Mediation and Arbitration Board

Mediation and Arbitration Board
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2005/2006 Annual Report

April 1, 2005 – March 31, 2006

May 31, 2006

Ministry of Energy, Mines and Petroleum Resources
8th Fl., 1810 Blanshard Street
Victoria, BC
V8W 9N3

Attention: The Honourable Richard Neufeld

Dear Sir,

I am pleased to enclose the first annual report of the Mediation and Arbitration Board which covers the period from April 1, 2005 to March 31, 2006. Pursuant to the Memorandum of Understanding between the Minister and Chair of the Board, the Minister has the power to approve the scope and form of the report before publication. We would like to publish this report on our web-site by June 15, 2006, so we look forward to hearing from you.

Yours truly,
Mediation and Arbitration Board

Paul E. Love
Chair

Mediation & Arbitration Board
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Annual Report of the Mediation and Arbitration Board

2005/2006

Message from the Chair

I am pleased to submit the first Annual Report of the Mediation and Arbitration Board. This report is prepared pursuant to the Memorandum of Understanding between the Minister of Energy and Mines, and Paul E. Love, Board Chair.

The number of applications filed with the board during the year was twenty-three. The number of applications which were concluded by mediation was eleven. Three applications were settled by the parties directly after the application was filed with the Board. There were three arbitration hearings concluded during the 2005/2006 year; two mining matters, and one petroleum and natural gas matter.

The Board has had a stable compliment of members during the 2005/2006 fiscal year. Members Jim Sodergren, Thor Skafte and Caroline Jones were reappointed to the Board for a one year term by order-in-council. The Board has had turnover in its administrative staffing, and engaged in a recruitment process which resulted in the appointment of Shirley Olsen to the position in September of 2005. The Board delivered its services within its budget.

Paul Love, Chair

Introduction

This annual report provides an overview of the structure and function of the Board. It contains information on the mediation and arbitration process that the Board follows. It contains statistics on applications made to the Board, and information concerning the Board's expenditures. Decisions of the Board, commencing for the years 1999 to the present can be found on the Board's website. Decisions prior to that time period are available for viewing at the Board's office.

The Board

The Mediation and Arbitration Board is an independent administrative agency established under the *Petroleum and Natural Gas Act*. The Board deals with applications under the *Petroleum and Natural Gas Act*, *Coal Act*, *Geothermal Resources Act*, *Mining Right of Way Act*, *Mineral Tenure Ac and*, *Coal Act*.

The Board hears and decides applications for access or entry to privately owned land, lease renewals and damage claims, by persons requiring land for access, exploration and development in the petroleum and natural gas. The Board also hears and decides applications for access to privately owned land under the *Mineral Tenures Act* and *Mining Right of Way Act*. Although the Board resolves disputes for the entire province most of the disputes occur in the north-east portion of the province. While the Board has jurisdiction under the *Coal Act* and *Geothermal Resources Act*, the Board has had no applications under these *Acts* during this year.

The Board Office

The Board office is staffed by a part-time Administrator, who receives applications, provides information about the Board's processes, coordinates the setting of dates for mediation and arbitration hearings, and

distributes decisions or orders to the parties. Shirley Olsen is the Board's administrator.

Information available about the Board can be found on the Board's website, and at the Board's office. The office is open to the public Monday to Thursday from 10:00 a.m. to 2:00 p.m. Mountain Time. The Board can be reached at:

114 – 10142 101 Avenue

Fort St. John, B.C., V1J 2B3

Telephone: (250)787-3403

Fax: (250)787-3228

Administrator's Email Address: Shirley.Olsen@gov.bc.ca

Because the Board is an independent administrative tribunal which makes decisions in individual cases, the Board requires all contact with the Board, other than communications at pre-hearing conferences, mediation and arbitration hearings be with its administrator, rather than with individual Board members or the Chair. The Board's internet website is:

http://www.em.gov.bc.ca/subwebs/M&ABoard/.

Board Membership

The Board members are appointed by the Lieutenant -Governor -in-Council (Cabinet) pursuant to section 13 (1) of the *Petroleum and Natural Gas Act*. Since the *Administrative Tribunals Appointment and Administrative Act* became effective there has been a greater role for the Chair in recommending appointment of members pursuant to a merit based process. The members are drawn from across the province and presently the Board has three members from Fort St. John, three members from Vancouver Island and two members from Vancouver. All the members are part-time. Board members are remunerated according to Treasury Board Guidelines at a rate of $350.00 per day, plus expenses. The Board has persons drawn from farming, oil and gas, mining industry, and law. Board members bring with them a background but are expected to be impartial with regard to the issues and parties before the Board and exercise their duties in an independent manner. The current Board members are:

Current Members			
Name:	**By order:**	**Position:**	**Expiry:**
Berkshire, Dan P.	OIC 493/04, May 29, 2004	Member	May 28, 2006
Love, Paul E	OIC 778/04, July 22, 2004	Chair	July 21, 2007
McKnight, Bruce K	OIC 1164/04, December 2, 2004	Member	December 2, 2006
McNabb, Caroline [1]	OIC 521/03, May 28, 2003	Member	May 27, 2006
Petersen, Ib S	OIC 1165/04, December 2, 2004	Member	December 2, 2006
Skafte, Thor	OIC 521/03, May 28, 2003	Member	May 27, 2006
Sodergren, James Layne	OIC 521/03, May 28, 2003	Member	May 27, 2006
Woods, Darrel Barton	OIC 1166/04, December 2, 2004	Member	December 2, 2006

Board Chair

The Chair of the Board is responsible for the effective management and operation of the tribunal. This includes the assignment of mediators and arbitrators to files, and jurisdictional rulings on applications. The relationship between the Board Chair and the Ministry is set out in a Memorandum of Understanding which is published on the Board's web-site. The Memorandum reinforces the independence of the Board's decision making from the Minister and Ministry of Energy, Mines and Petroleum Resources. The Board Chair is accountable to the Minister for the use of the Board's resources.

The current Chair, Paul Love is a lawyer who arbitrates, adjudicates and mediates in a wide variety of disputes within and outside of British Columbia. The Board Chair is a part time position. The Chair is

[1] Inactive during 2005/2006

remunerated according to Treasury Board Guidelines at $525.00 per day, plus expenses.

Board Training

Members come to the Board with a variety of skills and backgrounds. During the 2004/2005 fiscal year, Board members participated in a two day mediation skills based training session in Fort St. John facilitated by Sally Campbell. During the 2005/2006, Board members participated in a two day Hearing Skills Workshop provided by the B.C. Council of Administrative Tribunals in Vancouver.

Policy on Freedom of Information and Protection of Privacy

The Board's mediation processes are private and are open only to the parties. Board orders made after mediation are available to the public. The Board's arbitration hearings are open for observation by the public, and information provided to the Board by a party must be provided to all other parties in the arbitration hearing. Decisions of the Board are available to the public.

The Board is subject to the *Freedom of Information and Protection of Privacy Act, R.S.B.C*. 1996 c. 165, and the regulations under that *Act*. If a member of the public requests information about an arbitration or mediation that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act.*

The Board receives leases filed pursuant to section 10 of the *Petroleum and Natural Gas Act*. It is the view of the Board that this information falls under an exception in the *Freedom of Information and Protection of Privacy Act* as it contains confidential business information. The leases are not disclosed to the public. Any person who is a party to a lease may obtain a copy of their lease from the Board.

Legislative Amendments Affecting the Board

There has been a substantial administrative justice law reform process ongoing in British Columbia since the commencement of the Administrative Justice Project in July of 2001.

On February 13, 2004, the *Administrative Tribunals Appointment and Administrative Act* (the *ATAA Act*) came into force. This made changes to

the appointment process, clarifies the role of the chair in the appointment process, and the general roles and responsibilities of the chair of the Board. Appointments and reappointments made in prior to October 15, 2004 in that reporting year were made pursuant to the *ATTA Act*.

The *ATTA Act* was replaced by the *Administrative Tribunals Act* which was given Royal Assent on May 20, 2004, and sections 1 to 62 came into effect by order in council on June 30, 2004 (B.C. Reg. 293/2004). Not all these sections affect the Board's operations. The sections of the Administrative Tribunals Act which affect the Board are 1 to 11, 14, 17, 19 to 21, 29, 30, 32, 34(3) and (4), 36, 38 to 42, 44, 47 to 49, 55 to 57, 59, 60 (a), (b), (d) to (f) and 61. These sections and consequential amendments to the *Petroleum and Natural Gas Act* : sections 13 (5) (6) 15(2.1), (2.2), 16(2)(a), 17(1)-(3), 18(1) (5), 20(1), 22(3)(4)(5), and 25(1) (4) – (7) and the repeal of sections 23, 24, and 27 came into force with respect to the Board on October 15, 2004 (B.C. Reg. 425/04).

The relevant legislative provisions are set out in Appendix A to this report.

On October 7, 2004, the quorum of the Board was changed from two members to one member (B.C. Reg. 987/04). This change was made at the request of the Board's Chair. There is a general trend in the hearing practice of arbitration and administrative tribunals to move towards one person panels as this provides for the cost effective and timely delivery of services, unless there is a particular reason to require a multi-person panel. Many very serious cases are heard before single arbitrators or adjudicators. It was also perceived that in most cases the issues before the Board did not require the need for three decision makers.
The Chair of the Board requested a change in the quorum in order to ensure that mediation meetings and arbitration hearings, as well as jurisdictional rulings, preliminary meetings, procedural rulings, related to these processes could be administered in a timely and cost effective manner. A two person panel in effect requires three panelists to avoid the possibility of a deadlock between two panelists, and a potential rehearing of the matter at great expense and inconvenience to parties.

The Mediation and Arbitration Process

The Board is not presently governed by published rules of procedure, but the Board is governed by the *Petroleum and Natural Gas Act*, and the *Administrative Tribunals Act*. The Board principally deals with applications between a party seeking access to land and a landowner. On occasion

persons other than the landowner and an oil company or mining company have sought to participate in the Board's processes. The Board has developed an intervener rule to allow the Board to assess whether a person seeking to intervene in an application will be permitted to participate in an arbitration hearing before the Board, and to define the extent of the participation. In determining whether to grant a person intervener status in an application the member considers how the person would be impacted, what the person intends to contribute to the hearing process, the issues on which the potential intervener wishes to contribute and the expertise to contribute if the person intends to contribute expert evidence.

The Board has a simplified application form which requires the applicant to attach relevant documents. When an application is received by the Board, the application is reviewed by the Board's administrator, and referred to the Chair for review of jurisdictional issues, and assignment of a Board member to mediate, or arbitrate as the case may be. In every case, the Board member assigned to an application will call a preliminary conference to discuss the process the Board will follow.

For lease renewal applications a party is required to give sixty days notice of its intent to require the party to renegotiate the terms of a renewal of a lease. A party may then apply to the Board six months after the date of the expiration of the notice under section 12 of the *Petroleum and Natural Gas Act*. This permits the parties to attempt to resolve the issue without the need to resort to the use of the Board's processes. The Board has no power to reduce that time period, and a party seeking relief from the Board must be in a position to prove that it gave the sixty days notice and that the six month notice period has expired before the Board will proceed with the scheduling of a lease renewal application for mediation before the Board.

Mediation Process

The Board does not follow a pure mediation process. A pure mediation process is a voluntary process whereby the parties chose to go to mediation, the parties chose the mediator and the mediator assists the parties in negotiating a resolution of their problem. Mediation before the Board is a compulsory process and the parties must participate at mediation. The Board's mediation process is a blended mediation and arbitration process conventionally known as a 'med-arb process'. If the mediation does not result in a voluntary settlement, the Board member has the power to make an order which may be accepted or rejected by the parties.

The Board member assigned to mediate, calls a pre-hearing conference with the parties to provide information about the mediation process and to schedule the mediation meeting. The mediator will also discuss with the parties the information the parties will need to bring to the mediation. The pre-hearing conference may be in-person or by telephone conference call.

At the mediation meeting the Board member assists the parties in negotiating a resolution of the application. The discussions and information exchanged during a mediation session are confidential, and are without prejudice to the position that either party may take at an arbitration hearing. Because a mediation proceeding is intended to be confidential the proceedings are not recorded. The mediator may meet separately with each party in a caucus session on a confidential basis to explore settlement possibilities.

If the parties are able to reach a negotiated settlement, they are free to enter into a written agreement which is not filed with the Board. Any lease arising from the mediation agreement must be filed by the Board pursuant to section 10 of the *Petroleum and Natural Gas Act*.

If the Board member is unable to bring the parties to agreement, the Board member may issue an order for access to the lands, interim payment and security. The Board order is published to the parties, and is available to the public on the Board's website. The parties may accept the order or reject the order. If the parties accept the order, the process before the Board comes to an end.

If the parties reject the mediator's order, the Board is required to arbitrate the application under section 20 of the *Petroleum and Natural Gas Act*. Board orders made at mediation are often accepted by the parties as a final solution to the application. In many cases it is anticipated that the order made at mediation may substantially narrow the issues on which an arbitration hearing is required.

Arbitration Process

An arbitrator is a neutral and independent board member who is assigned by the Chair to make a final and binding determination of the application, subject to a right to apply for a review of the decision by the Supreme Court of British Columbia. The person appointed to arbitrate will usually be a different Board member than the mediator. Generally, there will be a single board member who will arbitrate the dispute. At this point in time, the Chair is only appointing lawyers as single arbitrators.

The Board follows an adversarial hearing model where the parties are responsible to raise the issues, and introduce the evidence in support of their position. Arbitration decisions are made on the basis of the admissible evidence introduced by the parties, including oral testimony, expert testimony, documents, relevant law, and the arguments raised by the parties. As the information before the mediator, is not before the arbitrator, the parties are required to exchange with each other and provide to the Board, for transmission to the arbitrator, any materials that the party intends to rely upon at the arbitration hearing.

The Board's administrator will make the administrative arrangements for a pre-hearing conference between the parties and the arbitrator to discuss scheduling issues, and issue directions for the exchange of documents, witness lists, expert reports, statements of issues or facts, and any other matter which will expedite and assist in a fair hearing. These exchanges of information and documents are scheduled to occur before the date of the arbitration hearing so that the parties are fully prepared to proceed to a hearing. A party who fails to disclose the documents that they intend to rely on in advance of the hearing, may not be permitted to introduce the documents into evidence at the hearing. The arbitrator will attempt to narrow the issues which will require evidence at a hearing. Directions following a pre-hearing conference are confirmed in writing. The arbitrator will also specify a method in the pre-hearing conference directions to resolve any further procedural requests in advance of the hearing.

At the main hearing the arbitrator is required to consider the mediation order, but is not bound by the decision of the mediator. The arbitration hearing is a fresh consideration of all the issues on the merits; however, the parties may specify that only certain portions of the mediator's order are in dispute and require a final and binding decision.

The Board's arbitration hearings are not recorded. If any party wishes to record the proceeding, or bring a court reporter to record the proceeding, this must be raised during the pre-hearing conference or on further application to the Board before the hearing date. The Board will make directions on the application during the course of the arbitration hearing.

At an arbitration hearing the party making the application proceeds first (the applicant), followed by the person responding to the application (the respondent). If there is more than one respondent, the Board will fix the order of the proceeding. The applicant makes an opening statement alerting the Board to the issues including the witnesses the party intends to call. The arbitrator may have the respondent or respondent(s) make an opening statement following the opening statement of the applicant, or defer the opening statement to the opening of the respondent's case. The party will then present its case through witnesses. Any witnesses called by

a party will be asked to affirm or swear on a bible before the witness gives evidence. After questioning by the party presenting the witness, the witness is then subject to questioning by the opposing party. The witness may then be re-examined by the party who presented the witness for questioning. When all the witnesses in the applicant's case are concluded, any person responding to the application calls oral evidence using the same procedure described above.

In addition to the making of a final decision, the arbitrator may also make a number of procedural rulings during the course of the proceeding to ensure that the hearing proceeds in a fair and expeditious manner. Some of those rulings made at a hearing may include whether a document is admissible, whether the question asked by a party will be allowed and whether an issue raised by a party can be pursued. The parties are expected to abide by the ruling made at the hearing; however it is open to a party within the time period prescribed by the *Administrative Tribunals Act* to apply to the Supreme Court of British Columbia for a review of the final decision of an arbitrator. Parties are expected to deal with each other and the arbitrator in a courteous manner at all hearings of the Board.

The arbitrator then hears closing argument from the parties, and retires to make a written decision, which will be delivered to the parties, and posted on the Board's web-site. The written decision can be reviewed on application by either party by a Judge of the Supreme Court of British Columbia. The process for the review is set out in the *Administrative Tribunals Act*.

It is anticipated that most arbitration matters will be heard by a single arbitrator. The selection of the arbitrator and the number of arbitrators is a matter for the Chair to decide. This decision is made without consultation with the parties. The Board has the power under the *Administrative Tribunals Act* to hold hearings by written submission or by electronic means. The nature of the issue to be decided will have a bearing on the type of the hearing. Generally, the main hearing will be an in-person hearing. Procedural issues in advance of the hearing, or cost applications following the written decision on the main issue may be decided after written submissions or a telephone conference call.

Challenges for the Board

There are a range of issues and disputes that arise as a result of oil and gas and mining development when industry seeks to enter onto and use the surface of privately owned land. The Board is a statutory tribunal, and

can only mediate or arbitrate those disputes which fall within its statutory mandate. The Board is not a policy making Board that regulates the oil and gas industry, or the conduct of landowners or the conduct of the oil and gas industry. The Board does not have the jurisdiction of the Supreme Court of British Columbia, which has inherent jurisdiction to deal with all legal disputes. The Board has a limited dispute resolution mandate.

As the Board does not have the power to hear and decide all issues that arise in the oil and gas and mining industries, at a hearing the Board will limit the evidence and argument to the relevant issues which it has the jurisdiction to decide. Generally, the Board's jurisdiction relates to access and compensation disputes on private land to which an industrial party seeks access. Some of the issues which the Board has no jurisdiction to decide include health concerns or environmental concerns arising from a proposed development, the effect of a development on an adjoining or neighbouring property, or the effect of a development on the community in which the landowner resides. These are concerns that are often brought forward by landowners, or persons seeking intervener status. The inability of the Board to address these issues, and to advise the parties where these issues can be addressed leads to frustration on the part of the landowners or interveners.

The Board faces certain challenges with respect to its dispute resolution process as the mandate is limited and the Board cannot resolve all disputes that may arise by a potential entry onto land by an oil and gas or mining company. Many landowners are unaware that title to land in the province of British Columbia generally contains a reservation of oil and gas and mineral rights to the provincial crown. [1] Most landowners in British Columbia do not own the oil and gas and mineral rights that underlie their property. Many landowners do not wish an oil company on their land at all, and do not wish to experience the nuisances associated with oil and gas production. Some of the disputes are very contentious: access for sour gas extraction, or access for coal bed methane. Often these disputes are linked to health and safety concerns over which the Board has no jurisdiction. Mineral development often can consume the entire land.

Many of the Board's "clients" are unrepresented by counsel. The "clients" often look to the Board for advice and information concerning the merits of their dispute, or the probable outcome if the matter were to proceed to a hearing. This poses a challenge to a Board which has the obligation to

[1] Land Act, R.S.B.C. 1996., c. 245, s. 50: a disposition of crown land contains no right title or interest to geothermal resources, minerals or placer minerals, coal petroleum or gas. An indefeasible title is subject to the subsisting conditions provisos, restrictions, exceptions in the original grant or disposition from the crown: Land Title Act, R.S.B.C. c. 250 s. 23(2)(a). The province has not included petroleum rights in most land grants since 1891. (source: Energy and Mines, *Petroleum and Natural Gas Rights in British Columbia.*).

make orders, if the dispute is not resolved by negotiation at a mediation meeting. Because the Board must be independent and neutral in the exercise of its dispute resolution mandate, the Board cannot operate as an advice bureau to land owners or to persons seeking access to land for petroleum and natural gas or mineral purposes. The Board cannot provide advice to any party on the probable outcome of a matter proceeding to arbitration, or information concerning comparable lease rates.

The Board is aware of a longstanding concern of landowners that industry has more information than landowners on lease comparables and that there is a basic inequality in bargaining power between landowners and oil and gas and mining companies. The Board has no role to play in the correction of any power imbalance; the Board simply mediates and arbitrates applications before the Board where the parties are unable to resolve their dispute. The Board as a neutral party has no role to play in the advising of parties on issues other than providing information on purely procedural issues related to the Board's mediation and arbitration process. It is up to the parties to research, and prepare properly to participate in mediation or arbitration. It is the Board's view that most parties before the Board would be well served by obtaining legal representation. The Board has a statutory power under section 47 of the *Administrative Tribunals Act* to award costs. The scope of that power has not been determined as this issue has not been raised by a party to date.

Statistics

During the year the Board received twenty new applications relating to oil and gas matters. The Board received three applications relating to mining matters. The Board conducted eleven mediations and issued three arbitration decisions. Most of the Board's applications were resolved through mediation.

During the year, the Board held most of its mediation meetings in the Peace area. The Board also held mediations in Abbotsford, Cache Creek and Osoyoos. Mediation matters are concluded within several weeks from the date of application. Generally mediation matters take one half day session, but the Board dealt with mediation matters requiring a full day and more than one day. The Board held arbitration hearings in Kelowna, Kamloops and Fort St. John. Arbitration matters generally take several months as they are more involved processes. All the arbitration matters were concluded with one day of hearing time.

Mediation and Arbitration Statistics	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
Applications- *Petroleum and Natural Gas Act*	43	25	33	27	21	20
Applications - *Mineral Tenure Act* or *Mineral Right of Way Act*	1	0	0	3	1	3
Settled in Mediation hearings	23	4	9	10	10	11
Arbitration Decisions Issued	7	10	3	0	0	3
Settled in Pre hearing conferences	5	0	1	2	0	0
Not proceeded with, Withdrawn or settled outside of board	9	11	20	18	11	3
Currently before the Board						6
Total Annual Applications requiring Board Hearings	36	14	13	15	11	22**

*2005 statistics are for the fiscal year April 1, 2005 to March 31, 2006. The earlier years are recorded by calendar year.
** Mediations and arbitrations held during the year

Budget

The Board has a budget of $150,000. The Board delivered its services under budget, despite an increase in the number of applications from the previous fiscal year. The Board has been able to deliver its services in a cost effective basis through the assignment of mediators on a geographic basis, and by application of the change of quorum from two members to one board member. The Board is expecting a substantial increase to its operating costs during the next fiscal year, as the Board is anticipating a movement to new premises, and the market rents in Fort St. John have increased substantially since the commencement of the term of the lease on the existing premises. The Board is also anticipating a substantial one time moving expense cost. Initially the Board was expecting some or all of these increased costs to materialize during the 2005/2006 fiscal year.

Fiscal Year 2005/2006	
Salaries[2]	$12,884
Board Members fees	$62,262
Board Members expenses	$17,274
Public Servant Travel[3]	$3,029
Centralized Management Services	$262
Information Systems Operating Expenses	$2,298
Office & Business Expenses[4]	$19,924
Rent	$5,205
Total	$123,128

Recommendations

The Board has no recommendations to make with respect to the operation of the Board at this time.

[2] Excludes temporary staffing costs while the Board was engaged in a recruitment process
[3] Incurred in support of staff recruitment process
[4] Includes temporary staffing costs while the Board was engaged in a recruitment process, in a normal year some of these expenses would be incurred under salaries

Appendix A: Legislation

Reproduced below are the relevant sections of the *Petroleum and Natural Gas Act*, *Administrative Tribunals Act*, *Coal Act*, *Geothermal Resources Act*, *Mining Right of Way Act*, and *Mineral Tenure Act*.

***Petroleum and Natural Gas Act,* R.S.B.C. 1996, c. 361, as am.**

Agreement to enter land

9 (1) A person may not enter, occupy or use land, other than Crown land, to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir unless

(a) the person makes, with each owner of the land, a surface lease in the form and content prescribed authorizing the entry, occupation or use,

(b) the board authorizes the entry, occupation or use, or

(c) as a result of a hearing under section 20, the board makes an order specifying terms of entry, occupation and use, including payment of rent and compensation.

(2) A person who enters, occupies or uses land to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir is liable,

(a) to pay compensation to the land owner for loss or damage caused by the entry, occupation or use, and

(b) if the board so orders, to pay rent for the duration of the occupation or use.

(3) For the purposes of subsection (2) (a), if a certificate of restoration is required after the entry, occupation or use, the liability for payment of compensation ends on the date stated in the certificate.

Record of entry agreements

10 A person who has, under a surface lease containing rental provisions, the right to enter, occupy or use land other than Crown land to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir must, not more than 90 days after the date the person acquires the right, submit to the board his or her name, address, a description of the land and a copy of the surface lease.

Renegotiation

11 (1) This section applies despite a surface lease containing rental provisions made, order made or an authority given, before or after July 1, 1974, or anything done under the surface lease, order or authority.

(2) If a person has, for a continuous period of 4 years, been entering, occupying or using land to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir, that person may, or an owner of the land may, on or after the next anniversary of the making of the lease, order or authority, on giving 60 days' notice in the prescribed form by registered mail to each owner of the land and to each person who is entering or occupying the land for the purpose stated or for a connected or incidental purpose, require renegotiation of rental provisions in the surface lease, order or authority.

(3) Subsection (2) also applies if 4 years have elapsed since

(a) the completion of the last renegotiation of rentals under subsection (4), or

(b) the effective date of an order under section 12 (2).

(4) If notice is given under subsection (2) or (3), the persons giving and receiving the notice may renegotiate the rental provisions by mutual agreement.

Arbitration: other provisions

12 (1) If rental provisions are not renegotiated under section 11 (4) within 6 months after the expiration of the notice, an owner of the land or person entering, occupying or using the land for a purpose referred to in section 11 (2) may apply in writing to the board for arbitration under section 17 (3).

(2) If an application is made for arbitration, an order may be made varying the rental provisions, or may be refused.

(3) A renegotiation or order under section 11 or this section is effective from the immediate past anniversary date of the surface lease preceding the notice and is retroactive to the extent necessary to give effect to this subsection, but in all other respects the surface lease, order or authority remains in force.

(4) Despite anything in a subsisting surface lease made before or after July 1, 1974 or the termination of the surface lease, the rentals payable under it continue to be payable until the commission has issued a certificate of restoration for the leasehold, and this subsection is retroactive to the extent necessary to give effect to its provisions.

Mediation and Arbitration Board

13 (1) The Mediation and Arbitration Board is continued consisting of up to 9 individuals appointed as follows by the Lieutenant Governor in Council after a merit based process:

(a) one member designated as the chair;

(b) one member designated as the vice chair after consultation with the chair;

(c) other members appointed after consultation with the chair.

(2) A vacancy in the board's membership does not impair the right of the remaining board members or member to act.

(3) The Lieutenant Governor in Council may provide the following:

(a) the number of members to constitute a quorum;

(b) the board's duties and those of a member;

(c) [Repealed 2003-47-53.]

(d) the rules of procedure for board applications and hearings.

(4) The board may, subject to the Public Service Act, appoint employees, and designate their title, office and responsibilities, as may be required to carry out the proper business of the board, and may, despite the Public Service Act, appoint casual and temporary employees when necessary for the proper functioning of the board.

(5) [Repealed 2004-45-142.]

(6) Sections 1 to 11, 14, 17, 19 to 21, 29, 30, 32, 34 (3) and (4), 36, 38 to 42, 44, 47 to 49, 55 to 57, 59, 60 (a), (b) and (d) to (f) and 61 of the Administrative Tribunals Act apply to the board.

Repealed

14 [Repealed 2004-45-143.]

Powers and duties of board

15 (1) The board may sit at any place in British Columbia, and for any of its proper business purposes, enter and inspect, or authorize a board member or employee to enter and inspect, a facility, land, location or record.

(2) The board must

(a) prepare a record of every proceeding before it, and

(b) provide any person, on application during normal business hours and payment of the fee, with copies of a record in the custody of the board.

(2.1) If the board transcribes or tape records a proceeding, the transcription or tape recording constitutes part of the record of the proceeding and is deemed to be correct.

(2.2) If, because of a mechanical or human failure or other accident, the transcription or tape recording is destroyed, interrupted or incomplete, the validity of the proceeding is not affected.

(3) The board has custody of its records and of documents filed with the board in the board's proceedings.

(4) The board is responsible for drawing orders and rulings of the board, and for filing those orders and rulings with their appropriate records.

Application for mediation and arbitration

16 (1) A person may apply to the board for mediation and arbitration under this section if the person

(a) requires land to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir or for a connected or incidental purpose, and an owner of the land refuses to grant a surface lease satisfactory to that person authorizing entry, occupation or use for that purpose,

(b) is the owner of land that is entered, occupied or used for a purpose referred to in paragraph (a), and damage to the land or suffering to the owner is caused by the entry or occupation, or

(c) is a person referred to in section 129.

(2) Subject to the board's rules of procedure, the application must be made in the form the board requires and must be accompanied by

(a) an affidavit of the applicant, listing the name and address of each person directly affected, or who could reasonably be expected to be directly affected, by an order on the application, and verifying service of the application by registered mail on each person,

(b) if Crown land could reasonably be expected to be affected by an order, an affidavit verifying service of the application by registered mail on the commission and the minister responsible for the Land Act, and

(c) if the application is for the purposes of a development road or conservation scheme, a copy of the commission's approval of, or order for, the road or scheme.

(3) Subsection (1) does not apply in respect of geophysical exploration.

Further information and dates

17 (1) If the board believes that further information is required to hear and consider the application, or that the applicant has not served every person who would be directly affected, the board may require the applicant to provide further information or serve those persons.

(2) The application is deemed not to be received until the applicant provides the board with the further information or submits an affidavit verifying service of the application on the other persons directly affected.

(3) The chair must, promptly after the board receives an application under section 12, 16 or this section, set, after consultation with the applicant and the persons most likely to be directly affected by an order on the application, the places and dates of mediation and arbitration hearings, as the case may be.

Mediation hearing

18 (1) The chair, or a member the chair designates, must summarily hear representation by or on behalf of the applicant and persons likely to be directly affected, and must act as mediator for the purpose of resolving the complaint specified in the application.

(2) If, after the first mediation hearing, the application is not withdrawn and the complaint or issue specified in the application is not resolved, the mediator may

(a) dismiss the application,

(b) set one or more mediation hearings, or

(c) if the mediator believes that the complaint or issue cannot be summarily resolved by mediation, make an order refusing further mediation hearings.

(3) If an application is made under section 16 (1), and if the mediator believes, as a result of a mediation hearing, that the applicant should be permitted to enter, occupy or use the land, the mediator may make an order under section 19.

(4) If an applicant alleges in an application made under section 16 (1) that money is due to the applicant, the mediator may, as a result of a mediation hearing, order that the amount the mediator determines be paid to the applicant by the person or persons, and in the proportions the mediator may specify.

(5) An order of the mediator under subsection (4) is not final unless every person directly affected by the order approves of it or the board confirms the order.

Entry, occupation or use order

19 (1) A mediator may make an order permitting, subject to the terms the mediator may specify in the order, an applicant under section 16 to enter, occupy or use the land for a purpose stated in that section.

(2) Before making an order, a mediator must

(a) require the applicant to deposit with the board security in the amount, form and manner that the mediator considers necessary for the purpose of ensuring that the owners of the land will be paid any amount ordered subsequently to be paid to them,

(b) require the applicant to pay to the owners, as partial payment of the amount subsequently ordered by the board to be paid to them, an amount of money not less than 1/2 the amount of security required to be deposited, and

(c) require the applicant to serve a copy of the order on each owner of the land, and direct the manner of service.

(3) Despite subsection (2), the board, on application at any time, may require the applicant to pay to the owners under subsection (2) (b) additional amounts the board considers proper.

(4) In determining an amount of money to be paid, the board is not bound by an order of the mediator under section 18 (4) or by a requirement of the mediator under subsection (2).

Arbitration hearing

20 (1) Unless the application is withdrawn or the applicant and the person who will likely be directly affected by an order approve the order of the mediator, the board must hear representation by or on behalf of the applicant and persons likely to be directly affected by an order, and must arbitrate for the purpose of resolving the complaint specified in the application.

(2) Unless the applicant and the other persons otherwise agree, the board must review an order of the mediator made under section 19, and may confirm or vary the order, subject to the terms it considers proper.

(3) Unless the applicant and the other persons otherwise agree, the board,

(a) if a mediator has made an order under section 18 (4), must review the order, confirm it or vary it in the manner and subject to the terms the board considers proper,

(b) if a mediator has not made an order under section 18 (4), must determine the amount of money to be paid to a person, as rent for occupation or use, or for damage caused, up to the date stated in a certificate of restoration, for the entry, occupation or use, and

(c) may determine the disposition of the amount remaining of the deposit required under section 19 (2) as between the applicant and the owner.

Determining amount

21 (1) In determining an amount to be paid periodically or otherwise on an application made under section 12 or 16 (1), the board may consider

(a) the compulsory aspect of the entry, occupation or use,

(b) the value of the land and the owner's loss of a right or profit with respect to the land,

(c) temporary and permanent damage from the entry, occupation or use,

(d) compensation for severance,

(e) compensation for nuisance and disturbance from the entry, occupation or use,

(f) money previously paid to an owner for entry, occupation or use,

(g) other factors the board considers applicable, and

(h) other factors or criteria established by regulation.

(2) In determining an amount to be paid on an application under section 12, the board must consider any change in the value of money and of land since the date the surface lease, order or authority was originally or last granted.

Termination of order

22 (1) If 2 years have expired since an order made by the mediator or the board authorizing entry, occupation or use of land, the applicant for the order may, on not less than 90 days' notice to the land owner, apply to the board for an order terminating the previous order.

(2) Subject to the board's rules of procedure, an application must be made in the form the board requires.

(3) On receiving the application, the chair must without delay set, after consulting the applicant and the persons likely to be directly affected by an order, a date and place of hearing.

(4) The chair, or other board members the chair designates, must summarily hear representation by or on behalf of the applicant and persons who will likely be directly affected by an order resulting from the application, and may dismiss the application, or dismiss it subject to the terms and conditions he or she considers appropriate, or make an order terminating the previous order, conditional on

(a) the removal of all equipment and facilities used in respect of and the restoration of all land directly affected by the entry, occupation or use, and

(b) obtaining from the commission a certificate of restoration in respect of the land.

(5) An application is not required if all persons likely to be directly affected by termination of the previous order agree to the termination and so long as the conditions in subsection (4) are complied with.

Repealed

23 and 24 [Repealed 2004-45-150.]

Service and registration of order

25 (1) If an order is made by the board, the board must provide notice of the order to the applicant and to any other persons directly affected by that order.

(2) If the board makes an order on an application under section 16 (1) (a), the applicant must not enter, occupy or use the land until the owner of the land has received a certified copy of the order.

(3) If the board makes an order authorizing or terminating entry, occupancy or use of land, the applicant for the order must file a certified copy of the order with the registrar of the appropriate land title district, who, on payment of the appropriate fees, must endorse his or her records accordingly.

(4) An order made by the board is effective on the date it is issued by the board unless the order specifies otherwise.

(5) If the board is of the opinion that because there are so many parties to an application or for any other reason it is impracticable to give notice of its final order to all or any of the parties individually, the board may give notice of its final order by public advertisement or otherwise as the board directs.

(6) If the board gives notice under subsection (5) of a final order, the notice must inform the parties where copies of the final order may be obtained.

(7) The board must provide for public access to its orders.

Review and enforcement of order

26 (1) An order of the mediator or board granting the right to enter, occupy or use land may be enforced in the same manner as a writ of possession issued by a court.

(2) The board may, on its own motion or on application,

(a) rehear an application before making a determination, and

(b) review, rescind, amend or vary a direction or order made by it, the chair or a board member.

Repealed

27 [Repealed 2004-45-152.]

Certified copies

28 A certified copy of an order of the board signed by the chair, or the secretary of the board if appointed, must be admitted as evidence of the order by the board.

Assignment

29 An order by the board may be assigned by

(a) serving notice of the assignment on the other parties named in the order,

(b) filing a certified copy of the assignment with the board, and

(c) filing the assignment with the registrar of the appropriate land title district, who, on payment of the appropriate registration fee, must endorse against the indefeasible or absolute title of the land affected by the assignment.

Failure to pay money

30 If the owner of land in respect of which an order was made by a mediator or the board refuses to comply with the order, the applicant for the order may apply to the board to deduct from any compensation to be determined and awarded to the owner under the order an amount covering the cost of and incidental to obtaining entry on, or occupancy and use of, the land according to the order, which amount is at the sole discretion of the board.

Administrative Tribunals Act, **S.B.C. 2004, c. 45.**

Definitions

1 In this Act:

"applicant" includes an appellant, a claimant or a complainant;

"application" includes an appeal, a review or a complaint but excludes any interim or preliminary matter or an application to the court;

"appointing authority" means the person or the Lieutenant Governor in Council who, under another Act, has the power to appoint the chair, vice chair and members, or any of them, to the tribunal;

"constitutional question" means any question that requires notice to be given under section 8 of the Constitutional Question Act;

"court" means the Supreme Court;

"decision" includes a determination, an order or other decision;

"dispute resolution process" means a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute;

"intervener" means a person who is permitted by the tribunal to participate as an intervener in an application;

"member" means a person appointed to the tribunal to which a provision of this Act applies;

"privative clause" means provisions in the tribunal's enabling Act that give the tribunal exclusive and final jurisdiction to inquire into, hear and decide certain matters and questions and provide that a decision of the tribunal in respect of the matters within its jurisdiction is final and binding and not open to review in any court;

"tribunal" means a tribunal to which some or all of the provisions of this Act are made applicable under the tribunal's enabling Act;

"tribunal's enabling Act" means the Act under which the tribunal is established or continued.

Chair's initial term and reappointment

2 (1) The chair of the tribunal may be appointed by the appointing authority, after a merit based process, to hold office for an initial term of 3 to 5 years.

(2) The chair may be reappointed by the appointing authority for additional terms of up to 5 years.

Member's initial term and reappointment

3 (1) A member, other than the chair, may be appointed by the appointing authority, after a merit based process and consultation with the chair, to hold office for an initial term of 2 to 4 years.

(2) A member may be reappointed by the appointing authority as a member of the tribunal for additional terms of up to 5 years.

Appointment of acting chair

4 (1) If the chair expects to be absent or is absent, the chair may designate a vice chair as the acting chair for the period that the chair is absent.

(2) If the chair expects to be absent or is absent and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the chair may designate a member as the acting chair for the period that the chair is absent.

(3) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time, the appointing authority may designate a vice chair as the acting chair for the period that the chair is absent or incapacitated.

(4) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the appointing authority may designate a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for the period that the chair is absent or incapacitated.

(5) If the tribunal has no chair, the appointing authority may appoint an individual, who is a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for a term of up to 6 months.

(6) In exceptional circumstances an individual may be appointed as the acting chair under subsection (5) for an additional term of up to 6 months.

(7) Subsections (3), (4) and (5) apply whether or not an individual is designated, under the Act under which the chair is appointed, to act on behalf of the chair.

(8) An individual designated or appointed under any of subsections (1) to (5) has all the powers and may perform all the duties of the chair.

Member's absence or incapacitation

5 If a member is absent or incapacitated for an extended period of time or expects to be absent for an extended period of time, the appointing authority, after consultation with the chair, may appoint another person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to duty or the member's term expires, whichever comes first.

Member's temporary, non-renewable appointment

6 (1) If the tribunal requires additional members, the chair, after consultation with the minister responsible for the Act under which the tribunal is established, may appoint an individual, who would otherwise be qualified for appointment as a member, to be a member for up to 6 months.

(2) Under subsection (1), an individual may be appointed to the tribunal only once in any 2 year period.

(3) An appointing authority may establish conditions and qualifications for appointments under subsection (1).

Powers after resignation or expiry of term

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

(2) An authorization under subsection (1) continues until a final decision in that proceeding is made.

(3) If an individual performs duties under subsection (1), section 10 applies.

Termination for cause

8 The appointing authority may terminate the appointment of the chair, a vice chair or a member for cause.

Responsibilities of the chair

9 The chair is responsible for the effective management and operation of the tribunal and the organization and allocation of work among its members.

Remuneration and benefits for members

10 (1) In accordance with general directives of the Treasury Board, members must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in carrying out their duties.

(2) In accordance with general directives of the Treasury Board, the minister responsible for the tribunal's enabling Act must set the remuneration for those members who are to receive remuneration.

General power to make rules respecting practice and procedure

11 (1) Subject to this Act and the tribunal's enabling Act, the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.

(2) Without limiting subsection (1), the tribunal may make rules as follows:

(a) respecting the holding of pre-hearing conferences, including confidential pre-hearing conferences, and requiring the parties and any interveners to attend a pre-hearing conference;

(b) respecting dispute resolution processes;

(c) respecting receipt and disclosure of evidence, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a party on oath, affirmation or by affidavit;

(d) respecting the exchange of records and documents by parties;

(e) respecting the filing of written submissions by parties;

(f) respecting the filing of admissions by parties;

(g) specifying the form of notice to be given to a party by another party or by the tribunal requiring a party to diligently pursue an application and specifying the time within which and the manner in which the party must respond to the notice;

(h) respecting service and filing of notices, documents and orders, including substituted service;

(i) requiring a party to provide an address for service or delivery of notices, documents and orders;

(j) providing that a party's address of record is to be treated as an address for service;

(k) respecting procedures for preliminary or interim matters;

(l) respecting amendments to an application or responses to it;

(m) respecting the addition of parties to an application;

(n) respecting adjournments;

(o) respecting the extension or abridgement of time limits provided for in the rules;

(p) respecting the transcribing or tape recording of its proceedings and the process and fees for reproduction of a tape recording if requested by a party;

(q) establishing the forms it considers advisable;

(r) respecting the joining of applications;

(s) respecting exclusion of witnesses from proceedings;

(t) respecting the effect of a party's non-compliance with the tribunal's rules;

(u) respecting access to and restriction of access to tribunal documents by any person;

(v) respecting witness fees and expenses;

(w) respecting applications to set aside any summons served by a party.

(3) In an application, the tribunal may waive or modify one or more of its rules in exceptional circumstances.

(4) The tribunal must make accessible to the public any rules of practice and procedure made under this section.

General power to make orders

14 In order to facilitate the just and timely resolution of an application the tribunal, if requested by a party or an intervener, or on its own initiative, may make any order

(a) for which a rule is made by the tribunal under section 11,

(b) for which a rule is prescribed under section 60, or

(c) in relation to any matter that the tribunal considers necessary for purposes of controlling its own proceedings.

Withdrawal or settlement of application

17 (1) If an applicant withdraws all or part of an application or the parties advise the tribunal that they have reached a settlement of all or part of an application, the tribunal must order that the application or the part of it is dismissed.

(2) If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with its enabling Act.

(3) If the tribunal declines to make an order under subsection (2), it must provide the parties with reasons.

Service of notice or documents

19 (1) If the tribunal is required to provide a notice or any document to a party or other person in an application, it may do so by personal service of a copy of the notice or document or by sending the copy to the person by any of the following means:

(a) ordinary mail;

(b) electronic transmission, including telephone transmission of a facsimile;

(c) if specified in the tribunal's rules, another method that allows proof of receipt.

(2) If the copy is sent by ordinary mail, it must be sent to the most recent address known to the tribunal and must be considered to be received on the fifth day after the day it is mailed, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(3) If the copy is sent by electronic transmission it must be considered to be received on the day after it was sent, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(4) If the copy is sent by a method referred to in subsection (1) (c), the tribunal's rules govern the day on which the copy must be considered to be received.

(5) If through absence, accident, illness or other cause beyond the party's control a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2), (3) or (4), that subsection does not apply.

When failure to serve does not invalidate proceeding

20 If a notice or document is not served in accordance with section 19, the proceeding is not invalidated if

(a) the contents of the notice or document were known by the person to be served within the time allowed for service,

(b) the person to be served consents, or

(c) the failure to serve does not result in prejudice to the person, or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

Notice of hearing by publication

21 If the tribunal is of the opinion that because there are so many parties to an application or for any other reason it is impracticable to give notice of a hearing to a party by a method referred to in section 19 (1) (a) to (c), the tribunal may give notice of a hearing by public advertisement or otherwise as the tribunal directs.

Disclosure protection

29 (1) In a proceeding, other than a criminal proceeding, unless the parties to an application consent, a person must not disclose or be compelled to disclose

(a) a document or other record created by a party specifically for the purposes of achieving a settlement of one or more issues through a dispute resolution process, or

(b) a statement made by a party in a dispute resolution process specifically for the purpose of achieving a settlement of one or more issues in dispute.

(2) Subsection (1) does not apply to a settlement agreement.

Tribunal duties

30 Tribunal members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

Representation of parties to an application

32 A party to an application may be represented by counsel or an agent and may make submissions as to facts, law and jurisdiction.

Power to compel witnesses and order disclosure

34(3) Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.

(4) The tribunal may apply to the court for an order

(a) directing a person to comply with an order made by the tribunal under subsection (3), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (3).

Form of hearing of application

36 In an application or an interim or preliminary matter, the tribunal may hold any combination of written, electronic and oral hearings.

Examination of witnesses

38 (1) Subject to subsection (2), in an oral or electronic hearing a party to an application may call and examine witnesses, present evidence and submissions and conduct cross examination of witnesses as reasonably required by the tribunal for a full and fair disclosure of all matters relevant to the issues in the application.

(2) The tribunal may reasonably limit further examination or cross examination of a witness if it is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the application.

(3) The tribunal may question any witness who gives oral evidence in an oral or electronic hearing.

Adjournments

39 (1) An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

(2) In considering whether an application should be adjourned, the tribunal must have regard to the following factors:

(a) the reason for the adjournment;

(b) whether the adjournment would cause unreasonable delay;

(c) the impact of refusing the adjournment on the parties;

(d) the impact of granting the adjournment on the parties;

(e) the impact of the adjournment on the public interest.

Information admissible in tribunal proceedings

40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.

(3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

(5) Notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application are inadmissible in tribunal proceedings.

Hearings open to public

41 (1) An oral hearing must be open to the public.

(2) Despite subsection (1), the tribunal may direct that all or part of the information be received to the exclusion of the public if the tribunal is of the opinion that

(a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or

(b) it is not practicable to hold the hearing in a manner that is open to the public.

(3) The tribunal must make a document submitted in a hearing accessible to the public unless the tribunal is of the opinion that subsection (2) (a) or section 42 applies to that document.

Discretion to receive evidence in confidence

42 The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

Tribunal without jurisdiction over constitutional questions

44 (1) The tribunal does not have jurisdiction over constitutional questions.

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

Power to award costs

47 (1) Subject to the regulations, the tribunal may make orders for payment as follows:

(a) requiring a party to pay part of the costs of another party or an intervener in connection with the application;

(b) requiring an intervener to pay part of the costs of a party or another intervener in connection with the application;

(c) if the tribunal considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay part of the actual costs and expenses of the tribunal in connection with the application.

(2) An order under subsection (1), after filing in the court registry, has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken on it as if it were an order of the court.

Maintenance of order at hearings

48 (1) At an oral hearing, the tribunal may make orders or give directions that it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the tribunal may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the tribunal, by order, may

(a) impose restrictions on a person's continued participation in or attendance at a proceeding, and

(b) exclude a person from further participation in or attendance at a proceeding until the tribunal orders otherwise.

Contempt proceeding for uncooperative witness or other person

49 (1) The failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

(a) attend a hearing;

(b) take an oath or affirmation;

(c) answer questions;

(d) produce the records or things in their custody or possession.

(2) The failure or refusal of a person to comply with an order or direction under section 48 makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the court in respect of conduct by a person in a proceeding before the tribunal.

Compulsion protection

55 (1) A tribunal member, a person acting on behalf of or under the direction of a tribunal member or a person who conducts a dispute resolution process on behalf of or under the direction of the tribunal must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of duties under the tribunal's enabling Act or this Act.

(2) Despite subsection (1), the court may require the tribunal to produce the record of a proceeding that is the subject of an application for judicial review under the Judicial Review Procedure Act.

Immunity protection for tribunal and members

56 (1) In this section, **"decision maker"** includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a dispute resolution process.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker, the tribunal or the government because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act or the tribunal's enabling Act, or

(b) in the exercise or intended exercise of any power under this Act or the tribunal's enabling Act.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Time limit for judicial review

57 (1) Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

(2) Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

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

59 (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

Power to make regulations

60 The Lieutenant Governor in Council may make regulations as follows:

(a) prescribing rules of practice and procedure for the tribunal;

(b) repealing or amending a rule made by the tribunal;

d) prescribing the circumstances in which an award of costs may be made by the tribunal;

(e) prescribing a tariff of costs payable under a tribunal order to pay part of the costs of a party or intervener;

(f) prescribing limits and rates relating to a tribunal order to pay part of the actual costs and expenses of the tribunal.

Application of Freedom of Information and Protection of Privacy Act

61 (1) In this section, **"decision maker"** includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a dispute resolution process.

(2) The Freedom of Information and Protection of Privacy Act, other than section 44 (2), (2.1) and (3), does not apply to any of the following:

(a) a personal note, communication or draft decision of a decision maker;

(b) notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application;

(c) any information received by the tribunal in a hearing or part of a hearing from which the public, a party or an intervener was excluded;

(d) a transcription or tape recording of a tribunal proceeding;

(e) a document submitted in a hearing for which public access is provided by the tribunal;

(f) a decision of the tribunal for which public access is provided by the tribunal.

(3) Subsection (2) does not apply to personal information, as defined in the Freedom of Information and Protection of Privacy Act, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

***Coal Act,* S.B.C. 2004, c. 15.**

Definitions

1 In this Act:

"coal land" means land in which the coal or the right to explore for, develop and produce coal is vested in or reserved to the government;

"coal land reserve" means coal land reserved under section 21;

"lease" means a valid and subsisting lease issued under section 18;

"licence" means a valid and subsisting licence issued under section 12;

"location" means the area of land specified in a licence or lease;

"owner" means

(a) the government for land owned by the government,

(b) a person registered in the land title office as the registered owner of the surface area or as its purchaser under an agreement for sale, and

(c) a person to whom a disposition of Crown land has been issued under the Land Act;

"produce" means mining and removing coal for use, marketing or sale;

"protected heritage property" has the meaning in the Mineral Tenure Act;

"recorded holder" means a person whose name appears as the owner of a coal licence or coal lease on the record of that title in the chief gold commissioner's office;

"surface area" means surface area of land;

"unit" means a unit as defined under the Petroleum and Natural Gas Act.

Right of entry of recorded holder

2 (1) A recorded holder may enter, occupy and use coal land and prospect for, explore for, develop and produce coal.

(2) The right of entry under subsection (1) does not extend to any of the following:

(a) land occupied by a building;

(b) the curtilage of a dwelling house;

(c) protected heritage property, except as authorized by the minister or local government responsible for the protection of the heritage property;

(d) orchard land;

(e) land under cultivation.

(3) Unless the location is one of the following, a land use designation or objective does not preclude application by a recorded holder for any form of permission, or approval of that permission, required in relation to mining activity by the recorded holder:

(a) an area in which mining is prohibited under the Environment and Land Use Act;

(b) a park under the Park Act or a regional park under the Local Government Act;

(c) a park or ecological reserve under the Protected Areas of British Columbia Act;

(d) an ecological reserve under the Ecological Reserve Act;

(e) an area of Crown land if

(i) the area is designated under section 93.1 of the Land Act for a purpose under that section, and

(ii) the order under that section making the designation, or an amendment to the order, precludes the application by the recorded holder;

(f) a protected heritage property.

(4) Despite this or any other Act, the minister may restrict the use of surface rights by a person who holds a licence if, after inspection and giving reasonable notice to that person, the minister considers that the surface area is so situated that it should be used for purposes other than mining.

(5) If surface rights are restricted under subsection (4), the minister must serve the licensee with a notice of the restriction.

(6) No compensation is payable as a result of a restriction under subsection (4).

Right of entry on private land and compensation

3 (1) A recorded holder must not begin the exploration for or development or production of coal unless the recorded holder first gives notice to every owner of surface area on which the recorded holder intends to carry out that activity.

(2) A recorded holder is liable to pay compensation to the owners of surface area for loss or damage caused by the recorded holder entering, occupying or using the surface area.

(3) On application of a recorded holder or owner, the Mediation and Arbitration Board under the Petroleum and Natural Gas Act has authority to settle disputes arising from rights acquired under this Act in respect of entry, use or occupation, security, rent and compensation and, for this purpose, the relevant provisions of Part 3 of the Petroleum and Natural Gas Act apply.

(4) In an arbitration under subsection (3) involving a conflict between rights acquired under this Act and rights acquired under the Land Act, the Mediation and Arbitration Board must take into account which of the rights were applied for first and must give the holder of those rights some priority in its consideration of the dispute between the parties.

(5) A copy of an order made by the Mediation and Arbitration Board under subsection (3) may be filed at any time in a Supreme Court registry and enforced as if it were an order of the court.

Mining Right of Way Act, R.S.B.C. 1996 c. 294, as. am.

Definitions

1 In this Act:

"access road" means a road built on Crown land as a facility under this Act;

"Crown land" has the same meaning as in the Land Act, but does not include land owned by an agent of the government;

"deemed owner" means, subject to section 5, the owner of facilities placed in a right of way acquired across Crown land under this Act;

"facilities" means linear developments and related improvements that may be placed in a right of way acquired under this Act, and includes a road, railway, aerial, electric or other tramway, surface or elevated cable, electric or telephone pole line, chute, flume, pipeline or drain and related improvements;

"forest officer" has the same meaning as in the Forest Act;

"forest service road" has the same meaning as in the Forest Act;

"free miner" has the same meaning as in the Mineral Tenure Act;

"gold commissioner" means a gold commissioner appointed under the Mineral Tenure Act;

"locate" has the same meaning as in the Mineral Tenure Act;

"mediation and arbitration board" means the Mediation and Arbitration Board established under the Petroleum and Natural Gas Act;

"mineral title" has the same meaning as in the Mineral Tenure Act;

"minister" includes a person designated in writing by the minister;

"private land" means land other than Crown land, but does not include land owned by an agent of the government;

"Provincial forest" has the same meaning as in the Forest Act;

"recorded holder" has the same meaning as in the Mineral Tenure Act and includes the holder of a Crown granted 2 post claim;

"regional manager" has the same meaning as in the Forest Act;

"right of way" means an interest in land required for the purpose of constructing, maintaining and operating a road, railway, aerial, electric or other tramway, surface or

elevated cable, electric or telephone pole line, chute, flume, pipeline, drain or other linear facilities, or any right or easement of a similar nature;

"road" has the same meaning as in the Industrial Roads Act.

Power to use existing road

10 (1) A recorded holder who desires to use an existing road, whether on private land or Crown land or both and whether built under this or another Act, may use the road for the purposes referred to in section 2.

(2) A free miner who desires to use an existing road, whether on private land or Crown land or both and whether built under this or another Act, may do so in order to locate a claim and need not serve notice on the owner or operator of the road of the intention to use the road and need not pay compensation for its use, but is constrained by all lawful conditions that govern its use under this or any other Act.

(3) A recorded holder who wishes to use an existing road

(a) must serve written notice on the owner or operator of the road of the intention to use the road,

(b) if the road is an access road, must undertake use of the access road in accordance with the rights of the deemed owner and subject to payment of compensation in accordance with section 6,

(c) if the road was not built under this Act, must compensate the owner or operator of the road in an amount or manner agreed on or settled between the parties, and

(d) is constrained by all lawful conditions that govern the use of an existing road under this or any other Act.

(4) For the purposes of subsection (3) (c), in default of an agreement between the parties and on application of one of the parties, the mediation and arbitration board has jurisdiction to settle the issue of compensation and the terms of the settlement are binding on the parties.

***Mineral Tenure Act*, R.S.B.C. 1996, c.292**

Right of entry on private land and compensation

19 (1) A person must not commence a mining activity by a method using mechanical equipment that disturbs the surface unless the recorded holder

(a) first serves written notice on the owner of every surface area on which the recorded holder intends to work or intends to utilize a right of entry for that purpose, and

(b) provides, within 30 days after serving the notice required by paragraph (a), a copy of the notice to the chief gold commissioner and to an inspector under the Mines Act.

(2) A free miner or recorded holder, or any person acting under or with the authority of a free miner or recorded holder, is liable to compensate the owner of a surface area for loss or damage caused by the entry, occupation or use of that area or right of way by or on behalf of the free miner or recorded holder for location, exploration and development, or production of minerals or placer minerals.

(3) On receipt by the chief gold commissioner of an application from a free miner, recorded holder, owner or other person who, in the opinion of the chief gold commissioner, has a material interest in the surface, the chief gold commissioner must use his or her best efforts to settle issues in dispute between them arising from rights acquired under this Act in respect of entry, taking of right of way, use or occupation, security, rent or compensation.

(4) If the chief gold commissioner is unable to settle the dispute to the satisfaction of the parties to the dispute, the Mediation and Arbitration Board under the Petroleum and Natural Gas Act has, on application by a party to the dispute, authority to settle the issues in dispute and, for this purpose, the relevant provisions of Part 3 of the Petroleum and Natural Gas Act apply.

(5) In an arbitration under subsection (4) involving a conflict between rights acquired under this Act and rights acquired under the Land Act, the Mediation and Arbitration Board must take into account which of the rights was applied for first and, unless injustice would result, must give the holder of those rights due priority in its consideration of the dispute between the parties.

(6) A copy of an order made by the Mediation and Arbitration Board under subsection (4) may be filed at any time in a Supreme Court registry and enforced as if it were an order of the court.

(7) If an owner of private land opposes entry on the land by a recorded holder on the grounds that the intended activity would obstruct or interfere with an existing operation or activity on the land or with the construction or maintenance of a building, structure, improvement or work on the land, the Mediation and Arbitration Board must determine the impact of the intended entry and must determine which parts of the land would be affected by that entry.

(8) If, under subsection (7), the Mediation and Arbitration Board determines that it is not possible to enter the land or a part of it without obstruction or interference, in addition to any other order it makes, the board must make an order

(a) specifying conditions of entry that will minimize the obstruction to or interference with the existing circumstances of the land, and

(b) specifying compensation for obstruction to or interference with enjoyment of the land.

(9) Without limiting the factors that the board may consider in making a decision under this section, in making a determination under subsections (7) and (8) the board must take into account the extent of the obstruction or interference with respect to the following:

(a) land occupied by a building;

(b) the curtilage of a dwelling house;

(c) orchard land;

(d) land under cultivation.

Geothermal Resources Act, R.S.B.C 1996, c. 171, as am.

(2) Sections 6 to 31 of the Petroleum and Natural Gas Act apply in respect of entry onto and use of land for the purpose of exploring for and producing geothermal resources.

(3) For subsection (2), **"produce"** and **"producing"** in sections 7 to 11 and 16 of the Petroleum and Natural Gas Act have the same meaning as in this Act.