.16, s.5.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Apple Maggot Control Board *Agricultural and Marketing Act* R.S.N.S. 1989 c.6 s.135 Department of Agriculture & Marketing	W/N 10 days of date of Order.	Appeal to Supreme Court.	Unstated.
Director of Animal Industry Branch Improvement of Livestock Breeding Regulations N.S. Reg. 178/94, s.8, *Agricultural and Marketing Act* R.S.N.S. 1989 c.6 Department of Agriculture & Marketing	W/N 7 days of date of Order.	Appeal to Artificial Insemination Advisory Board. May consider record of proceedings and any additional evidence considered appropriate. Decision is Final.	Confirm, rescind or vary.
Management Council of the N.S. Institute of Agrologists *Agrologists Act* R.S.N.S. 1989 c.8 s.14 Department of Agriculture & Marketing	W/N 3 months of date of Order.	Appeal to Supreme Court. Decision Final.	Allow or dismiss the appeal, make varying Order or order as to costs.
Director of Apprenticeship Trade Qualifications *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 s.27-28 Department of Education	1) For refusal to register an apprenticeship agreement or a termination, cancellation, transfer or completion thereof - W/N 15 days from date of decision. 2) For suspension of registration with recom-mendation of cancellation - W/N 15 days from receipt of Notice.	Appeal to Provincial Apprenticeship Board.	Confirm, vary or reverse decision of Director.
Director of Apprenticeship and Tradesmen's Qualifications Motor Vehicle Repair Trade (Heavy Duty) Regulations N.S. Reg. 78/71 s.25 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17. Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.

Agency/Department (appealed from) listed by Acts	Appeal Period	Appeal Process	Jurisdiction
Director of Apprenticeship and Tradesmen's Qualifications Industrial Instrumentation Trade Regulations N.S. Reg. 6/68 s.20 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.
Director of Apprenticeship and Tradesmen's Qualifications Industrial Electrical Trade Regulations N.S. Reg. 10/67 s.20 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.
Director of Apprenticeship and Tradesmen's Qualifications Linesman Trade Regulations N.S. Reg. 11/67 s.22 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.
Director of Apprenticeship and Tradesmen's Qualifications Machinist Trade Regulations N.S. Reg. 12/67 s.20 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.
Director of Apprenticeship and Tradesmen's Qualifications Painting and Decorating Trade Regulations N.S. Reg. 12/67 s.25 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.
Director of Apprenticeship and Tradesmen's Qualifications Industrial Mechanic Trade (Millwright) N.S. Reg. 7/678s.20 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.
Director of Apprenticeship and Tradesmen's Qualifications Bricklaying Trade Regulations N.S. Reg. 78/71 s.28 made under *Apprenticeship and Trades Qualifications Act* R.S.N.S. 1989 c.17 Department of Labour	Cancellation or suspension of Certificate of Qualification - W/N 15 days from receipt of Notice.	Appeal to the Minister of Labour.	Confirm, modify or reverse.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Council of the N.S. Association of Architects *Architects Act* R.S.N.S. 1989 c.21 s.39-40-51 Department of Justice * a Bill was also tabled in May 1996	1) For suspension or revocation Order W/N 10 days from receipt of Notice or Order. 2) For Order refusing registration, refusal to grant temporary or special licence or reinstatement W/N 10 days.	Appeal to Supreme Court. Trial de novo. Appeal to Supreme Court.	1) Confirm, modify or reverse. 2) Direct Registrar and Council to register person or issue a special or temporary licence, or make such other Order as may be warranted by the facts.
Committee of Management By-Laws N.S. Reg. 147/89; s.VIII made under *Armdale Yacht Club Act* S.N.S. 1937 c.105	W/N one month from receipt of Notice.	Appeal to Committee of Management. Decision is effective notwithstanding appeal.	If two-thirds of the members present vote to reverse the previous decision of the Committee of Management the member shall be at once restored to his or her privileges as a member.
Regional Assessment Appeal Court *Assessment Act* R.S.N.S. 1989 c.23 s.86 Department of Municipal Affairs	For assessment rate or Order or any proceedings of Council W/N 30 days from receipt of Notice or Decision of Order or s.95 limitation period.	Utility & Review Board. Hearing de novo. Act also restricts *certiorari* (s.89).	Shall have the powers of the Regional Assessment Appeal Court. May inquire into the matter, examine witnesses and take all the proceedings that are required for full investigation.
Director of Assessment *Assessment Act* R.S.N.S. 1989 c.23 s.62-76 Department of Municipal Affairs	W/N 21 days from date of service of Notice, or Decision of Order.	Appeal to Regional Assessment Appeal Court. Appeal does not stay operation of decision.	a) Confirm, reduce or increase valuation of property. b) Dismiss appeal. c) Add person to the role. d) Strike person from role. e) Transfer assessment to proper person. f) Strike out improper or illegal assessment. g) Change classification of property. h) Correct clerical error.
Minister of Lands and Forest *Assessment Act* R.S.N.S. 1989 c.23 s.139 Department of Municipal Affairs.	W/N 30 days from date of decision.	Appeal to Supreme Court.	Unstated.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Discipline Subcommittee *Barristers and Solicitors Act* R.S.N.S. 1989 c.30 s.32 (13) Department of Justice	s.32(13) W/N 6 months following date of Order.	Court of Appeal may intervene and make Orders during the investigations or after an Order of subcommittee. Intervenes upon request of barrister, officer of society or member of Discipline Committee or subcommittee.	Make such Order or give such directions as it shall deem fit and necessary.
N.S. Boxing Authority *Boxing Authority Act* R.S.N.S. 1989 c.43 s.14 N.S. Sport and Recreation Commission	W/N 20 days from date of Order or date of Decision.	Appeal to Supreme Court.	Judge may consider record and additional or further evidence. Confirm, rescind or vary.
Local Commission Boxing Authority Regulations N.S. Reg. 182/89 s.62(3) made under *Boxing Authority Act* R.S.N.S. 1989 c.43 N.S. Sport and Recreation Commission	W/N 20 days of date of disciplinary action being imposed.	Appeal to N.S. Boxing Authority.	Can hold hearings relating to carrying out of its objects and powers.
N.S. Boxing Authority Boxing Authority Regulations N.S. Reg. 182/89 s.62(5) made under *Boxing Authority Act* R.S.N.S. 1989 c.43 N.S. Sport and Recreation Commission	W/N 20 days of date of last disciplinary action.	Further appeal to N.S. Boxing Authority with leave. Disciplined party may present additional evidence or testimony which the party feels may change the disposition of the case.	Grant or refuse leave to the appeal.
Canada-N.S. Offshore Petroleum Board *Canada-N.S. Offshore Petroleum Resources Accord Implementation (N.S.) Act*. S.N.S. 1987 c.3 s.126(11) Department of Natural Resources	W/N 30 days from date of Order or date of decision.	Review by Supreme Court.	Review and set aside.
Safety Officer or Chief Safety Officer *Canada-N.S. Offshore Petroleum Resources Accord Implementation (N.S.) Act*. S.N.S. 1987 c.3 s.190 Department of Natural Resources	Not stated.	Refer Order on request of person against whom directed. Review by Supreme Court. Decision is final.	Confirm or set aside Order.
Chief Conservation Officer *Canada-N.S. Offshore Petroleum Resources Accord Implementation (N.S.) Act*. S.N.S. 1987 c.3 s.154 Department of Natural Resources	Not stated.	Appeal to the Oil and Gas Committee.	Set aside, confirm or vary the Order. Order such work to be undertaken as may be necessary to prevent waste, the escape of petroleum or any other contravention of this Part, or make other Orders as deemed appropriate.

Agency/Department (appealed from) listed by Acts	Appeal Period	Appeal Process	Jurisdiction
Oil and Gas Committee *Canada-N.S. Offshore Petroleum Resources Accord Implementation (N.S.) Act*. S.N.S. 1987 c.3 s.184 Department of Natural Resources	W/N one month of decision or Order or such further time as the appellate body allows.	Appeal to Supreme Court upon a question of law. Leave required.	Court may certify opinion and committee makes Order to comply with it.
Tree Committee *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.31(8) Department of Municipal Affairs	W/N 30 days from date of Order.	Appeal to Supreme Court.	Confirm, modify, set aside.
Council of the Regional Municipality *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.35 Department of Municipal Affairs	W/N 120 days after request.	May appeal when not fewer than 100 electors have requested that Council establish a Community Council for an area or the Council has abolished a Community Council. Appeal to the Utility & Review Board.	Order that the Council may be established or not be abolished.
Council of the Regional Municipality *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.36 Department of Municipal Affairs	W/N 120 days after request.	Appeal to Utility & Review Board.	Allow appeal with or without such modifications as in the interests of the inhabitant of areas effected.
Collector of the Regional Municipality *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.108 Department of Municipal Affairs	Not Stated.	Appeal to Regional Assessment Appeal Court. Decision final.	Determines the sale price and may examine persons on oath.
Director of Engineering of the Regional Municipality or person under the Director's supervision *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.178 Department of Municipal Affairs	Expires 30 days after Engineer gives decision in writing to owner re: approval or permission.	Appeal to Committee of the Council of the Cape Breton Regional Municipality.	Uphold decision or direct Engineer to grant the approval or permission.
Engineer of the Cape Breton Regional Municipality *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.209 Department of Municipal Affairs	Expires 30 days after Engineer gives decision in writing re: approval or permission.	Appeal to Committee of the Council of the Cape Breton Regional Municipality.	Uphold decision or direct Engineer to grant the approval or permission.
Development Office *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.229 Department of Municipal Affairs	W/N 14 days from date of decision.	Appeal to the Utility & Review Board.	The same powers and jurisdiction as under the *Planning Act*. If refusal was recommended by the Department of Environment and there is reasonable and probable grounds for the recommendation. Board must uphold.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Council of the Regional Municipality *Cape Breton Regional Municipality Act*, S.N.S. 1994 c.3, s.232(3) Department of Municipal Affairs	W/N 20 days from receipt of decision.	Appeal to Utility & Review Board. May be further reviewed by the Board, s.232(6).	Order Municipality to modify rates, fares, charges or schedules, provide reasonably adequate services, make extensions or such other Order as seems just.
Institute of Certified Management Consultants of Atlantic Canada *Certified Management Consultants Act* R.S.N.S. 1989 c.65 s.5(3) Department of Justice	Not Stated.	Appeal to Supreme Court upon a question of law or fact or both.	Rescind, exercise all powers of the Institutes, direct the Institute to take any decision considered appropriate, substitute opinion, refer the matter back for rehearing with directions.
Registrar General of the Province *Change of Name Act* R.S.N.S. 1989 c.66 s.19 Department of Justice	Not Stated.	Appeal to Supreme Court.	May hear evidence, consider submission and make final and binding Order.
Minister of Community Services *Children and Family Services Act* 1990 c.5 s.71(2) Department of Community Services	W/N 30 days of refusal or further period as the court may allow.	Appeal to Supreme Court.	Conduct hearing, parties may give evidence and call witnesses. Confirm, refuse or direct Minister to issue a certificate.
Director of Child and Adolescent Services Children and Family Services Regulations N.S. Reg. 183/91; N.S. Reg. 126/94 s.34(4) made under *Children and Family Services Act* 1990 c.5 Department of Community Services	Not Stated.	Appeal to Minister.	Uphold, reverse or vary.
Admissions Committee Children and Family Services Regulations N.S. Reg. 183/91; N.S. Reg. 126/94 s.43 made under *Children and Family Services Act* 1990 c.5 Department of Community Services	Not Stated.	Appeal to Minister.	Uphold, reverse, vary.
Plan Administrator Long Term/General and Short Term Disability Income N.S. Reg. 158/85; 108/92 s.5 made under the *Civil Service Act*, R.S.N.S. 1989 c 70 Nova Scotia Civil Service Commission	Not Stated.	Appeal on medical grounds to Trustees of the Nova Scotia Public Service Long Term Disability Plan. Decision Final.	Determines eligibility on medical grounds only.
Clinical Appraisal and Patient Care Committee By-Laws N.S. Reg 78/86 s.98(5) made under the *Cobequid Multi-Service Centre Act*, R.S.N.S. 1989 c.74	Not Stated.	Appeal to Medical Advisory Committee.	Add or alter the clinical appraisal of member.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Examiner or Special Examiner *Collection Act* R.S.N.S. 1989 c.76 s.33,36 Department of Justice	1) to the Supreme Court: a) before the judge who first holds a sitting in the County in which the appeal is made; or b) if a judge of the Supreme Court resides in the County w/n 30 days from date of Order or adjudication of examiner.	Appeal to Supreme Court. May be heard at sittings or in chambers. Decision final.	If the appeal is from adjudication of the examiner, then Court may read the previous examined on appeal or may call witnesses. Confirm, reverse or may make such Order, adjudication or commitment as seems just and which might have been made under this *Act*. May award costs.
Registrar *Collection Agencies Act* R.S.N.S. 1989 c.77 Department of Consumer Affairs	W/N 30 days from date of decision.	1) Appeal to Supreme Court. Heard in accordance with the *Summary Proceedings Act*; 2) At hearing; evidence taken before Registrar may be read with leave of Judge and new evidence can be adduced and new witnesses may be heard.	Dismiss, allow, allow subject to terms, vary, refer back to Registrar for further consideration, award costs, or such other Order as seems just.
Registrar of Credit *Consumer Protection Act*, R.S.N.S. 1989 c.92,s.32 Department of Housing & Consumer Affairs	W/N 30 days of receipt of notice.	Appeal to Supreme Court.	Confirm, vary, set aside.
Director of Consumer Services *Consumer Reporting Act*, R.S.N.S. 1989 c.93, s.14(3) Department of Housing & Consumer Affairs	Not Stated.	Appeal to Supreme Court.	Confirm, vary, reverse.
Inspector of Co-operatives *Co-operative Association Act*, R.S.N.S. 1989 c.98, s.12(3) Department of Economic Development	W/N 30 days of refusal to approve articles of incorporation.	Appeal to Minister.	Confirm, vary, reverse.
Minister of Finance *Corporation Capital Tax Act*, R.S.N.S. 1989 c.99, s.37 Department of Finance	W/N 60 days from date of notice.	Appeal to Supreme Court. Further to appeal to Appeal Court with same rules applying.	The Judge hears appeal and evidence in a summary manner.
Superintendent Correctional Facilities Regulations N.S. Reg. 248/88 s.33 made under *Corrections Act* R.S.N.S. 1989 c.103 Department of the Solicitor General	Not Stated.	Appeal to Minister. Decision final.	Confirm or vary.
Superintendent Lock-Up Facilities Regulations, s.26,33,37 made under *Corrections Act*, R.S.N.S. 1989 c.103 and *Court Houses and Lock-Up Houses Act*, R.S.N.S. 1989 c.109 Department of the Solicitor General	Not Stated.	Appeal to Solicitor General. Decision final.	Confirm or vary.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Provincial Examining & Licensing Committee *Cosmetology Act*, S.N.S. 1995-96, s.15 (5) Department of Education & Culture	W/N 30 days from date of receipt of notice or Order.	Appeal to Executive of the Cosmetology Association.	Executive may take such action as it considers appropriate.
Provincial Examining & Licensing Committee *Cosmetology Act*, S.N.S. 1995-96, s.21 Department of Education & Culture	W/N 3 month from date of suspension, revocation, Order or decision.	Appeal to Supreme Court.	Vary, confirm, reverse either in whole or in part.
Examinations Committee of the Crane Operators *Crane Operators Act* S.N.S. 1994-95, c.2, s.14 Department of Labour	Not Stated.	Appeal to Appeal Board created under the *Act*. Decision final.	Not stated.
Directors of the Credit Union *Credit Union Act*, S.N.S. 1994, c.4, s.59(4) Department of Housing & Consumer Affairs	W/N 14 days from date of Notice.	Appeal to Members of the Credit Union.	By majority vote, confirm or set aside.
Members of Credit Union *Credit Union Act*, S.N.S. 1994, c.4, s.59(7) Department of Housing & Consumer Affairs	Not Stated.	Appeal to Superintendent of Credit Unions.	Confirm or set aside. No appeal for persons whose membership is terminated for failure to fulfil financial obligations to the credit union.
Superintendent *Credit Union Act*, S.N.S. 1994, c.4, s.223 Department of Housing & Consumer Affairs	W/N 30 days from date of decision.	Appeal to Supreme Court on question of law or fact or both.	Affirm, reverse, substitute or direct Superintendent to make other decision.
Superintendent *Credit Union Act*, S.N.S. 1994, c.4, s.230 Department of Housing & Consumer Affairs	W/N 15 days from receipt of notice, decision or Order.	Appeal to Minister. Heard by Minister or Appeal Board. Decision is not subject to appeal.	Appeal based on evidence presented. Confirm, vary, revoke.
N.S. Dairy Commission *Dairy Commission Act*, R.S.N.S. 1989 c.117, s. 7(2) as amended, S.N.S. 1994 c.17 Department of Agriculture & Marketing	No appeal period provided but appellant must give a 7 clear days notice of hearing.	Appeal to Supreme Court. Decision final.	Receive evidence, give such direction for the conduct of proceedings, and make such Order or decision as seems just.
Minister of Social Services *Day Care Act*, R.S.N.S. 1989 c.120, s.6(3) Department of Community Services	Not Stated.	Review of Minister's decision by Minister.	Not Stated.
Clerk, Registrar or other person appointed by Council *Deed Transfer Tax Act*, R.S.N.S., 1989, c.121,s.11, s.13 Department of Municipal Affairs	W/N 6 hours after clerk has declined to accept the affidavit.	Appeal to Assessment Appeal Court. Decision final.	Shall determine the sale price, may examine person on oath.
Registrar of the Provincial Dental Board of N.S. *Dental Act*, S.N.S. 1992 c.3, s.31 Department of Health	Not Stated.	Appeal to the Provincial Dental Board.	Reverse, uphold, vary.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Discipline Committee *Dental Act*, S.N.S. 1992 c.3, s.38(1) Department of Health	W/N 30 days from date of service of notice, decision or Order.	Appeal to the Provincial Dental Board.	Confirm, reverse, vary.
Provincial Dental Board of N.S. *Dental Act*, S.N.S. 1992 c.3, s.39(1) Department of Health	W/N 30 days from date of service of notice, decision or Order.	Appeal to Supreme Court on a question of law or jurisdiction.	Confirm, vary or refer matter back to Board with directions.
Peer Review Committee Provincial Dental Board Regulations N.S. Reg. 131/82; s.1.15.1 made under *Dental Act*, S.N.S. 1992 c.3 Department of Health	W/N 14 days from date of service of notice, decision or Order.	Appeal to Provincial Dental Board.	Affirm vary or reverse the findings, conclusions and decisions of the Committee.
Registrar of the Provincial Dental Board of Nova Scotia Advertising Standards Regulations N.S. 166/93 s.4 made under *Dental Act*, S.N.S. 1992 c.3 Department of Health	Not Stated.	Appeal to Provincial Dental Board.	Not Stated.
Continuing Dental Education Committee Mandatory Continuing Dental Education Regulations N.S. 97/94 s.9 made under *Dental Act*, S.N.S. 1992 c.3 Department of Health	Not Stated.	Appeal to the Provincial Dental Board. Decision is final and binding.	Not Stated.
Council of the N.S. Dental Technicians Association *Dental Technicians Act*, R.S.N.S. 1989 c.126, s.15 Department of Health	No appeal period but appellant must give 15 days notice to Secretary of Association.	Appeal to Supreme Court.	May make such Order or give such directions as seems just.
Registrar of Denturists *Denturist Act*, R.S.N.S. 1989 c.127, s.8 Department of Health	W/N 15 days from service of notice of decision.	Review by Denturist Licensing Board.	Not Stated.
Denturist Licensing Board *Denturist Act*, R.S.N.S. 1989 c.127, s.12 Department of Health	Not Stated.	Appeal to Supreme Court and from here to Court of Appeal on questions of law or fact or both. Decision of Board is effective notwithstanding appeal.	Confirm, alter decision or Order. Do any act authorized under this *Act*, refer matter back to Board for reconsideration, substitute its opinion for that of the Registrar.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Registrar *Direct Sellers' Licensing and Regulation Act*, R.S.N.S. 1989 c.129, s.39 Department of Housing & Consumer Affairs	W/N 30 days from date of decision.	Appeal to Supreme Court. Further appeal to Appeal Court with leave on questions of law.	May read in previous evidence or call witnesses and adduce further evidence. Dismiss, allow, allow with terms and conditions, vary, refer matter back to Registrar, award costs, make such other Orders as seems just.
Board of Dispensing Opticians *Dispensing Opticians Act*, R.S.N.S. 1989 c.131, s. 14(4) Department of Health	Not Stated.	Review by the Board of its own decision.	Any Order as it deems proper.
Board of Dispensing Opticians *Dispensing Opticians Act*, R.S.N.S. 1989 c.131, s. 15 Department of Health	W/N 14 days from date of service of notice, decision, or Order.	Appeal to Supreme Court. Trial de novo.	Judge may hear all evidence deemed relevant. Affirm, amend, set aside, make such decision as to costs as seems just.
Engineer appointed by the Municipal Council *Ditches and Water Courses Act*, R.S.N.S. 1989 c.132, s.12 Department of Municipal Affairs	W/N 15 days from filing of award.	Appeal to Supreme Court.	Set aside, alter, affirm.
Board of Directors of Dominion Steelworkers' Mutual Benefit Society *Dominion Steelworkers' Mutual Benefit Society Act*, S.N.S.,1906 c.201	W/N six weeks from suspension.	Appeal to Special General Meeting of the Membership.	Not Stated.
School Board or Superintendent of Schools *Education Act*, R.S.N.S. 1995-96, c.1, s.36 Department of Education & Culture	a) W/N 20 days from any confirmation, variation of suspension, discharge or termination of contract; b) for suspension of pupil to use school bus w/n 7 days from receipt of notice, decision or Order.	Appeal to Board of Appeal. Order Final.	Hold a hearing and confirm, revoke or vary Order.
Minister Education Regulations N.S. Reg. 226/84; N.S. Reg. 24/94 s.33 made under *Education Act*, R.S.N.S. 1989 c.136 (new *Act* says old regs. in force until repealed). Department of Education & Culture	Not Stated.	Review by Certification Appeal Committee.	Review teacher's certification and forward its recommendation to Minister. Notify the teacher of decision of Minister.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
School, principal or person in charge of the school *Education Act*, S.N.S. 1995-96, c.1, s.123 Department of Education & Culture	W/N 3 school days of receiving notice.	Appeal to School Board.	Confirm or revoke.
Principal or supervisory person designated by the school board *Education Act*, S.N.S. 1995-96, c.1, s.127 Department of Education & Culture	W/N 7 days from receipt of notice, decision or Order.	Appeal to School Board.	Hearing held. Confirm, revoke or vary.
Board of Registration of Embalmers and Funeral Directors *Embalmers and Funeral Directors Act*, R.S.N.S. 1989 c.144, s.23(2). Department of Housing & Consumer Affairs	W/N 3 months of date of suspension or revocation.	Appeal to Supreme Court.	Confirm, amend, set aside, order further inquiries.
Energy and Mineral Resources Conservation Board *Energy and Mineral Resources Conservation Act*, R.S.N.S. 1989 c.147, s.20. Department of Natural Resources	W/N 30 days of mailing or Order or decision.	Appeal to Court of Appeal on a question of law or jurisdiction.	Practice and procedure same as upon an appeal from the Supreme Court.
Energy and Mineral Resources Conservation Board *Energy and Mineral Resources Conservation Act*, R.S.N.S. 1989 c.47, s.22 Department of Natural Resources	Not Stated.	The Energy and Mineral Resources Conservation Board may review an Order it made.	Review, rescind, change, alter, vary.
Council of the Association of Professional Engineers of N.S. *Engineering Profession Act*, R.S.N.S. 1989 c.148, s.17(3) Department of Justice	W/N 30 days from date of Order.	Appeal to Supreme Court. Judge may decide either on evidence taken or by trial de novo.	Confirm, set aside.
Council of the Association of Professional Engineers of N.S. or Registrar of Association of Profession Engineers of N.S. *Engineering Profession Act*, R.S.N.S. 1989 c.148, s.18(4) Department of Justice	Not Stated.	Appeal to Supreme Court.	Grant Order to register name of person, Order to issue to persons a licence to practise, any other Order warranted by the facts.
Administrator appointed by the Minister *Environment Act*, S.N.S. 1994-95, c.1, s.137 Department of Environment	Not Stated.	Appeal to the Minister.	Dismiss, allow or make any decision the administrator could have.
Minister of Environment *Environment Act*, S.N.S. 1994-95, c.1, s.138 Department of Environment	W/N 30 days from date of decision or date of Order.	Appeal by any aggrieved person to Supreme Court on a question of law or fact or both. Decision final and binding.	May hear evidence.
Minister of Environment or Administrator N.S. Reg. 48/95, s.6(2) made under the *Environment Act*, S.N.S. 1994-95, c.1 Department of Environment	Not Stated.	Appeal to the Minister.	Not Stated.

Agency/Department (appealed from) listed by Acts	Appeal Period	Appeal Process	Jurisdiction
Director of Family Benefits *Family Benefits Act*, R.S.N.S. 1989 c.158, s.16(6) Department of Community Services	Not Stated.	Appeal to Family Benefits Review Board. Decision binding on Director.	Shall review and consider appeals.
Registrar of Farms or Designate *Farm Registration Act*, S.N.S. 1994-95, c.3, s.11 Department of Agriculture & Marketing	W/N 60 days from date of decision.	Appeal to Committee.	Vary or confirm.
Registrar of Farms or Designate *Farm Registration Act*, S.N.S. 1994-95, c.3, s.11 Department of Agriculture & Marketing	W/N 60 days from date of decision.	Appeal to Appeal Committee.	Vary or confirm.
Fence Arbitration Committee *Fences and Detention of Stray Livestock Act*. R.S.N.S. 1989 c.166, s.8 Department of Agriculture & Marketing	Not Stated.	Procedure provided by *Summary Proceedings Act* to Appeal to Supreme Court. Decision Final.	Affirm, vary, reverse.
Local Assistant to Fire Marshall *Fire Prevention Act*, R.S.N.S. 1989 c.171, s.21 (1) Department of Labour	W/N 10 days from receipt of notice, decision of Order.	Appeal to Fire Marshall.	Investigate, affirm, modify or revoke Order.
Fire Marshall *Fire Prevention Act*, R.S.N.S. 1989 c.171, s.22 Department of Labour	W/N 5 days from date of service of notice, decision or Order.	Appeal to Supreme Court. Decision final.	Make appropriate Order.
Inspector Fish Inspection Regulations N.S. Reg. 286/84; N.S. Reg. 247/89 s.19 made under *Fisheries Act*, R.S.N.S. 1989 c.173 Department of Fisheries	W/N 30 days from disputed inspection.	Appeal to Minister of Fisheries. Decision final.	Order a re-inspection.
Grader Nova Scotia Christmas Tree Grading Regulations N.S. Reg. 193/94, s.9 made under the *Forests Act* R.S.N.S. 1989, c.179, s.40 Department of Natural Resources	W/N 7 days from receipt of notice, decision or Order.	Appeal to Chief Inspector. Decision final.	Confirm, assign a different grade or determine that trees do not qualify for an official grade.
Head of Public Body *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993 c.5, s.32-33-40 Department of Justice	W/N 60 days from date of notice or 60 days from date of act or failure to act.	Review by tribunal, member of tribunal or other person designated by Governor in Council.	Make recommendations to head of public body.
Head of Public Body (in event Head of Public Body refuses to follow the recommendations of Review Officer) *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993 c.5, ss.40-41 Department of Justice	W/N 30 days from receipt of notice, decision or Order.	Appeal to Supreme Court. Follows N.S. Civil Procedure Rules. May determine matter de novo.	Order access to record or part of it be given, or make any other Order which seems just.
Head of Public Body *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993 c.5, s.32(3) Department of Justice	W/N 30 days from receipt of notice, decision or Order.	Appeal to Supreme Court.	Order access to record or part of it be given, or make any other Order which seems just.

Agency/Department (appealed from) listed by Acts	Appeal Period	Appeal Process	Jurisdiction
Registrar *Future Services Act*, S.N.S. 1990 c.12, s.24 Department of Housing & Consumer Affairs	W/N 30 days from receipt of notice, decision or Order.	Appeal to Supreme Court.	Confirm, vary, set aside.
Executive Director of Gaming Control, Director of Registration *Gaming Control Act*, S.N.S. 1994-95, c.4, s.56 Department of Finance	Not Stated.	Appeal to the Gaming Control Commission.	Hearing may be held.
Director of Registration *Gaming Control Act*, S.N.S. 1994-95, c.4, s.78 Department of Finance	Not Stated.	Appeal to Executive Director of Gaming Control or the Gaming Control Commission. Decision final and not open to question in any court except with respect to jurisdiction and natural justice.	Hearing held. May confirm, set aside, direct the Director to take such action as ought to be taken effect or may substitute their opinion for that of the Director of Registration.
Director of Investigation & Enforcement *Gaming Control Act*, S.N.S. 1994-95, c.4, s.112 Department of Finance	Not Stated.	Appeal to the Executive Director of Gaming Control or the Gaming Control Commission. Decision is final and not open to question in any court.	Hearing held. May confirm, set aside, direct the Director to take such action as ought to be taken effect or may substitute opinion.
Superintendent Handicapped Person Education Regulations N.S. Reg. 103/75; N.S. Reg. 293/90 s.36 made under the *Handicapped Persons Education Act* R.S.N.S. 1989, c.194 Department of Education	W/N 10 days from receipt of notice, decision or Order.	Appeal to Board of Appeal by Authority.	Confirm revoke, extension of suspension.
Board of Appeal appointed by the Authority Handicapped Persons Education Regulations N.S. Reg.103/75; N.S. Reg. 293/90 s.39,40,42 made under the *Handicapped Persons Education Act* R.S.N.S. 1989, c.194 Department of Education	W/N/ 10 days from receipt of notice, decision or Order.	Appeal to Board of Appeal appointed by Minister of Education. Decision is final and binding.	Not Stated.
Council of the Halifax Regional Municipality *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.29(1)-(3) Department of Municipal Affairs	Council has refused request or has not acted w/n 120 days after the request.	Appeal to Utility & Review Board.	If satisfied refusal or failure to act was unreasonable, may order that a community council be established.
Council of the Halifax Regional Municipality *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.29(4)-(5) Department of Municipal Affairs	Not Stated.	Appeal to Utility & Review Board.	May order that the community council not be abolished.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Council of the Halifax Regional Municipality *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.30 Department of Municipal Affairs	If Council has refused or not acted w/n 120 days after application.	Appeal to Utility & Review Board.	Allow appeal, with or without such modifications are considered are in the interests of the inhabitants.
Engineer of the Halifax Regional Municipality *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.50 Department of Municipal Affairs	Expires 30 days after the Engineer gives decision in writing to the owner.	Appeal to the Committee of the Council of the Regional Municipality.	Direct Engineer to grant approval or permission or uphold decision.
Council of the Halifax Regional Municipality *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.67 Department of Municipal Affairs	W/N 30 days from date of Order.	Appeal to Supreme Court.	Confirm, modify or set aside the Order.
Council of the Halifax Regional Municipality *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.128 Department of Municipal Affairs	By notice of motion w/n 3 months after adoption of the by-law, Order, administrative order of resolution. Where by-law requires approval of Minister and has not yet received it, application can be made at any time.	Appeal to Supreme Court.	May quash, in whole or in part, may order costs.
Development Officer *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.190 Department of Municipal Affairs	Same time period as in the *Planning Act*.	Appeal to the Utility & Review Board.	Same powers and jurisdiction as under the *Planning Act*. If the refusal is based on a recommendation of the Department of Environment and there was reasonable and probable grounds for the Department to make the recommendation, decision must be upheld.
Council of the Halifax Regional Municipality *Halifax Regional Municipality Act*, S.N.S. 1995, c.3, s.194 Department of Municipal Affairs	W/N 20 days from receipt of notice, decision or Order.	Appeal to Utility & Review Board.	Public hearing or inquiry held. Order or direct the regional municipality to reduce, modify or alter rates, fares or charges, furnish adequate service and facilities, or other Order as justice requires.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Medical Health Officer of a Municipality *Health Act* R.S.N.S. 1989 c.195, s.71. Department of Health	Not Stated.	Appeal to Minister of Health.	Give such directions and make such Orders as considers just.
Radiation Health Officer Radiation Emitting Devices Regulations N.S. Reg. 14/81, s.8 made under *Health Act* R.S.N.S. 1989 c.195 Department of Health	W/N 14 days from date of Order.	Appeal to Radiation Health Advisory Committee.	Not Stated.
Board of Health for the Municipality of the District of Queens Installation of on-site sewage disposal systems Queens County Regulations N.S. Reg. 13/82; N.S. Reg. 88/94 s.5 made under *Health Act* R.S.N.S. 1989 c.195 Department of Health	W/N 30 days from date of decision.	Appeal to Council of Municipality.	Not Stated.
Minister *Health Act*, R.S.N.S. 1989, c.195, s.14 Department of Health	Not Stated.	Appeal to Supreme Court.	In accordance with the provisions for appeal under the *Environment Act*.
Minister *Health Act*, R.S.N.S. 1989, c.195, s.136 Department of Health	Not Stated.	Appeal to Supreme Court.	Judge shall determine whether the records should be made available and to what extent.
Administrator, Insured Professional Services *Health Services and Insurance Act* R.S.N.S. 1989, c.197, s.30(1)(B) Department of Health	W/N 15 days of date of Order.	Appeal to Health Services and Insurance Commission. Decision final.	Render a decision.
Provincial Tax Commissioner *Health Services Tax Act*, R.S.N.S. 1989 c.198, s.20L(1) 36(5) Department of Finance	W/N 30 days from receipt of notice, decision or Order.	Appeal to the Utility & Review Board.	Parties may adduce evidence, cross-examine witnesses, make representations. Affirm, vary, reverse.
Heritage Officer *Heritage Property Act*, R.S.N.S. 1989 c.199, s.19(H)(I) Department of Municipal Affairs	Not Stated.	Appeal to N.S. Municipal Board (continued as Utility & Review Board).	Confirm, make any decision, refer matter back. Board shall not interfere unless decision cannot reasonably be said to be consistent with conservation by-law.
Council of a Municipality *Heritage Property Act*, R.S.N.S. 1989 c.199, s.20A Department of Municipal Affairs	Not Stated.	Appeal to N.S. Municipal Board (continued as Utility & Review Board).	Confirm, make any decision, refer matter back. Board shall not interfere unless decision cannot reasonably be said to be consistent with conservation by-law.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Minister *Home Owner's Incentive Act*, R.S.N.S. 1989 c.202, s.9 Department of Finance	Mutatis mutandis: W/N 30 days from date of decision.	Appeal to Utility & Review Board.	Affirm, vary, reverse.
Cape Breton Regional Hospital Hospitals Regulations N.S. Reg. 16/79; N.S. Reg. 182/94, s.3A made under *Hospitals Act*, R.S.N.S. 1989 c.208 Department of Health	Not Stated.	Appeal to Appeals Committee of Board of Directors of Hospital.	Not Stated.
Board of Inquiry *Human Rights Act* R.S.N.S. 1989 c.214, s.36 Human Rights Commission	Mutatis mutandis rules of court.	Appeal to the Court of Appeal on a question of law. Mutatis mutandis rules of court.	Hear and determine based upon the record of the proceedings in which the decision appealed from was made.
Minister *Income Tax Act*, R.S.N.S. 1989 c.217, s.28 as amended by S.N.S. 1993 c.26, s.12 Department of Finance	No appeal after 90 days of mailing of notice, decision or Order.	Appeal to Supreme Court. Mutatis mutandis rules of court.	Strike out notice of appeal. Strike out reply by Minister. Matter is deemed to be an action in the court and the practice and procedure of the court apply.
Professional Conduct Section By-laws N.S. Reg. 243/92 s.40 made under *Institute of Chartered Accountants of Nova Scotia Act* S.N.S. 1900 c.154	W/N 21 days from receipt of notice, decision or Order.	Appeal to Special Committee of Council of the Institute of Chartered Accountants of Nova Scotia. Decision final.	Confirm, modify, alter, cancel or revoke.
Superintendent of Insurance *Insurance Act* R.S.N.S. 1989 c.231, s.50 Department of Housing & Consumer Affairs	W/N 30 days from date of decision.	Appeal to Supreme Court. Further appeal to Court of Appeal with leave on a question of law.	Dismiss, allow, allow with terms/conditions, vary, refer matter back to Superintendent, award costs, make such Order that is just.
Insurance Council *Insurance Act* R.S.N.S. 1989 c.231, s.51(8) Department of Housing & Consumer Affairs	Not Stated.	Review by the Superintendent.	Not Stated.
Superintendent of Insurance *Insurance Act* R.S.N.S. 1989 c.231, s.51(9). Department of Housing & Consumer Affairs	Not Stated.	Appeal to Supreme Court.	Not Stated.
Superintendent of Insurance *Insurance Act* R.S.N.S. 1989 c.231, s.63. Department of Housing & Consumer Affairs	W/N 30 days from date of decision.	Appeal to Supreme Court. Further appeal to Court of Appeal with leave on a question of law.	Dismiss, allow, allow with terms/conditions, vary, refer matter back to Superintendent, award costs, make such Order that is just.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Board of Commissioners of Public Utilities appointed under the *Public Utilities Act* - (continued as Utility & Review Board, S.N.S. 1992 c.11). *Insurance Act* R.S.N.S. 1989 c.231, s.157 (5) Department of Housing & Consumer Affairs	Not Stated.	Appeal to Court of Appeal on question of fact or law.	Not Stated.
Labour Standards Tribunal (N.S.) *Labour Standards Code*, R.S.N.S. 1989 c.246, s.20(2) Department of Labour	W/N 30 days from mailing of notice, decision or Order.	Appeal to the Court of Appeal on question of law or jurisdiction.	Determine question of law and remit to Tribunal with its opinion thereon.
Director of Labour Standards, s.21(10). Order of Director is final and conclusive and not open to review by any court by *certiorari* or otherwise except that it can be appealed to the Labour Standards Tribunal. *Labour Standards Code*, R.S.N.S. 1989 c.246, s.21(5) Department of Labour	W/N 10 days from date of service of notice, decision or Order.	Appeal to Labour Standards Tribunal.	Decide whether or not a party has contravened the *Act*, make an Order to do any act or thing, make an Order to rectify an injury or make compensation.
Discipline Committee *Land Surveyors Act*, R.S.N.S. 1989 c.249, s.28 Department of Natural Resources	W/N 30 days from date of service of notice, decision or Order.	Appeal to Court of Appeal.	Make such Orders as seems just, or refer matter back to Discipline Committee with directions.
Executive Director of N.S. Legal Aid Commission *Legal Aid Act*, R.S.N.S. 1989 c.252, s.25 and General Regulations & Tariff of Fees N.S. Reg. 77/77; N.S. Reg. 102/90. Department of Justice	Not Stated.	Appeal to N. S. Legal Aid Commission.	Not Stated.
N.S. Liquor Commission *Liquor Control Act*, R.S.N.S. 1989 c.260, s.65 Minister designated to administer the *Act*	30 days from date of decision.	Appeal to Minister. Decision final.	Affirm, vary, reverse.
N.S. Liquor Commission Liquor Commission Regulations N.S. Reg. 22/91; N.S. Reg. 49/94 s.35 made under *Liquor Control Act*, R.S.N.S. 1989 c.260. Minister designated to administer the *Act*	For reinstatement of expired permit: 30 days from expiration of permit.	Appeal to the Commission.	Not Stated.
Commissioner chosen by the proprietors *Marsh Act*, R.S.N.S. 1989 c.273, s.74 Department of Justice	W/N 6 months of proceeding of a commissioner.	Apply for Order of *Certiorari* to Supreme Court. *Act* restricts application time.	May call and examine witnesses under oath. Make such determination as proper including remit proceeding to commissioner for reconsideration.
Assessor of Marsh body *Marshland Reclamation Act*, R.S.N.S. 1989 c.274, s.41 Department of Agriculture & Marketing	Not later than the 30th day of November following the deposit of the roll.	Appeal to Executive Committee of Marsh body.	Confirm or alter valuation of land on assessment roll, add person's name to roll, stake off person's name from roll.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Director of Livestock Services in the Department of Agriculture & Marketing *Meat Inspection (N.S.) Act*, R.S.N.S. 1989 c.276, 12 (to be repealed by *Meat Inspection Act* S.N.S., 1996 c.6, s.14 (in force December 2, 1996) Department of Agriculture & Marketing	W/N 30 days from receipt of notice, decision or Order.	Appeal to Meat Inspection Board. Appeal by way of a hearing de novo. Decision final.	Confirm, vary, reverse.
Administrator appointed by the Minister of Agriculture and Marketing *Meat Inspection Act*, S.N.S. 1996, c.6, s.14 (coming into force on December 2, 1996) Department of Agriculture & Marketing	Not Stated.	Appeal to the Meat Inspection Board.	Dismiss, allow or make any decision the administrator was authorized to make.
Provincial Medical Board *Medical Act*, R.S.N.S. 1989 c.278, s.43 (to be repealed by *Medical Act*, S.N.S. 1995-96, c.10, s.68 - not yet proclaimed) Department of Health	W/N 30 days from date of Order.	Appeal to Supreme Court. Trial de novo.	Not Stated.
Hearing Committee of the Council of the College of Physicians & Surgeons of Nova Scotia *Medical Act*, S.N.S. 1995-96, c.10, s.68 (not yet proclaimed). Department of Health	Not Stated.	Appeal to Court of Appeal.	Civil Procedure Rules apply except for those not inconsistent with the *Act.*
Committee of the Council of the College *Medical Act*, S.N.S. 1995-96, c.10, s.53(4) (not yet proclaimed). Department of Health	W/N 15 days from receipt of notice, decision or Order.	Appeal to Hearing Committee.	No oral testimony. Committee reviews an agreed statement of facts supplied by legal council. May counsel, caution, reprimand, require treatment.
Metropolitan Authority *Metropolitan Authority Act*, R.S.N.S. 1989 c.285, s.40(2) Department of Municipal Affairs	W/N 20 days from receipt of notice, decision or Order.	Appeal to Public Utilities Board (continued as Utility & Review Board S.N.S. 1992 c.11).	Order reduction, modification or alteration of rates, fares and charges, give such Order as seems appropriate. Order Authority to furnish reasonable adequate service/facilities (after public hearing).
Officer (includes inspector, engineer, geologist in public service) *Mineral Resources Act*, S.N.S. 1990 c.18, s.169(1) Department of Natural Resources	W/N 30 days from date of decision. (Mineral Resources Regulations N.S. Reg. 30/91 s.82).	Appeal to Minister of Natural Resources. Appeal de novo. Decision final.	Minister has all the powers of the officer appealed from.
Officer (includes inspector, engineer, geologist in public service) *Mineral Resources Act*, S.N.S. 1990 c.18, s.153 Department of Natural Resources	W/N 60 days from date of notice.	Appeal to Minister of Natural Resources. Appeal de novo. Decision final.	Parties given the opportunity to be heard. Minister has all the powers of the officer appealed from.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Registrar appointed under the *Act* *Mineral Resources Act*, S.N.S. 1990 c.18, s.167 (6) Department of Natural Resources	W/N 20 days from receipt of notice, decision or Order.	Appeal to Minister of Natural Resources. Appeal de novo. Decision final.	Minister has all the powers of the officer appealed from.
Minister *Mineral Resources Act*, S.N.S. 1990 c.18, s.173 Department of Natural Resources	W/N 30 days from date of decision.	Appeal to Supreme Court except as in the *Act* otherwise provided. Decision final. Appeal to Court of Appeal on question of law.	Not Stated
Registrar of Mortgage Brokers *Mortgage Broker's and Lenders Registration Act*, R.S.N.S. 1989 c.29, s.12 Department of Housing & Consumer Affairs	Not Stated.	Appeal to Supreme Court.	Confirm, vary set aside.
Utility & Review Board *Motor Carrier Act*, R.S.N.S. 1989 c.293, s.30 Department of Transportation & Communications	30 days after Order.	The Board is governed by *Utility Review Act* under s.30. An Order is appealed to Court of Appeal.	Appeal and error of law or jurisdiction.
Registrar of Motor Vehicle *Motor Vehicle Act*, R.S.N.S. 1989 c.292, ss.15,44(a) Department of Transportation & Communications	Not Stated.	Appeal to Minister. Decision final.	Not Stated.
Tree Committee *Municipal Act*, R.S.N.S. 1989 c.295, s.34 Department of Municipal Affairs	W/N 30 days from date of Order.	Appeal to Supreme Court.	Confirm, modify, set aside.
Director of Engineering of the Municipality or person under Director's supervisor *Municipal Act*, R.S.N.S. 1989 c.295, s.146V Department of Municipal Affairs	Expires 30 days after the engineer gives a decision in writing to the owner.	Committee of the Council of the Municipality.	Direct engineer to grant approval or permission to uphold previous decision.
Director of Assessment *Municipal Grants Act*, R.S.N.S. 1989 c.302, s.9(4)-14)(5) Department of Municipal Affairs	W/N 60 days of the determination.	Review by Minister. Decision final.	Not Stated.
Nova Scotia Turkey Producers' Marketing Board Nova Scotia Turkey Marketing Plan Regulations N.S. Reg. 29/84; N.S. Reg. 265/92 s.14 made under *Natural Products Act* R.S.N.S. 1989 c.308 Department of Agriculture & Marketing	W/N 7 days of price determination by Turkey Board.	Review by Natural Products Marketing Council.	Affirm or vary price determination.
Nova Scotia Egg and Pullet Producers Marketing Board Nova Scotia Egg and Pullet Producer's Marketing Plan Regulations N.S. Reg. 239/82; N.S. Reg. 281/92 s.17 made under *Natural Products Act* R.S.N.S. 1989 c.308 Department of Agriculture & Marketing	Not Stated.	Appeal to Natural Products Marketing Council. Decision final.	Not Stated.

Agency/Department (appealed from) listed by Acts	Appeal Period	Appeal Process	Jurisdiction
Principal of a campus of Community College or Chief Executive Officer of Community College region Nova Scotia Community College Regulations N.S. Reg. 13/91 s.13(5) made under *Nova Scotia Community College Act* R.S.N.S. 1989 c.495 Department of Education	W/N 7 days from receipt of notice, decision or Order.	Appeal to Minister.	Not Stated.
Credentials Committee *Nursing Assistants Act*, R.S.N.S. 1989 c.319, s.17 Department of Health	W/N 30 days from date of Order.	Appeal to Supreme Court. Trial de novo.	Not Stated.
Registrar Nursing Assistants Regulations N.S. Reg. 209/88 s.XI made under *Nursing Assistants Act*, R.S.N.S. 1989 c.319 Department of Health	Not Stated.	Appeal to Board of Registration of Nursing Assistants.	Not Stated.
Board of Registration of Nursing Assistants *Nursing Assistants Act*, R.S.N.S. 1989 c.319, s.17 Department of Health	W/N 30 days from date of Order.	Appeal to Supreme Court. Trial de novo.	Not Stated.
Minister *Offshore Petroleum Royalty Act*, S.N.S. 1987 c.9, s.11 Department of Natural Resources	No appeal 90 days of mailing of notice, decision or Order confirming or varying an assessment or 180 days of mailing of notice of objection.	Appeal to Supreme Court.	Dismiss, allow and vacate, or vary assessment or make such necessary Order.
Board of the N.S. Association of Occupational Therapists *Occupational Therapists Act*, R.S.N.S. 1989 c.321, s.14 Department of Health	30 days from date of decision.	Appeal to Supreme Court.	Such Order as seems just as to refusal of application of the cancellation or suspension of registration and as to costs.
Executive Director of Occupational Health and Safety General Blasting Regulations N.S. Reg. 77/90 s.18(9) made under *Occupational Health and Safety Act*, R.S.N.S. 1989 c.320 Department of Labour	Not Stated.	Appeal to the Board of Examiners. Decision final.	Confirm, vary or reverse.
Executive Director of Occupational Health and Safety Disclosure of Information Regulations N.S. Reg. 220/86; N.S. 65/89 s.14 made under *Occupational Health and Safety Act*, R.S.N.S. 1989 c.320 Department of Labour	W/N 15 days from date of service of notice, decision or Order.	Appeal to Minister.	Not Stated.
Minister Disclosure of Information Regulations N.S. Reg. 220/86; N.S. 65/89 s.16 made under *Occupational Health and Safety Act*, R.S.N.S. 1989 c.320 Department of Labour	W/N 15 days from date of service of notice, decision or Order.	Determination de novo by Supreme Court.	Not Stated.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Occupational Health and Safety Officer *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.67 (not yet proclaimed) Department of Labour	W/N 14 days from date of service of notice, decision or Order.	Appeal to Executive Director of Occupational Health and Safety or Director's designate.	May consider new information. Shall summarily review and decide the matter. May Order, confirm, vary, revoke or suspend or make any order or decision that an officer may make.
Executive Director of Occupational Health and Safety or the Director's designate *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.69 (not yet proclaimed) Department of Labour	W/N 21 days from date of decision or date or Order.	Appeal to Appeal Panel. Exclusive jurisdiction to determine all questions of law, fact and mixed law and fact. Decision final and binding. Only reviewable for error of law or jurisdiction.	Hearing held, aggrieved person may present evidence and make representations. may by Order, confirm, vary, revoke or suspend or any Order the officer may make.
Appeal Panel *Occupational Health and Safety Act*, S.N.S., c.7, s.70 (not yet proclaimed) Department of Labour	Not Stated.	Review by Court of Appeal, only with leave.	Appeal panel has exclusive jurisdiction to determine all questions of law, fact and mixed law and fact. The review by the Court of Appeal is with recognition that the Appeal panel is an expert body. The Director has standing as a party in the review.
Registrar of Motor Vehicles Off-Highway Regulations N.S. Reg. 13/88; N.S. Reg. 191/88, s.5 and Snow Vehicles Regulations N.S. Reg. 42/71; N.S. Reg. 73/72 s.4 made under *Off-Highway Vehicles Act* Department of Transportation & Communications	Not Stated.	Appeal to Minister. Decision final.	Not Stated.
Council of the Association, Secretary Treasurer of the Association or Board of Examiners of the Association *Optometry Act*, R.S.N.S. 1989 c.328, s.21(3) Department of Health	Not Stated.	Appeal to Supreme Court.	Grant such Order as may be warranted by the facts.
Discipline Section Nova Scotia Association of Optometrists By-Laws N.S. Reg. 65/93; N.S. Reg. 50/94 s.33,34 made under *Optometry Act*, R.S.N.S. 1989 c.328 Department of Health	W/N 14 days from date of delivery of written report of Discipline section.	Appeal to Appeal Committee appointed by Council of the Association. Decision final.	Confirm, alter, cancel or revoke.
Registrar of Joint Stock Companies *Partnerships and Business Names Registration Act*, R.S.N.S. 1989 c.335, s.4(6) Department of Justice	Not Stated.	Appeal to Supreme Court.	Order that name of partnership not be changed or that is former name be restored or such Order that seems just.

Agency/Department (appealed from) listed by Acts	Appeal Period	Appeal Process	Jurisdiction
Building Inspector *Peggy's Cove Commission Act*, R.S.N.S. 1989 c.339, s.12 Department of Municipal Affairs	Not Stated.	Appeal to Peggy's Cove Commission.	Confirm refusal or Order, building inspector to issue permit.
Superintendent of Pensions *Pension Benefits Act*, R.S.N.S. 1989 c.340, s.89(9) Department of Finance	Not Stated.	Appeal to Supreme Court.	Confirm or substitute any decision the superintendent was authorized to make.
Council of the N.S. Pharmaceutical Society or Discipline Committee of the Society *Pharmacy Act*, R.S.N.S. 1989 c.343, s.34 Department of Health	W/N 30 days of mailing of decision.	Appeal to Supreme Court on a question of law or jurisdiction. Decision final.	Dismiss the appeal or make any Order which Discipline Committee could have made, or make Order respecting costs.
Registrar Pharmacy Regulations N.S. Reg. 148/81; N.S. Reg. 133/92 s.13:13:1 made under *Pharmacy Act*, R.S.N.S. 1989 c.343 Department of Health	On or before January 31st in any year.	Appeal to Committee.	Not Stated.
Committee Pharmacy Regulations N.S. Reg. 148/81; N.S. Reg. 133/92 s.13:13:3 made under *Pharmacy Act*, R.S.N.S. 1989 c.343 Department of Health	Not Stated.	Appeal to Discipline Committee.	Allow or disallow appeal or substitute its own decision.
Board of the N.S. College of Physiotherapists *Physiotherapy Health Act*, R.S.N.S. 1989 c.344, s.12 Department of Health	W/N 30 days of date decision cam to the notice of person.	Appeal to Supreme Court.	Make Order as to cancelation or suspension of registration and as to costs.
Development Officer *Planning Act*, R.S.N.S. 1989 c.346, s.15-85-115; Reg. 204/94, s.15(2) Department of Municipal Affairs	W/N 15 days from date of service of notice, decision, or Order.	Appeal to the Utility & Review Board.	Confirm or allow appeal by ordering issuance of permit.
Council of a Municipality *Planning Act*, R.S.N.S. 1989 c.346, s.70 Department of Municipal Affairs	W/N 21 days of date of publication of amendment or of date of decision in case of refusal to amend.	Appeal to the Utility & Review Board.	Confirm, allow appeal by reversing decision or allow appeal of instructing council to amend by-law in manner prescribed by Board.
Council of a Municipality *Planning Act*, R.S.N.S. 1989 c.346, s.78, s.79 Department of Municipal Affairs	W/N 21 days of date of advertisement.	Appeal to the Utility & Review Board.	Confirm, make any decision council could have made or refer matter back to council.
Municipal Development Officer *Planning Act*, R.S.N.S. 1989 c.346, s.87(3) Department of Municipal Affairs	W/N 15 days from date of service of notice, decision or Order.	Appeal to Council.	Make any decision that municipal development officer could have made.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Provincial Director of Planning *Planning Act*, R.S.N.S. 1989 c.346, s.123 Department of Municipal Affairs	W/N 10 days from granting of permit.	Appeal to the Utility & Review Board.	Confirm, allow appeal by revoking permit, order conditions to attach to permit or vary/revoke conditions.
Provincial Director of Planning *Planning Act*, R.S.N.S. 1989 c.346, s.123 Department of Municipal Affairs	W/N 60 days of permit being refused or granted subject to conditions.	Appeal to the Utility & Review Board.	Dismiss appeal, allow appeal by granting permit or vary/revoke conditions.
N.S. Police Commission *Police Act*, R.S.N.S. 1989 c.348, s.27 Department of Justice	1) In case of disciplinary default - w/n 14 days from receipt of notice, decision or Order. 2) In case of suspension and discontinuance of member's pay and allowance - w/n 60 days from receipt of notice, decision or Order.	1) Referral of complaint to Police Review Board - Hearing do novo. Decision final. 2) Referral of complaint to Police Review Board. Hearing do novo. Decision final.	Parties may appear and be heard, call witnesses and cross-examine. Make findings of facts, dismiss matter, make recommendations, vary, affirm, substitute its opinion, award costs, supersede disciplinary procedure or provision in a contract or collective agreement.
Authority (body which has jurisdiction to deal with complaint or internal disciplinary matter). Police Regulation N.S. Reg. 101/88; N.S. Reg. 135/94 s.13 made under *Police Act* R.S.N.S. 1989 c.348 Department of Justice	W/N 14 days from receipt of notice, decision or Order.	Review by Police Review Board. Hearing de novo. Decision final.	Make findings of fact, dismiss matter, make recommendations, vary, affirm, substitute a finding, award or fix costs, supersede a disciplinary procedure or provision in a contract or collective agreement.
Investigator of Nova Scotia Police Commission Police Regulations N.S. Reg. 101/88; N.S. Reg. 135/94 s.15 made under *Police Act* R.S.N.S. 1989 c.348 Department of Justice	W/N 14 days from receipt of notice, decision or Order.	Appeal to Nova Scotia Police Commission. Decision final.	Not Stated.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Chief Officer and Board of Police Commissioners Police Regulations N.S. Reg. 101/88; N.S. Reg. 135/94 s.28B(3) made under *Police Act* R.S.N.S. 1989 c.348, s.27,32 Department of Justice	W/N 60 days from receipt of notice, decision or Order.	Review by Police Review Board. Hearing de novo. Decision final.	Make findings of fact, dismiss matter, make recommendations, vary any penalty imposed, affirm penalty imposed, substitute a finding, award or fix costs, supersede a disciplinary procedure or provision in a contract or collective agreement.
Council of a Municipality *Private Way Act*, R.S.N.S. 1989 c.358, s.32 Department of Justice	W/N 10 days from date of decision.	Appeal to Supreme Court.	Allow appeal, quash, set aside or reverse or confirm decision with or without costs.
Superintendent or Delegate Remission of Sentence Regulations N.S. Reg. 249/88 s.6 made under *Prisons and Reformatories Act (Canada)* R.S.C. 1970 c.P-21 Solicitor General of Nova Scotia	Not Stated.	Review by Minister or person authorized by Minister of act on his behalf. Decision final.	Not Stated.
Registrar of Probate *Probate Act*, R.S.N.S. 1989 c.359, s.163 Department of Justice	W/N 10 days from date of Order. s.141 places a time limit on *certiorari* - W/N 6 months from date of decision.	Appeal to Probate Court. Further appeal to Appeal Court.	May hear further evidence, confirm, vary, or set aside, or make any order which the Registrar should have made.
Board of Directors of the N.S. Dietetic Association *Professional Dietitians Act*, R.S.N.S. 1989 c.361, s.19 Department of Health	Not Stated.	Appeal to Supreme Court on questions of law or fact or both. Further appeal to Court of Appeal. Direct appeal to Court of Appeal if probate judge is incapacitated or disqualified or the parties consent in writing.	Confirm or alter, direct Registrar to do any act authorized, refer matter back to Board, substitute its opinion for that of the Registrar.
N.S. Board of Examiners in Psychology *Psychologists Act*, R.S.N.S. 1989 c.368, s.19 Department of Health	W/N 30 days from date person advised of refusal, cancellation or suspension.	Appeal to Supreme Court on a question of law or fact or both.	Confirm, alter, quash, substitute opinion for that of the Board.
Public Accountants Board of the Province of N.S. *Public Accountants Act*, R.S.N.S. 1989 c.360, s.19 Department of Housing & Consumer Affairs	W/N 3 months from date of service of notice, decision or Order.	Appeal to Supreme Court. Order final.	Confirm, direct Board to grant or restore licence and place applicant's name on roll.

Agency/Department (appealed from) listed by Acts	Appeal Period	Appeal Process	Jurisdiction
Minister of Transportation and Communications *Public Highways Act*, R.S.N.S. 1989 c.371, s.13(4) Department of Transportation & Communications	W/N 30 days from date of service of notice, decision or Order.	Appeal to Governor in Council.	Confirm, set aside, vary, make such Order as seems just.
Minister of Transportation and Communications *Public Highways Act*, R.S.N.S. 1989 c.371, s.15(3) Department of Transportation & Communications	W/N one month from date of decision.	Appeal to Supreme Court. Hearing of appeal in summary manner.	Confirm, vary, reverse.
Administrator appointed pursuant to the *Act* *Public Sector Compensation (1994-97) Act*, 1994, c.4, s.22	Not Stated.	Appeal to Board made pursuant to the *Act*. Decision final but Board can reverse decision.	Board shall decide any question referred to, may vary or revoke.
Utility & Review Board *Public Utilities Act*, R.S.N.S. 1989 c.380, s.77(4) Utility & Review Board	Not Stated.	Any Order of Board may be reviewed by the Board.	Not Stated.
Utility & Review Board *Public Utilities Act*, R.S.N.S. 1989 c.380, s.102 Utility & Review Board	W/N 15 days from date of decision.	Court of Appeal on question of law or jurisdiction.	Hear and determine questions and remit the matter back with opinion of the court.
Engineer of the Queens Regional Municipality *Queens Regional Municipality Act*, S.N.S. 1995, c.9, s.39 Department of Municipal Affairs	Expires 30 days after Engineer gives decision in writing to owner.	Appeal to Committee of the Council of the Region of Queens Municipality.	Uphold the decision or grant approval or permission.
Council of the Queens Regional Municipality *Queens Regional Municipality Act*, S.N.S. 1995, c.9, s.56 Department of Municipal Affairs	W/N 30 days from date of Order.	Appeal to Supreme Court.	Confirm, modify or set aside.
Council of the Queens Regional Municipality *Queens Regional Municipality Act*, S.N.S. 1995, c.9, s.114 Department of Municipal Affairs	By notice of motion made within three months after adoption of the by-law, Order, administrative order or resolution. Where by-law requires approval of Minister and has not yet received it, applications can be made at any time.	Appeal to Supreme Court.	May quash, in whole or in part, may order costs.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Development Officer *Queens Regional Municipality Act*, S.N.S. 1995, c.9, s.173 Department of Municipal Affairs	Same time period as *Planning Act*.	Appeal to the Utility & Review Board.	Same powers and jurisdiction as under the *Planning Act*. If the refusal is based on a recommendation of the Department of Environment and there was reasonable and probable grounds for the Department to make the recommendation, decision must be upheld.
Council of the Queens Region Municipality *Queens Regional Municipality Act*, S.N.S. 1995, c.9, s.177 Department of Municipal Affairs	W/N 20 day from receipt of notice, decision or Order.	Appeal to the Utility & Review Board.	Public hearing or inquiry held. Order or direct the regional municipality to reduce, modify or alter rates, fares or charges, furnish adequate service and facilities, or other Order as justice requires.
Governor in Council *Railways Act*, R.S.N.S. 1923, c.180, s.16 Department of Government Services	Not Stated.	Review by Governor in Council of own decision.	May review, rescind or vary.
Arbitrator(s) *Railways Act*, R.S.N.S. 1923, c.180, s.159 Department of Government Services	W/N 1 month after receiving written notice.	Appeal to Court of Appeal on question of law or fact. If question of fact, must decide on evidence taken before arbitrators.	Practice and proceedings are to be nearly the same as upon any of the appeals to the court.
Superintendent of Insurance *Real Estate Brokers' Licensing Act*, R.S.N.S. 1989 c.384, s.6(8) Department of Housing & Consumer Affairs	Not Stated.	Minister's decision is final.	Not Stated.
Council of a Regional Municipality *Regional Municipalities Act*, S.N.S. 1995-96, c.16, s.31 Department of Municipal Affairs	Not fewer than 500 have requested the council establish a community council and it has refused or not acted in 120 days after the request.	Appeal to the Utility & Review Board.	May order the Community Council be established.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Council of a Regional Municipality *Regional Municipalities Act*, S.N.S. 1995-96, c.16, s.66 Department of Municipal Affairs	Where the council refuses to grant an application to alter the boundaries or has not acted in 120 days after the application, the applicant may appeal the refusal or failure to act.	Appeal to the Utility & Review Board.	May allow appeal, with or without modification as it considers are in the best interests of the inhabitants of areas affected.
Engineer *Regional Municipalities Act*, S.N.S. 1995-96, c.16, s.49 Department of Municipal Affairs	Expires 30 days after the engineer gives a decision in writing to the owner re the approval or permission.	Appeal to Committee of the Council of a Regional Municipality.	Uphold decision or direct the engineer to grant approval or permission.
Council of the Regional Municipality *Regional Municipalities Act*, S.N.S. 1995-96, c.16, s.32 Department of Municipal Affairs	W/N 30 days from date of Order.	Appeal to Supreme Court.	Confirm, modify, set aside.
Council of a Regional Municipality *Regional Municipalities Act*, S.N.S. 1995-96, c.16, s.125 Department of Municipal Affairs	By notice of motion made w/n three months after adoption of the by-law, Order, administrative Order or resolution. Where by-law requires approval of Minister and has not yet received it, applications can be made at any time.	Appeal to Supreme Court.	May quash, in whole or in part, may order costs.
Development Officer *Regional Municipalities Act*, S.N.S. 1995-96, c.16, s.186 Department of Municipal Affairs	Same time period as in the *Planning Act*.	Appeal to the Utility & Review Board.	Same powers and jurisdiction as under the *Planning Act*. If the refusal is based on a recommendation of the Department of Environment and there was reasonable and probable grounds for the Department to make the recommendation, decision must be upheld.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Council of a Regional Municipality *Regional Municipalities Act*, S.N.S. 1995-96, c.16, s.190 Department of Municipal Affairs	W/N 20 days from receipt of notice, decision, or Order.	Appeal to Utility & Review Board.	Public hearing or inquiry held. Order or direct the regional municipality to reduce, modify or alter rates, fares or charges, furnish adequate service and facilities, or other Order as justice requires.
Board of Commissioners of Public Utilities continued as Utility & Review Board, S.N.S. 1992 c.11 *Regional Transit Authority Act*, R.S.N.S. 1989 c.389, s.33(7) Department of Municipal Affairs	Not Stated.	Any Order of Board may be reviewed by Board.	Revise, rescind.
Registrar or Executive Director of the Registered Nurses' Association of N. S. *Registered Nurses' Association Act*, R.S.N.S. 1989 c.391, s.11. (*A Bill was also introduced Fall 1996 which may alter this process slightly.) Department of Health	Not Stated.	Appeal to the Complaints Committee.	Refer matter to Discipline Committee or decide that no further action be taken.
Discipline Committee of the Registered Nurses' Association of N. S. *Registered Nurses' Association Act*, R.S.N.S. 1989 c.391, s.47 Department of Health	W/N 30 days from date of service of notice, decision or Order.	Appeal to Appeal Committee of Registered Nurses' Association of N.S.	Make Order which seems just, vary, quash, confirm, or refer matter back to Discipline Committee.
Residential Tenancy Officer *Rent Review Act*, R.S.N.S. 1989 c.398, s.15 Department of Housing & Consumer Affairs	W/N 15 days from date of decision or date of Order.	Review by the Rent Review Commission. Decision final.	The Commission may determine its own procedure. Affirm, make Order authorized under the *Act*.
Rent Review Commission *Rent Review Act*, R.S.N.S. 1989 c.398, s.26 Department of Housing & Consumer Affairs	W/N 30 days from date of decision or date of Order.	Appeal to Court of Appeal on questions of jurisdiction or law, with leave.	Not Stated.
Residential Tenancies Board *Residential Tenancies Act*, R.S.N.S. 1989, c.401, s.16 Department of Housing & Consumer Affairs	After a period of 7 business days has expired from the date of the report.	Appeal to Supreme Court.	Set a hearing date and give directions, adopt the report, vary or reverse, required a supplemental report, decide any question or issue reformed by the report with or without additional evidence, make an Order.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Provincial Tax Commission *Revenue Act* S.N.S. 1995-96, c.17, s.61 & Reg. 63/96 Department of Finance	Where a taxpayer or collector disputes liability for the amount assessed - w/n 60 days from date of service of notice, decision or Order or days of mailing of notice, decision or Order.	Appeal to the Utility & Review Board.	Hearing held. A prehearing conference and a preliminary hearing may also be held. Evidence may be adduced, witnesses cross-examined, representations made, submission made. May affirm, vary or reverse.
Provincial Tax Commission *Revenue Act* S.N.S. 1995-96, c.17, s.61 & Reg. 63/96 Department of Finance	Where dissatisfied with the decision of the Commissioner - w/n 30 days from receipt of notice, decision or Order.	Appeal to the Utility & Review Board.	Hearing held. A prehearing conference and a preliminary hearing may also be held. Evidence may be adduced, witnesses cross-examined, representations made, submission made. May affirm, vary or reverse.
Minister of Natural Resources Scaling Regulations N.S. Reg. 93/87 s.7 made under *Scalers Act* R.S.N.S. 1989 c.411 Department of Natural Resources	W/N 30 days from date of service of notice, decision or Order.	Appeal to Court of Appeal.	Not Stated.
Chairman, Members of Commission or Director of N.S. Securities Commission *Securities Act*, R.S.N.S. 1989 c.418, s.6, s.25(2) N.S. Securities Commission	W/N 30 days of mailing of notice decision or Order.	Review by N.S. Securities Commission.	Confirm, quash, vary or make Order as seems just.
N.S. Securities Commission *Securities Act*, R.S.N.S. 1989 c.418, s.26 Department of Justice	Not Stated.	Appeal to Supreme Court.	New material may be introduced. Order Commission to do such act as authorized by *Act*.
Sheep Valuer *Sheep Protection Act*, R.S.N.S. 1989, c.424, s.9(4) Department of Agriculture & Marketing	W/N 30 days after the making of the report by the valuer.	Appeal to Justice of the Peace. Decision is final and conclusive as to the amount of damage done.	May make further investigation on oath. Make a decision and award.
Justice of the Peace *Sheep Protection Act*, R.S.N.S. 1989, c.424, s.11 Department of Agriculture & Marketing	Not Stated.	Appeal to Supreme Court.	Proceedings shall be as close as possible to the *Summary Proceedings Act*.
Council of Municipality *Shopping Centre Development Act* R.S.N.S. 1989 c.427, s.11(4) Department of Justice	W/N 30 days of publication of notice of decision.	Appeal to the Utility & Review Board.	Decide as if an original application to the Board.
Registrar of Joint Stock Companies *Societies Act*, R.S.N.S. 1989 c.435, s.29 Department of Justice	W/N one month from date of decision.	Appeal to Governor in Council.	Confirm, modify, reverse.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Director of Provincial Social Assistance Social Assistance Appeal Regulations N.S. Reg. 123/75; N.S. Reg. 14/83 s.10, 16 made under *Social Assistance Act* R.S.N.S. 1989 c.432 Department of Community Services	W/N 30 days from receipt of notice, decision or Order.	Appeal to Provincial Assistance Review Board. Further appeal to Social Assistance Appeal Board.	Allow or dismiss appeal.
Social Services Committee Social Assistance Appeal Regulations N.S. Reg. 123/75; N.S. Reg. 14/83 s.10, 18 made under *Social Assistance Act* R.S.N.S. 1989 c.43 Department of Community Services	W/N 30 days from receipt of notice, decision or Order.	Appeal to Social Services Committee. Further appeal to Social Assistance Appeal Board.	Reverse or vary decision.
Social Assistance Appeal Board Social Assistance Appeal Regulations N.S. Reg. 123/75; N.S. Reg. 14/83 s.33, made under *Social Assistance Act* R.S.N.S. 1989 c.43 Department of Community Services	Not Stated.	Appeal to Minister.	Vary Order.
Board of Examiners *Social Workers' Act*, S.N.S. 1993, c.12, s.25(3) Department of Community Services	W/N 30 days from date of decision.	Review by Board of Examiners.	Confirm, vary.
Complaints Committee *Social Workers' Act*, S.N.S. 1993, c.12, s.29(5) Department of Community Services	W/N 30 days from date of decision.	Review of treatment of complaint by Board of Examiners.	Refer to Discipline Committee.
Registrar General *Solemnization of Marriage Act*, R.S.N.S. 1989 c.436, s.8 Department of Health	Not Stated.	Appeal to Governor in Council.	Not Stated.
Board of Examiners *Stationary Engineers Act*, R.S.N.S. 1989 c.440, s.6 Department of Labour	Not Stated.	Appeal to Minister. Decision final.	Not Stated.
Minister of Finance *Stock Savings Plan Act*, R.S.N.S. 1989 c.445, s.17 Department of Finance	W/N 60 days from date of notice.	Appeal to Supreme Court.	Not Stated.
Minister Nova Scotia Student Aid Appeal Committee Regulations N.S. Reg. 113/76; N.S. Reg. 172/90 s.3 made under *Student Aid Act* Department of Education	Not Stated.	Appeal to Nova Scotia Student Aid Appeal Committee.	Recommend to Minister that award be confirmed, increased or decreased.
Amusements Regulation Board General Regulations M/S/Reg/18/56; N.S. Reg. 213/91 s.2 made under *Theatres and Amusements Act* R.S.N.S. 1989, c.466 Department of Consumer Affairs	Not Stated.	Appeal to Minister.	Not Stated.
Teachers' Pension Commission Teachers' Pension Commission Regulations N.S. Reg. 31/51; N.S. Reg. 103/93 s.5A made under *Teachers' Pension Act* R.S.N.S. 1989 c.461 Department of Education	Not Stated.	Appeal to Teachers' Pension Committee.	Not Stated.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Provincial Tax Commissioner *Tobacco Tax Act*, R.S.N.S. 1989 c.470, s.18 Department of Finance	W/N 30 days from date of decision.	Appeal to the Utility & Review Board.	Conduct hearing. Parties may be examined or representations made to the Board. Affirm, vary, reverse.
Utility & Review Board *Tobacco Tax Act* R.S.N.S. 1989 c.470, s.19 Department of Finance	Not Stated.	Appeal to Court of Appeal on questions of law.	Not Stated.
Committee on Streets or Town Council *Towns Act*, R.S.N.S. 1989 c.472, s.76 Department of Municipal Affairs	Not Stated.	Appeal to Supreme Court.	Not Stated.
Tree Committee *Towns Act*, R.S.N.S. 1989 c.472, s.104, s.24 Department of Municipal Affairs	W/N 30 days from date of Order.	Appeal to Supreme Court.	Confirm, modify, set aside.
Superintendent of Private Trade Schools *Trade Schools Regulation Act*, R.S.N.S. 1989 c.474 Department of Education	W/N 15 days from receipt of notice, decision or Order.	Appeal to Provincial Private Trade School Board.	Confirm, vary, set aside.
Labour Relations Board *Trade Union Act*, R.S.N.S. 1989 c.475, s.19(3) Department of Labour	Not Stated.	Appeal to Court of Appeal on questions of law.	Hear and determine questions of law and remit matter to Board with opinion of court thereon.
Minister of Mines and Energy *Treasure Trove Act*, R.S.N.S. 1989 c.477, s.10(6) Department of Natural Resources	W/N 30 days from date of decision.	Appeal to Supreme Court.	Determine amount of compensation to be paid.
Superintendent of Trust and Loan Companies *Trust and Loan Companies Act*, S.N.S. 1990 c.7, s.235 Department of Housing & Consumer Affairs	W/N 15 days from receipt of notice, decision or Order.	Appeal to Minister of Consumer Affairs. Minister shall hear appeal or appoint an Appeal Board to do so. Decision final.	Confirm, vary, revoke.
Utility & Review Board *Utility and Review Board Act*, S.N.S. 1992 c.11, s.30, N.S. Reg. 131/96, N.S. Reg. 25/95 Department of Justice	W/N 30 days from date of Order.	Appeal to Court of Appeal on questions of jurisdiction or law.	Determine question of law and remit matter to Board.
Council of the N.S. Veterinary Medical Association *Veterinary Medical Act*, R.S.N.S. 1989 c.490, s.15(4) Department of Agriculture & Marketing	W/N 30 days after member becomes aware of suspension or expulsion.	Appeal to Supreme Court.	Confirm, vary, rescind.
Director of Victim Services *Victims' Rights and Services Act*, S.N.S. c.14, s.11L and s.6(1) Criminal Injuries Compensation Regulations N.S. Reg. 24/95 and Criminal Injuries Compensation Regulations N.S. Reg. 24/95 S.6(2) Department of Justice	W/N 30 days from receipt of notice, decision, or Order.	Appeal to the Utility & Review Board. Decision final, except appeal to Court of Appeal on any question of law.	Prehearing conference and preliminary hearing may be held. Make decision that Director could have made.

Agency/Department (appealed from) listed by Acts	**Appeal Period**	**Appeal Process**	**Jurisdiction**
Registrar General *Vital Statistics Act*, R.S.N.S. 1989, c.494, s.40(1)(3) Department of Health	W/N one year of refusing application for registration or certificate of search.	Appeal to Supreme Court.	Judge may make Order requiring the Registrar to accept the application or issue certificate or search.
Registrar General *Vital Statistics Act*, R.S.N.S. 1989, c.494, s.40(4) Department of Health	W/N 6 years from Order.	Appeal to Supreme Court. Order final.	Confirm, set aside.
Inspector appointed by the Council of a Municipality *Weed Control Act*, S.N.S. 1989, c.501, s.12 Department Agriculture and Marketing	W/N 4 days.	Appeal to Chief Inspector.	Immediate re-inspection by another inspector who may confirm, vary or rescind.
Inspector *Weed Control Act*, S.N.S. 1989, c.501, s.14(5) Department Agriculture and Marketing	W/N 7 days from date of service of notice, decision or Order.	Appeal to Chief Inspector.	May confirm or vary the statement.
Workers' Compensation Board *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.196 Department of Labour	W/N 30 days from receipt of notice, decision or Order.	Workers' Compensation Board may reconsider its decision.	The Board determines its own procedure. s.178 - Board has power to summon witnesses, require testimony, production of documents, accept oral and written testimony.
Workers' Compensation Board *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.199 Department of Labour	W/N 30 days from receipt of notice, decision or Order.	Appeal to Hearing Officer of the Workers' Compensation Board.	Oral hearing may be held, participants may present evidence and make submission depending on the issue, hearing officer can refer matter to the chair who can further refer it to the Board of Directors, Appeal Tribunal or return to hearing officer.
Hearing Officer of the Workers' Compensation Board *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss.243-254 Department of Labour	W/N 30 days from receipt of notice, decision or Order.	Appeal to Workers' Compensation Appeal Tribunal. Leave to appeal required.	Oral hearing may be held if requested. Additional evidence may be submitted. Confirm, vary or reverse.
Workers' Compensation Appeal Tribunal *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.256 Department of Labour	W/N 30 days from receipt of notice, decision or Order.	Appeal to Court of Appeal on any question as to jurisdiction of the Appeal Tribunal but not any other question of law or fact. Leave to appeal required.	Not Stated.

Appendix D

The following lists some of the topics that might be covered in a government sponsored training course. Some of these components might also be communicated by a video programme to assist in the delivery of information. The Commission notes, for example, that the Workers' Compensation Board has recently developed a video which assists claimants and employers in understanding the hearing process for workers' compensation claims.

Suggested Topics to be Covered in Training of All Appointees/Secretariat to ABCs

- What is the legal nature of a government appointment?
- What is a conflict of interest and why/when might it come up? How should a conflict of interest be dealt with?
- The statute or law creating the agency - what are appointees' obligations and responsibilities and liabilities under this and other statutes?
- What powers or authority does the appointee have under the statute?
- What is a Board of Directors? Officers, Chair, Staff?
- What is the relationship of the ABC to Government? What communication should properly exist and how might they occur?
- Public accountability and corporate/fiscal governance, consistency in decisionmaking - role of policy and guidelines regarding decisionmaking, banking resolutions, role of committees and auditing.
- Government policy, practice and law in connection with human rights, procurement, access to information, confidentiality of information, government record keeping requirements.

Suggested Additional Training for Appointees and Support Staff to Administrative Tribunals

Overview of Legal Framework

Importance of familiarity with the law and relevant legislation

- Overview of administrative law.
- What is an appeal?
- What is judicial review?
- Review of specific statutory requirements.
- The role of appointees to a tribunal and management role of the Chair.
- Overview of the requirements of natural justice in the context of a hearing (that is, requirements regarding hearing cases that you are deciding, what information can be reviewed?).
- The need to provide notice and reasons as well as ensuring that the person coming before you has an opportunity to answer allegations.
- What if a tribunal member cannot continue a hearing?

Conducting a Hearing

- Draft of hearing rules.
- Applying rules fairly.
- Pre-hearing disclosure.
- What are the legal requirements relating to the *Charter* and *Human Rights Act*?
- Bias (institutional and individual bias).
- How to conduct a hearing.
- How information should be presented to/by a tribunal. Appropriate/inappropriate questioning by tribunal.
- The principles of evidence.
- The role of legal counsel.
- The role of expert witnesses/reports.
- The powers of administrative tribunals (that is, what legal powers does the tribunal have and how might they be exercised? Can the tribunal consider the *Charter*?)
- The range of dispute resolution process and how they fit within hearing procedures.
- What information can a tribunal review (fairness and disclosure)?
- Principles regarding confidentiality and public hearings.
- What does privilege mean in connection with information?
- Special issues relating to public interest hearings and consultation.
- Rules of standing.
- Awarding cost and control over process.

After the Hearing

- Written reasons - what should be in reasons?
- Delay in decisionmaking - what is the appropriate time period within which decisions should be communicated?
- What to do about dissenting opinions in the tribunals?
- What is the relationship of tribunals to its secretariat/staff? Can staff draft reasons?
- What is the relationship of the administrative tribunal to a government department and to information held by departments?
- What is an appeal and what is the effect on the decision?
- Enforcement of orders and decisions.
- Re-hearing to correct error.

Appendix E

List of suggestions in Discussion Paper 1996

The Commission invites comments on its suggestions that:

1. There should be reform of the administrative justice system in Nova Scotia.

2. Reforms to the administrative justice system should seek to ensure independence, accessibility/openness, expertise, representativeness, efficiency and accountability.

3. Any reforms must include education of the public and members of the public acting as decisionmakers and must take into account the need to provide simple access to information about administrative procedures.

4. The relationship between the administrative structure of an ABC, the operation of an ABC and natural justice, concerns must be fully recognized in any new law and in the system creating administrative agencies.

5. ABCs can come in many different forms, but the role and the operational and structural needs of each should be considered and reflected in the structure, resources, composition and procedures of the ABC.

6. All ABCs should, in both structure and personnel, reflect an analysis of the degree to which independence, expertise, efficiency, accessibility, representativeness and accountability are required to achieve the mandate of the ABC.

7. While evaluation of existing agencies must take place on a case by case basis, it is possible to develop models for various types of ABCs which can be adopted for greater uniformity and efficiency as needs arise.

8. Each Government department responsible for an ABC must have, as part of its legal mandate, a requirement that it carry out an assessment of specific structural and personnel needs and criteria for all agencies it administers. They must specifically outline the needs of each ABC and develop criteria for appointments in accordance with those needs. Although it should not be a basis for an appeal of a decision of the ABC unless bias is established, a new law should say that the appointment process should be transparent and accountable.

9. There should be a new *Administrative Justice Act,* which sets out a number of minimum rights, powers and procedures that could be expected of most ABCs when making decisions that affect others. The *Act* and the administrative justice system must be simple and as accessible as possible for members of the public.

10. The *Act* should require decisionmakers to develop and to communicate their rules of practice.

11. The Government should prepare and publish "model" rules which, combined with training, will assist decisionmakers but which are not in the form of a law or regulations but rather are there to provide guidance.

12. There should be a broadly inclusive *Administrative Justice Act*, which will include minimum rules directing agencies to develop their own procedures as appropriate which are consistent with these rules.

13. The *Act* should say it covers all decisionmakers including those carrying out deliberations and providing recommendations to another agency or person unless their statute specifically excludes operation of the *Administrative Justice Act*. This *Act* would cover all self-governing agencies which are specially created by statutes.

14. ABCs should be required to develop and to communicate standardized rules of procedure for making decisions affecting rights and entitlements. The standardized rules should reflect minimum procedural rights including traditional natural justice rights and emerging fairness rights, such as the rights to access to justice, information, expedition, efficiency and resolution as well as substantive rights to written reasons within a reasonable time and to a decision based on principles of evidence.

15. All decisions should be filed in one central office so they are easily accessible to the public.

16. The enactment of a new law should be combined with the implementation of a training program and the adoption of comprehensive model rules or guidelines (which are not law) to assist decisionmakers in each agency to develop and interpret the requirements of natural justice, fairness, human rights law and modern caseflow management practices.

17. The Commission invites comment as to how to protect privacy interests while also providing for a right to know of all material being considered by a decisionmaker.

18. The Commission specifically invites comment on the form of remedy or sanction that could be provided if a decisionmaker does not comply with the requirement for expedition.

19. An administrative tribunal should be able to control its own process, subject to the rights of people who are affected by its decisions and subject to the supervisory power of the courts through judicial review.

20. There should be minimum standard powers provided in an *Administrative Justice Act* for all administrative tribunals which can be adjusted by the Government in creating the agency.

21. There should only be a very limited power on the part of the decisionmaker to re-hear a case to correct an error. However, the Commission invites specific comment on this matter.

22. The Commission is unresolved as to whether administrative decisionmakers should always have standard power to award costs and invites specific comment on this issue.

23. The law relating to judicial review remain as it is currently operating with some amendments to the Civil Procedure Rules regarding the six month time limit on *certiorar*i.

24. The Government should create a single consolidated Administrative Appeal Board for all administrative appeals in Nova Scotia, much like the role currently played by the Utility and Review Board, for many issues in Nova Scotia. This Board should have standardized times for appeals and a standardized basis of appeal. The Administrative Appeal Board should have full and part-time people appointed to it who can meet the public need for expedition, independence, informality and experience combined with sufficient training to ensure principles of natural justice and fairness are complied with.

25. The appointment process for members of any agency which is making decisions and particularly to the Administrative Appeal Board should ensure that where independence from the Government and from any particular interest is important to the agency mandate and to fairness then appointments must reflect this requirement.

26. Appointees must be trained to ensure an understanding of the meaning of conflict of interest and procedures must be developed for ensuring that this is respected.

27. In cases where institutional bias may suggest that otherwise independent decisionmakers are biased, then there should be a clear separation from Government and provisions for tenure or other mechanisms of accountability, including stated terms of appointment and secondment of staff whose primary obligation is to the agency in question.

28. Where an individual's liabilities, rights or entitlements are affected, then freedom from bias on the part of the decisionmaker should be paramount.

29. The rights to information and fairness, particularly where the same agency might carry out several roles including investigation, must be respected and are central aspects of the independence of decisionmakers.