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Procedural Overview – What Does An Administrative Hearing Look Like?

1. Introduction

Administrative justice is the opportunity – or in some cases, the requirement – to have disputes resolved or rights determined by a specialized body instead of the court. Many more of your clients, friends and family will be touched by the decision of a quasi-judicial administrative entity than will ever see the inside of a court, yet little time is spent in law school preparing lawyers to practise before these entities. The goal of this paper is to fill a bit of that gap.

Being asked to describe what an administrative hearing looks like is a bit like being asked to describe what the people in a Coke commercial look like – great diversity seems to be the initial key descriptor – young/old, black/white/Chinese, male /female - but on a closer look they do have certain things in common - happy, smiley faces, beautiful voices. Administrative hearings are also greatly diverse – very formal to very informal, in-person/written, highly personal/highly technical matters, but they also have certain elements in common – the application of the rules of natural justice and procedural fairness. This paper describes that diversity and some of the procedural similarities.

2. The Spectrum of Administrative Decision-Making Bodies

Canadian administrative decision-makers make hundreds of thousands of decisions each year, affecting individuals, businesses, governments and the broader community. These decision-makers are extraordinarily diverse in mandate, scope, composition and size. They resolve disputes between private parties and also between individuals and government. They may decide questions ranging from individual liberty to property values, regulate complex economic activities, or resolve disputes about issues affecting the environment, public safety and other matters. The scope of powers they exercise may extend beyond adjudication to include regulatory, investigative and policy making. Some

decision-makers are highly knowledgeable about legal and/or technical matters, while others are laypersons, appointed to reflect the local community. Some have only part-time members, supported by a small registry, while others require large agencies with extensive administrative supports. Yet as diverse as they are, these administrative decision makers share substantial common elements as they work to provide an effective alternative to the typically more formal, more costly, less flexible court processes.

Administrative decision-makers are typically established by either the federal government (for example, Canada's largest tribunal - the Immigration and Refugee Board¹ – but also many smaller, lesser known tribunals such as the Canadian Artists and Producers Professional Relations Tribunal²) or by a provincial or territorial government. In British Columbia, more than 25 arms-length tribunals³ and about 100 statutory decision-makers make decisions in individual cases. In addition, both levels of government delegate to others the ability to establish or use administrative decision-makers to resolve issues – for example, various local government entities (city councils, regional districts, police boards, library boards, school boards), professional regulatory bodies (law societies, health care professionals, engineers, foresters and many more), regulatory/marketing boards (agricultural and other industries) and various independent authorities (for example, in BC, the Business Practices and Consumer Protection Authority⁴). Others, such as universities, professional and amateur sports bodies, and private entities like strata councils and housing co-operatives may use administrative decision-making bodies to resolve disputes.

These decision makers will have vastly different objectives: to distribute public benefits fairly, to protect individual and public safety, to promote economic stability, to protect the environment and to use public resources wisely. More specifically, the range of matters heard or issues decided can include:

- the right to benefits – veterans pensions, employment insurance, employment assistance, workers compensation
- the right to licenses or permits – drivers' licenses, liquor licences, taxicab or bus licenses, forest or crown land permits
- the right to minimum wages, to collectively bargain, to work within a specific field
- to resolve disputes about qualifications or to determine discipline matters - professional, university or sporting associations
- to resolve disputes about rental and some other types of housing
- the right to sell or market goods, or to carry out activities such as farming in certain ways
- to protect public interests – human rights, environment and public resources; safe buildings and industrial and professional practises.

¹ <http://www.irb-cisr.gc.ca/>

² <http://www.ic.gc.ca/eic/site/capprt-terpap.nsf/intro>

³ http://www.gov.bc.ca/ajo/popt/admin_tribunals_in_bc.htm

⁴ http://www.bcepa.ca/index.php?option=com_content&task=view&id=194&Itemid=132

The nature of the decision-making authority may also vary, which can affect the kinds of evidence the decision-maker can consider and the kinds of remedies it can award. Some decision-makers consider matters in the first instance (for example, a decision to issue a license, or a residential tenancy dispute or a human rights complaint). Others review or hear appeals of decisions already taken (for example, the Property Assessment Appeal Board⁵ and the Employment and Assistance Appeal Tribunal⁶), either de novo (permitting a broad range of issues and evidence to be raised) or may be limited to the issues and evidence that were before the first decision-maker. For example, the Employment and Assistance Appeal Tribunal hears appeals of reconsideration decisions made under the Employment and Assistance Act.⁷ Under the Act, the tribunal is limited to considering only the materials that were before the original decision-maker, and oral and written testimony in support of that information.

3. Key Differences between Courts, Tribunals and Statutory Decision-Makers

Like the courts, administrative decision-makers are required to make decisions fairly and in accordance with the applicable legislation, impartially and independent of government or any party to the dispute. However, in carrying out their responsibilities administrative decision-makers are typically:

- more proactive – taking an active role in the conduct of the case
- more flexible – able to apply different processes to different cases
- more nimble – able to respond more rapidly to changes in their environment such as unanticipated increases or decreases in caseloads or other changes in their operational or contextual environments

than the courts, providing a faster and more accessible alternative to the courts.

Many of the key differences between courts and administrative decision-makers are triggered by the types of matters decided and disputes resolved. Administrative decision-makers typically decide issues or resolve disputes that are either highly specialized and/or involve complex schemes – requiring specialized expertise and specific processes – or relatively simple but with a high case load – requiring speedy, informal processes – so that these entities can be less formal and less costly than the courts. Additionally, unlike the court's more passive role, the role played by the administrative decision-maker can be more active in terms of case management, applying different processes, and in terms of addressing the broader public interest in the outcomes, using inquisitorial processes to ask questions and seek evidence. The other key difference may be the physical setting.

Specialized expertise: Administrative decision-makers usually have in-depth experience and specialized knowledge of the technical matters, policy and law in their specific area, unlike judges, who are expected to have a broad knowledge in many, and often vastly different, areas of the law and without any pre-existing technical expertise. This can be a key challenge for legal counsel, as the administrative decision-maker will typically know the legislative scheme, the case law and the technical issues and merits far better than

⁵ <http://www.assessmentappeal.bc.ca/>

⁶ <http://www.gov.bc.ca/eaat/default.htm>

⁷ [Employment and Assistance Act, SBC 2002, c.40](#)

most lawyers can learn in his or her first or only case in the area. Legal counsel may need to prepare much differently by immersing themselves in the nuances of the case. Much information about rules and cases is easily available on public websites, and unlike the courts, statutory decision-makers and tribunal registries are usually very willing to assist or point legal counsel to the applicable sections of the legislation, the leading cases, the specific rules and policies that may apply – although they are perhaps more willing when counsel has done at least some preliminary research prior to calling. They may also be willing to provide the names of leading counsel in the field who may be willing to act as a mentor. However, new counsel should not be discouraged by the challenge posed by the expertise of the decision-maker, as in my own personal experience, new counsel often presented new and innovative interpretations of legislation and policies which were not only helpful, but often compelling, resulting in a very different outcome.

Specialized processes: Unless limited by legislation, tribunals are considered masters of their own processes and can set their own rules – subject of course to the principles of natural justice. Section 11 of the Administrative Tribunals Act⁸ enumerates the rule making powers for many BC administrative tribunals.

Administrative decision-makers' processes are generally expected:

- To be less complicated and less formal than court processes and to use plain language, so that in most circumstances the parties can represent themselves, without needing to consult a lawyer.
- To be proportionate to the issues, so that the steps to be taken and the efforts required reflect the complexity of the matter and the impacts of the outcome for the parties.
- To provide a range of processes and to actively review, stream and case manage matters in order to apply only those processes the particular matter may require.
- To use dispute resolution processes and encourage parties to participate in mediation or settlement conferences to try to resolve the matter without the need for a formal hearing
- To be timely and applied pro-actively, so that the matter is resolved within a reasonable time frame, unlike the court rules which, for the most part, leave the timing and choice of the various steps up to the parties.
- To be made publicly available, typically on a website or on request.

Generally most BC tribunals have adopted very strong, pro-active case management processes. This means the tribunal will be fairly hands on, in terms of moving the matter forward, and not leaving it to languish until the parties decide to take steps. This is often because other public interests are at stake in the outcome, and unwarranted delay in achieving an outcome can have detrimental affects to the broader public.

Pro-active case management can mean the tribunal will contact the parties to initiate discussions to clarify and confirm the matters in issue, so that each party has a very clear

⁸[Administrative Tribunals Act, SBC 2004, c. 45, s. 11](#)

understanding of what is in dispute and why. Parties may be required to produce statements of issues, positions on issues, statements of facts agreed on and in dispute, and in addition to exchanging expert's reports, to exchange "will say" statements from witnesses and experts. Much of this is done to try to resolve matters without a hearing, or to ensure that if a hearing is required, that it proceeds in a timely way, without adjournments or other delay.

Streaming, as a part of case management, may mean that where facts are not in dispute, or credibility is not an issue, a matter will be heard by written submissions, without oral argument or by telephone or video conference. And dispute resolution processes like mediation and settlement conferences facilitated by tribunal members are becoming a bigger part of the options offered.

Specific differences from the courts may include:

- Filing time limits: The right to have a matter considered by a tribunal is typically subject to shorter time limits than the limitations set for most court actions. The specific time limits will vary from tribunal to tribunal, so it is very important to check this as soon as possible. In some cases if the time limit is missed, there may be an ability to extend it, but not always, so you will need to check the tribunal's legislation and, for BC tribunals, also check to see if section 24(2) of the ATA⁹ applies.
- Standard Forms: Many tribunals and statutory decision-makers have standard forms that must be filed to start the process, and may have standard forms for responding to initiating documents; usually these are available on tribunal websites¹⁰.
- Filing fees: Some administrative decision-makers charge filing fees, and at least a few can now accept payments electronically. Many will accept an initiating document without a fee in order to preserve a time limit, and allow the filing to be perfected by late payment.
- Public and in camera hearings: Like the courts, most tribunals are expected to hold hearings in public but many have the ability to close the hearings for sensitive personal information. A request to close a hearing to the public or to exclude certain people should be made at the earliest possible point, and during case management, if possible.
- Limits on number of witnesses and experts, and limitations on questioning pursuant to section 38 of the ATA.¹¹
- Less likely to record hearings, and most sit without clerks to receive and mark documents, with the tribunal members performing that task themselves.
- Time frame for decision: Some tribunals are required by law to issue their decisions within a specified period of time. Other tribunals are not subject to a time limit, but are expected to complete the process as quickly as possible.

⁹http://www.gov.bc.ca/ajo/download/application_of_ata_to_individual_tribunals_103007.pdf

¹⁰ The Administrative Justice Office website at <http://www.gov.bc.ca/ajo/popt/links.htm> contains a list of links to B.C. tribunal websites.

¹¹ [*Administrative Tribunals Act, SBC 2004, c. 45, s. 38*](#)

The diversity of mandate and objectives will mean the processes will range from relatively formal and more complex (for example, the BC Utilities Commission¹²) to very informal and simple (Employment and Assistance Appeal Tribunal¹³).

Specialized role: Perhaps the most significant difference between courts and administrative decision-makers is the broader role the latter may have, not being restricted to simply adjudicative but also in some cases being assigned regulatory, investigatory, and policy making responsibilities. In addition, when exercising their decision-making functions, tribunals may take a more inquisitorial approach.

A number of administrative decision-makers are charged with regulatory responsibilities to establish and enforce standards for public safety, consumer protection, economic stability, the use of public resources, and provision of professional services. In establishing and enforcing those standards, the entity may engage a consultative process, which itself may engage some principles of natural justice.

The decision-making entity may also be charged with ensuring compliance with those standards, and may undertake investigations to ensure compliance and take steps to enforce the standards using compliance agreements and, if necessary, the hearing process. Many of these entities may impose administrative monetary penalties as a means to achieve compliance.¹⁴

As was recently affirmed by the Supreme Court of Canada, all administrative decision-making bodies have some policy-making role.¹⁵ Policies created by administrative decision-makers may relate to both substantive and procedural aspects of decision-making and take many forms, including formalized institutional practices, written guidelines, rules or quasi-regulations, as well as administrative decisions themselves.

While, as explained above, it is standard practice to give administrative tribunals the power to establish their own rules of practice and procedure,¹⁶ the mandate of some administrative decision-makers may also include the creation and application of substantive public policy. One common example of this policy-making function is decision-makers who are charged to make decisions “in the public interest.” Other examples of phrases which may indicate that a decision-making entity has this function include: “may establish criteria,”¹⁷ “may formulate general guidelines,”¹⁸ “may impose

¹² <http://www.bcuc.com/>

¹³ <http://www.gov.bc.ca/eaat/default.htm>

¹⁴ The Administrative Justice Office recently published a discussion paper which examines the use of administrative monetary penalty schemes by statutory decision-makers. The paper is available on the Administrative Justice Office website at <http://www.gov.bc.ca/ajo/down/amps092008.pdf>

¹⁵ *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)* 2001 SCC 52.

¹⁶ *Administrative Tribunals Act*, SBC 2004, c. 45, s. 11

¹⁷ *Agricultural Land Commission Act*, SBC 2002, c. 36, s. 27(1).

¹⁸ *Labour Relations Code*, RSBC 1996, c. 244, s. 132(1).

terms it considers advisable”¹⁹ and “may affirm, vary, reverse or substitute [a decision] on the terms and conditions it considers appropriate.”²⁰

The potentially broad latitude to permit interveners under section 33 of the ATA²¹ may be seen as an example of administrative decision-makers’ ability to reflect and consider a broader interest in the decisions to be made. Another example of consideration for a broader interest in outcomes may be some tribunals’ ability under section 37 of the ATA²² to either group similar cases for hearing, or to decide on a key case to go forward, and hold others pending its outcome.

And in their adjudicative function, some tribunals have an “inquisitorial” role that may be considered an obligation to ensure it has all the evidence it needs to make the decision, not simply the evidence the parties chose to present. This recognizes the overarching public interest in the decision to be made, and means the tribunal may ask questions of witnesses and require documents be produced, not simply for clarification, but to acquire the evidence necessary for it to make the decision.

Physical setting: Most administrative decision makers’ hearings will be much less imposing than the courts’ in terms of the physical setting for the hearing. Most will try to hold their hearings in a geographic location close to the parties. Many tribunals will use a standard boardroom or a hotel meeting room, with tables arranged in a vague semblance of a court room, but often without a special “witness box” or a clerk to accept and mark exhibits, with the decision-maker doing that him or herself. Witnesses may not always be required to be sworn, with many simply undertaking to tell the truth. There should be no “all rise”, and in many tribunals the practise is for counsel to remain seated throughout their questioning and while making submissions. Tribunal members should be addressed using their surnames or titles or a combination - (Chairman Smith, Madame Chair Singh, Member Lee, or simply Mr. or Ms Jones). But simply because the processes and settings are informal does not mean the level of courtesy is less, although to call opposing counsel “my learned friend” will leave many tribunal members perhaps not puzzled but bemused, and again surnames are sufficient here or simply counsel for the applicant or respondent. (Another important tip may be to personalize your own client and to refer to them by name, rather than their role as applicant or respondent.) Opening statements, questioning and submission are typically similar to the courts, but if not addressed in a case management conference, you should check with the tribunal the first time you appear, as sometimes the tribunal may call on the respondent to present evidence first.

The physical setting for statutory decision-makers may be even more informal, and because there is often only one party involved, they may simply use a standard government office with a desk and chairs and a less structured process. However, simply because the processes and settings are informal does not mean the level of courtesy, or

¹⁹ [Agricultural Land Commission Act, SBC 2002, c. 36, s. 25\(2\).](#)

²⁰ [Hospital Act, RSBC 1996, c. 200, s. 46\(2\).](#)

²¹ [Administrative Tribunals Act, SBC 2004, c. 45, s. 33](#)

²² [Administrative Tribunals Act, SBC 2004, c. 45, s. 37](#)

requirement for advance preparation, is less. Many of these decisions are final and only subject to judicial review, so don't take the casual setting as meaning casual preparation.

4. Advance Preparation for a Hearing

The best advance preparation for a hearing may eliminate the need for a hearing, because as you prepare and learn more about your case - the facts, the law and your client's real interests - you will be in a better position to resolve the matter without a hearing.

Using the rules, guidelines, policies and procedures, and case management: Tribunals' processes are intended to help resolve disputes and/or determine claims for rights and benefits fairly, using the parties' and the tribunal's time and efforts most effectively. As noted above, each tribunal will set its own specific steps or processes, but most tribunals using some or all of the following steps:

Preliminary reviews: Preliminary reviews are usually conducted by senior tribunal staff or a tribunal member to make sure the dispute or the claim for rights or benefits is made at the right tribunal, and that any pre-conditions or applicable time limits have been met or filing fees paid. The person reviewing the documents will often also look to see if the documents set out all the necessary information, and may require that further information be provided in order for the tribunal to proceed to resolve the dispute or determine the claim. Requests for more information may be made by telephone calls or letters from the tribunal.

If your client is a respondent, and you think the tribunal does not have jurisdiction or the matter has been filed out of time, those issues should be raised as early as possible. If the tribunal has authority to extend a filing deadline, you should be aware of the criteria to be applied and test the application of those criteria to your case.

Case management: The three main purposes of case management are: information exchange, promotion of settlement opportunities and, if settlement is not possible, setting the details for a hearing.

These case management steps may be taken at various times in the process, and there is no one set sequence or order for the steps to be taken. Instead, each tribunal determines what best fits for the type of disputes or claims and the people involved. For example, some tribunals may require the parties try mediation first, before they get too committed to their 'positions', while other tribunals may want the parties to exchange their statement of issues and/or documents before they try mediation.

Case management may be directed by senior tribunal staff or a tribunal member, and is often done by telephone conference calls with all the people involved participating. Often more than one telephone conference is required.

Failure to comply with a tribunal's case management orders or directions can result in the proceeding being dismissed, or findings being made against the party who does not comply.

- *Information sharing:* These case management directions are intended to ensure each person involved knows what the other people involved say about the matters in dispute, and that every person who is involved has all the information they need to understand and respond. These steps are often used in conjunction with mediation and/or settlement conferences (described below) to see if the parties can resolve their differences without a hearing. Orders may be issued requiring parties to do certain things such as:
 - provide the tribunal and each other with specific details about what the dispute is about, what aspects they think they can agree on and what aspects they continue to disagree about and why (“statements of issues and agreed facts”), and what outcomes the parties are looking for. Clear communication about the issues and desired outcomes can sometimes resolve matters at this early stage.
 - provide the tribunal and each other with copies of any documents or other information that they have about the matters they can't agree on. This is intended to ensure the parties have full knowledge of what the other parties' evidence is, and can review that evidence before a hearing to see if there is a possibility to resolve the case without a hearing, or if that is not possible, to come to the hearing ready to respond to those documents. However, the scope of production requirements is more limited than discovery in a civil trial and pre-hearing examinations for discovery and interrogatories are almost unheard of in the administrative decision-making context.

Mediation and settlement conferences: Tribunals use these steps to assist parties to resolve the dispute or claim by arriving at a mutually acceptable solution, without the stress, cost or uncertainty of a hearing. A settlement is often the most satisfactory outcome for all involved. Mediation and settlement conferences are usually conducted by a single tribunal member, with all the people involved in the dispute or claim participating. Mediation is almost always done in person, settlement conferences can be done by telephone. These are discussed in more detail below, under “Opportunities for Early Resolution”.

Hearings: Case management also helps ensure that if a hearing is needed, the hearing will proceed in an orderly way, without surprises or adjournments, and all the information necessary for the tribunal to consider the matter will be available in a timely and orderly way, within the time allocated for the hearing.

Where a dispute or claim cannot be resolved through mutual agreement using case management, mediation or settlement conference, the tribunal will hold a hearing and make a decision. The hearing may be in-person or based on written submissions, and may

be conducted by a single tribunal member or, if complicated or the legislation requires it, a panel of three tribunal members.

Preparation for a hearing is very important and should be done well in advance of the hearing date. Your preparation should include the following steps:

- Review the statute or statutes that govern the tribunal;
- Review any general legislation that may govern the administrative tribunal, such as the *Administrative Tribunals Act*;
- Familiarize yourself with the tribunal's specific powers in relation to your case – know what remedy is being sought and what statutory provisions authorize the tribunal to grant this remedy;
- Ensure that your client understands what the tribunal can and cannot do, the general nature of the tribunal's proceedings, and the possible outcomes of the hearing;
- Review prior decisions of the tribunal dealing with the same subject matter;
- Research if any relevant decisions of the tribunal have been appealed;
- Obtain a copy of the tribunal's rules of practice, procedures, and policies – familiarize yourself with the tribunal's pre-hearing practices and procedures;
- Research the tribunal members, if known, and determine their expertise;
- Prepare your witnesses – review their evidence with them, prepare them for cross-examination, determine whether they will swear or affirm (and ensure that they understand the difference between the two), and confirm that they are aware of the hearing date;
- Consider whether a subpoena or summons is needed to ensure a witness's attendance at the hearing; and
- Determine the tribunal's rules regarding expert evidence, should you require an expert.

5. *Hearings*

Tribunals often use a hearing structure that is similar to that of the courts and hearings typically proceed in the following manner:

- Tribunal's Opening Statement

A tribunal member makes an opening statement to give the parties information which will make it easier for them to function in the hearing. For example, the tribunal member may outline the tribunal's process and procedures. This is especially important if a party is unrepresented by legal counsel and is unfamiliar with the structure of administrative hearings. The tribunal member may also obtain preliminary information from the parties, such as the names and the order of witnesses.

- Applicant's Case

The applicant presents his or her case, beginning with an opening statement, which should clearly state what the issues are, what his or her position is in relation to the

issues, and the remedy being sought. The applicant then conducts a direct examination of his or her first witness, after which the witness is cross-examined by the respondent. The applicant can then re-examine the witness if necessary. The tribunal members will ask questions to clarify any matters about which they require more information or explanation. This process is then repeated for each additional witness that the applicant may have.

- Respondent(s)' Case

The respondent presents his or her case, also beginning with an opening statement. As the applicant did, the respondent conducts a direct examination of his or her first witness, who is then cross-examined by the applicant. The respondent may re-examine the witness if he or she so chooses. The tribunal members will also ask any clarification questions that they may wish to ask. This process is then repeated for each additional witness that the respondent may have.

- Closing Arguments

After the respondent has called his or her last witness, the applicant presents a closing argument. The argument should review the evidence to highlight what evidence the tribunal should rely on, and what evidence the tribunal should reject. The applicant should clearly state the remedies being sought and the reasons why they should be granted. The respondent then presents his or her own closing argument, stating why, based upon the evidence, the applicant's case should not succeed.

It must be remembered that the role of an administrative tribunal member is not the same as that of a judge. A tribunal member can play a much more active role in a proceeding than a judge would in court – for example, a tribunal member can ask questions of the witnesses and may make modifications to the structure of the hearing should it be necessary.

Administrative tribunals are also not bound by the rules of evidence, such as hearsay rules; however, this does not mean that the rules of evidence are irrelevant. It will always be to your advantage to place the most relevant and reliable evidence before the tribunal and, if the other party's evidence is both objectionable and truly harmful to your case, to politely remind the tribunal of the reasons why that evidence, even if admitted, ought not to be given any weight when making the decision.

6 *Opportunities for Early Resolution*

Over the past decade, there has been a tremendous increase in the use of mediation and settlement conferences by both tribunals and statutory decision-makers to resolve disputes.

Mediation is a voluntary negotiation where someone who is neutral – often a senior staff person or a tribunal member – facilitates the people involved to discuss the issues in a non-adversarial way and, if possible, come to a mutually acceptable outcome, instead of a win/lose decision after a hearing. Mediation focuses on the interests (or needs) of the parties, as opposed to their positions. The discussions are confidential and without prejudice to the positions the parties may wish to take in a hearing, if a mediated outcome is not reached. Mediation is not intended to force someone to compromise, although compromise can be an element of the process. If facilitated by a tribunal member, that tribunal member will not preside at the hearing, unless all of the parties agree.

Settlement conferences can be very similar to mediation, but have some differences. Similar to mediation, the parties meet with a third person, often a tribunal member, who facilitates discussion to resolve the dispute or claim. These discussions are also confidential and without prejudice to the parties, if a settlement is not reached. However, unlike mediation, the tribunal member conducting the settlement conference may take an active role in the discussions and in what a reasonable outcome might be. The tribunal member may offer non-binding opinions on an issue or give an opinion on the parties' the likelihood of success, if the dispute or claim proceeds to a hearing. Like mediation, the parties are not obliged to agree and can still go to a hearing if they are unable to agree. The tribunal member who presided over the settlement conference will not conduct the hearing, unless all of the parties agree.

A settlement conference may be used instead of mediation where the tribunal has a duty to ensure that any agreement the parties reach is in accordance with the legislative scheme that governs the dispute or claim. This is because in those cases a tribunal order may be required to put the settlement into place, so the tribunal will have to be satisfied that the outcome is one it can endorse.

Mediation and settlement conferences will generally be held in-person but could be held by telephone conference call. The tribunal may require parties to bring with them or provide in advance the documents or other evidence that they say supports their position.

Some of the benefits of mediation and settlement conferences are:

- Informality – Mediation and settlement conferences are less formal and less stressful than adversarial hearings. This makes it easier for the parties to communicate with each other more clearly and effectively.
- Control over and satisfaction with the outcome – The parties have control over the outcome because, unlike in a hearing process, it is the parties who are responsible to determine what the outcome will be. Because the outcome is determined by the parties to meet their specific needs, the parties are more likely to be satisfied with a mediated/settlement outcome than a decision imposed by the tribunal.
- Speed – Disputes can be resolved more quickly than through a hearing.
- Cost – Time and money can be saved through early resolution of the dispute or claim.

- Privacy – Mediation and settlement conferences take place in private; most tribunal hearings are open to the public. Using mediation or settlement conferences can mean the details of the dispute remain private.
- Better relationships – Often parties to a dispute have to continue to deal with one another on a personal or business basis after the dispute is resolved. Mediation and settlements can help to preserve a better on-going relationship because the parties have worked together to produce the outcome.

Conclusion

Administrative decision-making entities are incredibly diverse, both in terms of mandate and composition. This diversity can make answering the question, “What does an administrative hearing look like?” seem like an impossible task. However, the very diversity of administrative decision-makers, combined with certain overarching commonalities such as the existence of specialized expertise, the power to shape their own practice and procedure, and mandates which extend beyond decision-making to regulation, policy-making, and investigation, is in some ways the key to answering this question: hearings, and the related pre-hearing processes, will be designed to best meet the needs of users and the objectives of administrative justice.

In designing their specific processes, administrative-decision makers will apply the principles of natural justice and procedural fairness, but how those principles will apply will vary, being mindful of course of the overarching principles common to all administrative decision-making entities – to provide a faster and more accessible alternative to the courts to resolve citizens’ problems.

Ultimately, the diversity in mandate and composition of administrative decision-makers, coupled with the similarities in fundamental principles, means that while you can be sure that a client who is seeking an administrative decision will be heard and that every effort will be made to ensure that the hearing process is fair, the particular form that the hearing takes – formal/informal, written/in person, before a single decision-maker or before a board – will depend entirely on the particular administrative decision-maker. As a practical matter, this means that a critical and perhaps best source of information when seeking to understand the hearing processes of a particular administrative decision-maker will be the decision-making body itself.

*Any errors or omissions are ours and the opinions are ours, not the Ministry of Attorney General or Bull, Housser & Tupper LLP.