

BC Tribunal Dispute Resolution
Needs Assessment Project

Initial Research & Preliminary Assessment

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Introduction

In December 2005, the Administrative Justice Office (AJO) and Dispute Resolution Office (DRO) of the Justice Services Branch, Ministry of Attorney General, initiated a project to assess the need to enhance or expand dispute resolution capacity in the BC administrative tribunal environment (the “needs assessment”).

Craig Darling, a lawyer and public policy mediator, was contracted to undertake initial research, prepare a preliminary assessment and propose next steps, working with:

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- Richard Rogers, Director of Legislation and Law Reform, Administrative Justice Office
- Erin Shaw, Director, Dispute Resolution Office
- Ron Tucker, Barrister and Solicitor, Dispute Resolution Office

This report describes the first phase of the project to March 31, 2006.

Background

Most BC administrative tribunals now have express statutory authority to undertake dispute resolution to facilitate settlement of issues, either through their own specific legislative authority or through adoption of section 28 of the Administrative Tribunals Act. While adjudication is a key component of most tribunal processes, experience confirms that negotiation, pre-hearing conferences, settlement meetings, mediation and other collaborative tools enable the parties to resolve their disputes quickly, affordably and fairly.

The Dispute Resolution Office of the Ministry of Attorney General has, over the past decade, supported many initiatives to help build dispute resolution capacity in BC’s civil justice system and in administrative tribunals. The AJO and DRO want to continue to support the use of a wide range of dispute resolution processes within the tribunals. The needs assessment is a step in the process of defining opportunities to help tribunals enhance or expand their dispute resolution processes.

The Needs Assessment Project

The objectives for the first phase of the needs assessment project were to:

1. gather information about the nature and scope of dispute resolution processes used by selected BC administrative tribunals
2. elicit the tribunals' views on opportunities to expand or enhance dispute resolution processes in the tribunal environment
3. complete a preliminary assessment to support discussion with tribunals about the need to enhance or expand tribunal dispute resolution capacity, and
4. recommend next steps respecting promotion of dispute resolution in the tribunal environment.

Research Questions:

The initial phase of research was designed to address the following questions:

1. What dispute resolution processes are tribunals using to facilitate settlement?
2. How often are dispute resolution processes being used?
3. How do the tribunals view their dispute resolution processes?
4. Based on initial research, is there a need to expand or enhance tribunal dispute resolution processes?
5. Given the preliminary assessment, what steps are required to complete the assessment and build dispute resolution capacity in the tribunal environment?

For the purposes of the needs assessment project, dispute resolution process means "a process established by the tribunal to facilitate the settlement of one or more issues in dispute."

Tasks:

To achieve the project objectives, the contractor was directed to:

1. Assemble baseline information about the tribunals in the study sample from tribunal websites and enabling legislation describing the dispute resolution processes being used by BC administrative tribunals in the course of case management.

2. Survey the tribunals in the study sample to gather information about their dispute resolution processes, including
 - types of dispute resolution processes being used
 - current rates of utilization
 - perceived barriers to enhanced utilization of dispute resolution processes
 - levels of client satisfaction with tribunal dispute resolution processes
 - perceived adequacy of tribunal dispute resolution processes
 - the nature and extent of monitoring and evaluation of dispute resolution processes.
3. Based on the initial research, provide a preliminary assessment of the need to expand or enhance dispute resolution processes in the tribunal environment (subject to follow-up research and consultation with tribunal chairs).
4. Propose next steps in the research project aimed at promoting dispute resolution in the tribunal environment.

Study Sample:

The AJO and DRO identified eighteen BC administrative tribunals for the project study sample:

- Agricultural Land Commission (ALC)
- Community Care and Assisted Living Appeal Board (CCALB)
- Employment Standards Tribunal (EST)
- Environmental Appeal Board (EAB) / Forest Appeals Commission (FAC)
- Farm Industry Review Board (FIRB)
- Financial Services Tribunal (FST)
- Forest Practices Board (FPB)
- Hospital Appeal Board (HAB)
- Human Rights Tribunal (HRT)
- Labour Relations Board (LRB)
- Mediation and Arbitration Board (MAB)

- Mental Health Review Board (MHRB)
- Passenger Transportation Board (PTB)
- Property Assessment Appeal Board (PAAB)
- Safety Standards Appeal Board (SSAB)
- B.C. Utilities Commission (BCUC)
- Workers Compensation Appeal Tribunal (WCAT)

Statutory Authority for Dispute Resolution

Eleven tribunals in the study sample have specific legislative authority to support dispute resolution under their enabling legislation. The nature and scope of this authority varies considerably, depending on the tribunal's overarching mandate. Seven tribunals in the sample are empowered to undertake dispute resolution through adoption of section 28 of the Administrative Tribunals Act (ATA), which provides that

The chair may appoint a member or staff of the tribunal or other person to conduct a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute.

A few tribunals have authority under both their enabling legislation and section 28.

Table 1 references the legislative authority for dispute resolution for each of the tribunals in the study sample.

TABLE 1		
LEGISLATIVE AUTHORITY – DISPUTE RESOLUTION		
	Specific Legislation Authority	Section 28, Administrative Tribunals Act
ALC	<u>Agricultural Land Commission Act</u> ; Section 13 provides for “facilitated dispute resolution” on specific “community issues”	Sections 1 to 10 of the <u>Administrative Tribunals Act</u> apply to the commission. Section 28 does not apply.
CCALB	<u>Community Care and Assisted Living Act</u> , section 29;	Sections 1 to 20, 22, 24 to 42, 44, 47 (1) I and (2), 48 to 55, 57, 58, 60 and 61 of the <u>Administrative Tribunals Act</u> apply to the board.
EST	<u>Employment Standards Act, Part 12</u> ;	Sections 1 to 21, 28 to 30, 32, 34 (3) and (4), 35 to 40, 45, 46, 48, 49, 50 (2) to (4), 51 to 53, 55 to 58, 60 (a) and (b) and 61 of the <u>Administrative Tribunals Act</u> apply to the tribunal
EAB/ FAC	EAB: <u>Environmental Management Act, Part 8</u> . FAC: <u>Forest Practices Code of BC Act</u> and continued under the <u>Forest and Range Practices Act</u> .	Section 28 of the <u>Administrative Tribunals Act</u> does not apply to the EAB or the FAC.
FIRB	<u>Natural Products Marketing (BC) Act</u> ;	Sections 1 to 10, 27 to 30, 45, 46, 48, 57, 58 and 61 of the <u>Administrative Tribunals Act</u> apply to the Provincial board.
FPB	<u>Forest and Range Practices Act, Part 8</u> .	Sections 1 through 10, 44, 55 to 58, 60 and 61 of the <u>Administrative Tribunals Act</u> apply to the Board. Section 28 does not apply to the FPB.
FST	<u>Financial Institutions Act</u> section 242.1	Section 28 of the <u>Administrative Tribunal Act</u> does not apply to the FST.
HAB	<u>Hospital Act</u> , section 46.	Sections 1 to 20, 25 to 35, 37 to 39, 42, 44, 47 to 56, 57, 58, 60 (a), (b) and (d) to (f) and 61 of the <u>Administrative Tribunals Act</u> apply to the Hospital Appeal Board.
HRT	<u>Human Rights Code</u> , section 31.	Sections 1, 4 to 10, 17, 29, 30, 34 (3) and (4), 45, 46, 48 to 50, 55 to 57, 59 and 61 of the <u>Administrative Tribunals Act</u> apply to the tribunal. Section 28 does not apply.
LRB	<u>Labour Relations Code, Part 7, Division 1 – Mediation</u> ;	Sections 1 to 10, 43, 46, 47 (1) I, 48, 49, 56, 57, 58 (1) and (2) and 61 of the <u>Administrative Tribunals Act</u> apply to the board. Section 28 does not apply.
MAB	The Board is created under section 13 of the <u>Petroleum and Natural Gas Act</u> and has authority under the <u>Geothermal Resources Act</u> , the <u>Mineral Tenure Act</u> , the <u>Mining Right of Way Act</u> , and the <u>Coal Act</u> .	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 <u>Administrative Tribunals Act</u> apply to the board. Section 28 does not apply.
MHRB	<u>Mental Health Act</u> , section 25.	Sections 1 to 10, 11, 13 to 15, 18 to 20, 26 (5) to (7) and (9), 27, 30, 32, 35, 36, 38, 39, 40 (1) and (2), 44, 48, 49, 55 to 57, 59, 60 (a) and (b) and 61 of the <u>Administrative Tribunals Act</u> apply to the board and members of review panels. Section 28 does not apply.
PTB	<u>Passenger Transportation Act, Part 3</u> .	The definitions of “appointing authority”, “member”, “privative clause”, “tribunal” and “tribunal’s enabling Act” in section 1 of the <u>Administrative Tribunals Act</u> and sections 2 to 10, 26, 30, 31, 41, 42, 44, 57, 58 and 61 of that Act apply to the board. Section 28 does not apply.
PAAB	<u>Assessment Act, Part 5</u>	Sections 1 to 11, 13 to 16, 17 (2), 18 to 20, 28, 29, 31 (1) (a), (b) and (e), (2) and (3), 32, 33, 34 (3) and (4), 35, 37 to 40, 44, 48, 49, 50 (2) to (4), 51, 53 to 56, 60 (a) and (b) and 61 of the <u>Administrative Tribunals Act</u> apply to the property assessment appeal board.
SSAB	<u>Safety Standards Act, Part 8</u> .	Sections 1 to 22, 24, 26 to 30, 31 (1) (a) to (e), (2) and (3), 32, 33, 34 (3) and (4), 35 to 42, 44, 47 to 58, 60 and 61 of the <u>Administrative Tribunals Act</u> apply to the appeal board.
BCUC	<u>Utilities Commission Act</u> .	Sections 1 to 3 and 5 to 13, 15, 18 to 21, 28 to 30, 32, 34 (3) and (4), 35 to 42, 44, 48, 49, 54, 56, 60 (a) and (b) and 61 of the <u>Administrative Tribunals Act</u> apply to the commission.
WCAT	<u>Workers’ Compensation Amendment Act (No 2), 2002</u> ;	Sections 1, 11, 13 to 15, 28 to 32, 35 (1) to (3), 37, 38, 42, 44, 48, 49, 52, 55 to 58, 60 (a) and (b) and 61 of the <u>Administrative Tribunals Act</u> apply to the appeal tribunal.

Baseline Information

A summary description of each tribunal in the study sample and its dispute resolution processes is included in Appendix 1 to this report. Under each tribunal heading, the tribunal's mandate, enabling legislation, case management process and dispute resolution process are summarized. In some cases, relevant sections of legislation, policy statements or procedural rules are appended.

The descriptions also include a summary of the tribunal's responses to survey questions regarding criteria for process evaluation, perception of client satisfaction, barriers to utilization, and the adequacy of its dispute resolution processes.

The descriptions were compiled from the tribunal websites, their enabling legislation and other public sources in December 2005. They provide an initial reference and a departure point for discussion on specific issues. The descriptions should not be viewed as a comprehensive review of tribunal processes.

Tribunal Survey

In February 2006, the AJO and DRO invited the chairs of the eighteen tribunals in the study sample to answer a brief questionnaire exploring:

- the nature and scope of the tribunal's dispute resolution processes
- current rates of utilization
- perceived barriers to utilization of dispute resolution processes
- perceived level of client satisfaction with and adequacy of tribunal dispute resolution processes
- the nature and extent of monitoring and evaluation of dispute resolution processes

Seventeen tribunals responded to the survey¹, fifteen of which confirmed that they use dispute resolution processes. The Financial Services Tribunal (FST) and the Mental Health Review Board (MHRB) reported that they do not use dispute resolution processes in their case management system.

¹ The Mediation and Arbitration Board did not reply to the survey.

The survey responses provide valuable insight into the dispute resolution environment of each respondent tribunal. The results are tabulated in reference to particular issues throughout this report and a synopsis appears in Appendix 2.

The Tribunal Dispute Resolution Processes

What dispute resolution processes are tribunals using to facilitate settlement?

Survey Results:

1. Dispute resolution processes are part of most tribunal case management systems. Eighty-eight percent of the survey respondents (15 out of 17) reported using one or more dispute resolution processes.
2. Tribunals are using a range of dispute resolution processes to support case management, including early screening, settlement meetings, pre-hearing conferences, mediation and non-binding case evaluation.
3. Some tribunals have developed special mechanisms to facilitate settlement in their particular environments. For example, the Forest Practices Board (FPB), which performs an audit and reporting function (rather than an adjudicative role), provides an opportunity for representations on draft reports. Providing this opportunity for participation in the audit process may reduce the likelihood of subsequent disputes. In another example, the Forest Appeals Commission (FAC) may hold an appeal in abeyance for 30 days to allow the parties to attempt resolution without a hearing.
4. Table 2 lists the dispute resolution processes used by each tribunal in the study sample. These processes are described more fully in Appendix 1. The pre-hearing conference appears to be the predominant dispute resolution process used by the tribunals in the study group, followed by settlement meetings, early screening and mediation.

TABLE 2																
TRIBUNAL DISPUTE RESOLUTION PROCESSES																
	ALC	CCALB	EST	EAB/ FAC	FIRB	FPP	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
Early screening		✓	✓	✓	✓	✓			✓	✓			✓	✓	✓	
Settlement meetings			✓	✓	✓			✓	✓	✓			✓	✓	✓	✓
Pre-hearing conferences		✓	✓	✓	✓			✓	✓	✓		✓	✓	✓	✓	✓
Mediation		✓		✓	✓				✓	✓			✓	✓		✓
Non-binding case evaluation									✓				✓	✓		
Other	✓ ²			✓ ³	✓ ⁴	✓ ⁵			✓ ⁶							

Observations:

1. Many tribunals are empowered to use dispute resolution processes in case management and most include one or more types in their case management system.
2. The larger tribunals (i.e., those dealing with high case volumes like the Human Rights Tribunal, Labour Relations Board, and Property Appeals Assessment Board) appear to have integrated dispute resolution processes into their case management systems. Other tribunals use dispute resolution processes but the nature and extent of integration is not readily apparent. Two of the survey respondents (the Financial Services Tribunal and the Mental Health Review Board) confirmed that they do not use dispute resolution processes in their case management systems.
3. The dispute resolution processes are voluntary, and usually initiated at the discretion of the chair/member, or on application by one or more parties, with the consent of the parties. The Human Rights Tribunal has considered mandatory dispute resolution

² The ALC occasionally supports facilitated dispute resolution on specific community issues - see section 13 of the Agricultural Land Commission Act.

³ Hold appeal in abeyance for 30 days to allow all parties to attempt resolution on their own (Forest Act appeals only).

⁴ Transfer to supervisory role

⁵ Opportunity for representations on draft reports

⁶ A combination of mediation and adjudication, preliminary determination of a legal issue (or some legal issues) and then the mediation of the balance of the complaint.

but decided against it, primarily out of concern about power imbalances among the parties.

4. All but two of the tribunals in the study sample using dispute resolution processes indicated that they screen their cases for settlement opportunities.
5. In some tribunals, pre-hearing conferences are convened for administrative purposes, and only incidentally to facilitate dispute resolution. For example, the Passenger Transportation Board convenes pre-hearing conferences to ensure that the parties are prepared for the hearing and, where possible, narrow the field of inquiry. While narrowing the scope of differences may reduce the number of issues at hearing (which could conceivably result in resolution without a hearing), settlement does not appear to be a primary objective.

Rates of Utilization

How often are dispute resolution processes being used?

Survey Results:

Table 3 lists rate of utilization data by tribunal, derived from the survey responses.

Utilization data was not available from all of the tribunals in the study sample.

TABLE 3																
TRIBUNAL DISPUTE RESOLUTION PROCESSES – UTILIZATION																
In 2005, or the most recent year for which data is available:	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
How many case files were opened?		8	213	201	20	30	20	2	n/a	2400	1150	n/a	1868	6		5880
How many cases were carried over from previous years?		2	58	40	34	3	4	0		722	50		970 ⁷	n/a		9882
How many cases went through a dispute resolution process?		8	0	132	10	2	0	2		447	0		1695 ⁸		6	1
How many cases in I were settled?	n/a ⁹	4	0	37	7	2	0	1		287	0		1417 ¹⁰	2	6	1
Proportion of open cases referred to a dispute resolution process:		80%		55%	19%			100%		12%			100%		11	
Settlement rate:		50%		28%	70%			50%		64%			83.5%			

Observations:

1. The survey question on utilization rates was designed to determine, for each tribunal, the proportion of recent cases referred to a dispute resolution process, and of those, how many resulted in settlement. For example, the Community Care and Assisted Living Board (CCALB) opened eight case files in 2005 and carried two over from previous years. Eight files went through a dispute resolution process and four

⁷ Number of previous year appeals in the system as of March 31, 2005. New appeals are filed by April 30 each year.

⁸ The PAAB scheduled at least one Appeal Management Conference in every appeal. Some appeals settle before the AMC takes place. In a very few appeals, there is no AMC or other dispute resolution process but the appeal is simply scheduled for an adjudicative process. The dispute resolution processes in every appeal may not have occurred in 2005.

⁹ Only dispute resolution case was in 2004.

¹⁰ In 2005, the PAAB conducted 781 AMC's involving 2,548 appeals (some appeals have more than one AMC and some AMC's involve more one appeal). The Board conducted 43 Settlement Conferences. In 2005, 1,417 appeals were resolved without a hearing either directly as a result of the Board's dispute resolution processes or by the parties without the assistance of the Board. This represents 83.5% of the total appeals completed in 2005 (1,695). Total completions in 2005 increased 22.5% over 2004.

¹¹ BC Utilities Commission data is not organized or readily available for these purposes though, if necessary and helpful, further data could be compiled.

were settled, indicating that in 2005, 80% of CCALB cases went through a dispute resolution process and 50% of those resulted in settlement.

2. The survey did not seek to determine rates of utilization by type of dispute resolution process. So, for example, the initial research does not reveal whether the 2005 CCALB settlements are attributable to successful early screening, pre-hearing conference or mediation.
3. Many of the tribunals in the study sample deal with relatively few cases each year.
4. All but two of the tribunals in the study sample who support dispute resolution processes¹² initiate case management by screening for settlement opportunities. The other means of initiating dispute resolution processes are outlined in Table 4.

TABLE 4																
PROCESS INITIATION																
How are dispute resolution processes initiated?	ALC	CCALB	EST	EAB/ FAC	FRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
Tribunal initiates as part of case management (i.e., all cases are screened for settlement opportunities)		✓	✓	✓ ✓	✓	✓		✓	✓	✓		✓	✓	✓		✓
On application by any one or more parties		✓	✓	✓ ✓	✓					✓			✓	✓	✓	✓
Only with the consent of all parties	✓	✓	✓		✓			✓	✓					✓		✓
At the discretion of the Chair/Member			✓			✓				✓			✓		✓	✓
Other				✓ ✓ 13												

5. A significant number of survey respondents (44%) identified 'limited demand' (clients prefer hearings or are sceptical about settlement processes) and 'DR incompatible with mandate' (38%) as barriers to increased utilization of dispute resolution processes. Other tribunals (25%) cited procedural barriers and

¹² The exceptions are the BC Utilities Commission, where typically an applicant proposes an appropriate process, which the Commission considers in light of the nature of the application and anticipated public interest, and the Agricultural Land Commission, which has used its section 13 dispute resolution process only once.

¹³ Mediation and settlement conferences are only with the consent of the parties.

budget/resource limitations as barriers. Table 5 outlines perceived barriers to increased utilization of dispute resolution processes.

TABLE 5 PERCEIVED BARRIERS TO INCREASED UTILIZATION																
What may be preventing the tribunal from utilizing or increasing the utilization of DR processes?	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
Limited demand		✓		✓✓			✓	✓			✓					✓
Procedural Barriers											✓					✓
No legislative authority						✓					✓					
Statutory time constraints											✓		✓			
Budget limitations					✓	✓					✓		✓			
Resource limitations					✓	✓	✓				✓				✓	
DR incompatible with mandate				✓✓			✓				✓	✓				✓
Other	✓ ¹⁴							✓ ¹⁵					¹⁶			
If the barriers were removed, would the tribunal utilize or increase the use of DR processes?																
Definitely					✓									n/a		✓
Possibly						✓					✓		✓			
Unlikely	✓	✓					✓	✓				✓	✓			

¹⁴ Little, if any, need (local governments have other options).

¹⁵ Limited volume of cases.

¹⁶ Client scepticism

6. Relatively few respondents thought that removing the identified barriers would result in increased utilization (presumably due to limited demand).

The Tribunals' Perspective

How do the tribunals view their dispute resolution processes?

Survey Results:

1. Most of the tribunals in the study sample (86%) believe that their 'clients' (the parties to a complaint or appeal) are either satisfied or very satisfied with the tribunal's dispute resolution processes.
2. All of the tribunals in the study sample feel that their dispute resolution processes are adequate or more than adequate to meet current needs.
3. Few tribunals answered the survey question asking respondents to identify specific tools, resources or other assistance that might assist the tribunal in expanding or enhancing its dispute resolution processes. Those that did cited the need for a list of qualified mediators, increased staff, video/online conferencing and enhanced legislative authority.

Table 6 summarizes the questions in the survey regarding 'client satisfaction' and the 'adequacy' of tribunal dispute resolution processes.

TABLE 6A																
CLIENT SATISFACTION																
Generally, how would the tribunal assess 'client satisfaction' with the tribunal's dispute resolution processes?	ALC	CCALB	EST	EAB/FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
Very satisfied (28.5%)			✓				n/a		✓	✓	n/a		✓			
Satisfied (57%)		✓		✓✓	✓	✓ ¹⁷						✓		✓		✓
Unsatisfied (14%)	✓ ¹⁸					✓ ¹⁹										

TABLE 6B																
ADEQUACY OF DISPUTE RESOLUTION PROCESSES																
How would the tribunal assess its dispute resolution processes?																
More than adequate (28.5%)	✓		✓						✓	✓						
Adequate (71%)		✓		✓	✓	✓		✓				✓	✓	✓		✓
Inadequate (0%)																

Observations:

1. Although a large number of the tribunals in the study sample believe that their clients are satisfied with tribunal dispute resolution processes, only 66% (10 out of 15) evaluate the effectiveness of their processes (see Table 7). For those that do evaluate, the predominant criteria of effectiveness are settlement rates, time savings and cost effectiveness.
2. Only one of the tribunals in the study sample uses client satisfaction (neither 'process' nor 'outcome' satisfaction) as a criterion for evaluating effectiveness.

¹⁷ The FPB advises that the satisfaction level of auditees and complainants varies with results. The Board occasionally faces criticism from clients because the desired result from their perspective was not reached, particularly if, for example, complaints are part of an interest group campaign or touch on a committed industry or government policy position. The Board is more concerned about whether or not clients believe the process of audit or investigation to be accurate, timely, objective and fair.

¹⁸ Client reluctantly accepted process but not outcome.

¹⁹ The FPB advises that the satisfaction levels of auditees and complainants varies with results. The Board occasionally faces criticism from clients because the desired result from their perspective was not reached, particularly if, for example, complaints are part of an interest group campaign or touch on a committed industry or government policy position. The Board is more concerned about whether or not clients believe the process of audit or investigation to be accurate, timely, objective and fair.

3. While all of the tribunals in the study sample assessed their dispute resolution processes as adequate or more than adequate, the research did not explore the respondents' criteria for determining adequacy.

TABLE 7																
EVALUATION																
	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
Does the tribunal evaluate the effectiveness of its DR processes?	Yes ²⁰	No	Yes	Yes / Yes	Yes	Yes	n/a	No	Yes	Yes	n/a	No	No	Yes	Yes	No
What criteria does the tribunal use to evaluate the effectiveness of DR processes?																
Settlement rate			✓	✓✓	✓	✓			✓	✓			✓			
Time savings			✓	✓✓	✓	✓			✓	✓			✓		✓	
Cost effectiveness				✓✓	✓	✓			✓	✓			✓		✓	
Client satisfaction															✓	
Other									✓ ²¹						✓ ²²	

²⁰ No criteria but general in-house discussion and evaluation.

²¹ UBC recently conducted an in-depth review of HRT mediation services consisting of short survey of all participants and an in-depth, in-person or telephone survey with the participant's consent.

²² The effectiveness of each and every Negotiated Settlement Process (NSP) is reviewed by Commission or the panel assigned to consider the application before a decision is rendered to ensure, among other things, that the NSP was conducted appropriately and that the proposed resolution is in the public interest.

Preliminary Assessment

Based on the initial research, is there a need to enhance or expand tribunal dispute resolution processes? The survey reveals two widely held perceptions:

Perception 1: The tribunals believe that the participants in their dispute resolution programs are generally satisfied (or very satisfied) with the programs.

Perception 2: The tribunals feel that their dispute resolution processes are adequate (or more than adequate) to meet current needs.

This positive view is cause for optimism about the overall quality of dispute resolution programs in the tribunal environment. The survey results indicate that the tribunals in the study sample do not see a general need to expand or enhance their dispute resolution capacity. The tribunals' positive assessments of client satisfaction and the adequacy of their dispute resolution processes, together with reports of limited demand for dispute resolution, and few requests from tribunals for additional resources, suggest overall satisfaction with the status quo. However, it may be premature to conclude that dispute resolution capacity in the tribunal environment is optimal. It is difficult to confirm the tribunals' perspective for the following reasons:

1. Time, budget and resource limitations precluded interviews with tribunal chairs in the initial phase of research. The rationale for the website review and survey was to gather information that would permit meaningful discussion with tribunal chairs on specific issues in subsequent phases of the project. The limitations of the baseline research and tribunal survey need to be taken into account before concluding that no improvement, additional resources or further support is required.
2. Not all tribunals evaluate their dispute resolution processes. The survey primarily sought information about the 'quantity' not 'quality' of tribunal dispute resolution services. Among the tribunals who do evaluate their dispute resolution programs, evaluation standards and performance measures appear to vary. Some tribunals appear to have made evaluation an integral part of their dispute resolution program, with verifiable performance measures, while others appear to evaluate informally or on an ad hoc basis with few criteria. A comprehensive, informed assessment of the need to enhance or expand tribunal dispute resolution capacity requires evaluation of the effectiveness, design and administration of existing dispute resolution

programs.²³ More work on the nature and quality of monitoring and evaluation is required to enable a meaningful assessment of tribunal dispute resolution processes.

While the initial research suggests that substantial progress has been made towards integrating dispute resolution processes into tribunal case management systems, the following gaps in the baseline research should be addressed to permit a more fully informed assessment of the need to enhance or expand tribunal dispute resolution capacity:

1. The initial research appropriately focused on the nature and scope of dispute resolution processes – what processes are used and how often. More research is required to determine utilization rates by type of dispute resolution processes (e.g., mediation) and confirm the objective of the processes used (e.g., dispute resolution or administration).
2. The initial research confirms that dispute resolution processes are part of most tribunal case management systems. However, with a few notable exceptions (for example, the Human Rights Tribunal and Labour Relations Board), neither the website review nor the survey revealed much about the level of integration, particularly in the smaller tribunals. More research would be required to assess the extent to which dispute resolution processes are being integrated into case management systems.
3. The survey question about how dispute resolution processes are initiated indicated that all but two of the tribunals in the study sample screen their cases for settlement opportunities. However, the research does not reveal the nature and quality of early screening or how successful the screening process is. Early screening and streaming of cases towards settlement may indicate a high level of integration. More research and consultation with the tribunals is required to make this determination.
4. Case volume may have a bearing on a tribunal's perception of the need to expand or enhance dispute resolution processes. For example, the Hospital Appeal Board (HAB) opened just two case files in 2005, and the Community Care and Assisted Living Board (CCALB) dealt with a total of 10. At these volumes, the benefits of dispute resolution processes (e.g., time savings and cost effectiveness) may not outweigh the cost of integrating the processes into the case management system.

²³ Administrative Conference of the United States (1995). Dispute Systems Design Working Group. *Evaluating ADR Programs: A Handbook for Federal Agencies*. Washington, D. C.: Administrative Conference of the United States.

On the other hand, many of the high volume tribunals (e.g., Human Rights Tribunal, Labour Relations Board, and Property Assessment Appeal Board (PAAB) have already expanded (or are in the process of expanding) their capacity to meet current needs. The effect of case volume on the need and justification for dispute resolution processes in the tribunal environment should be examined. Should a tribunal that processes only a few cases annually be encouraged to enhance or expand their dispute resolution processes?

5. The initial research focuses primarily on dispute resolution processes in appeal management. Some tribunals also have a complaint management function. For example, the Utilities Commission receives complaints from utility customers who are unable to resolve disputes with their respective utilities without assistance, and the Farm Industry Review Board hears complaints from persons aggrieved by odour, noise, dust or other disturbances arising from farm operations. More research is required on the use of dispute resolution tools to facilitate the settlement of complaints (where tribunals have a complaint management mandate).
6. The initial research identified many perceived barriers to utilization or increased utilization. These barriers need to be assessed and, where possible, addressed. In particular, the issues of 'limited client demand' and the 'incompatibility of dispute resolution with statutory mandates' should be explored further. The perceptions that there is no room for settlement in appeals from statutory decisions, and that 'rights' or 'entitlement' processes cannot involve negotiation require more research and analysis.
7. The survey question on dispute resolution processes (see Table 2) characterized a 'pre-hearing conference' as a dispute resolution process. However, in some tribunals, pre-hearing conferences are convened for administrative rather than dispute resolution purposes, perhaps suggesting higher levels of utilization than is the case. More research is required to determine how many tribunals use pre-hearing conferences for strictly administrative purposes (e.g. to set a hearing date) and how many use them to advance resolution of the matter or streamline the adjudication process.

Conclusions

The initial research indicates that the tribunals in the study sample do not see a need to expand or enhance their dispute resolution capacity. This indication could be substantiated by completing the needs assessment research and verifying the results.

This would help:

1. ensure a more fully informed assessment of the need to expand tribunal dispute resolution capacity, and
2. identify the resources required from the AJO and DRO, if any, to build capacity and promote dispute resolution in the tribunal environment.

Further Research and Assessment

Given the preliminary assessment, what steps are required to provide a more sophisticated needs assessment?

The research done so far was conducted to provide a baseline for informed discussion with the tribunals about the need to enhance or expand their dispute resolution processes. The objectives were to gather information and elicit tribunal views (in a written survey), and use the results to inform next steps in the assessment process.

The following steps would take the assessment to the next level:

1. The initial research should be verified through discussions with tribunals, informed by the survey results and observations. The verification process could be initiated by distributing a draft of this report to the tribunals for comment.
2. Follow-up research should address the gaps in the baseline information identified in Preliminary Assessment, above.

Hard data is also required to back up the tribunals' perceptions of client satisfaction with their dispute resolution processes and the adequacy of their dispute resolution programs, and support a conclusion that there is no need to enhance or expand tribunal dispute resolution capacity. While the data may be available from some tribunals, with varying degrees of sophistication, it is not available from all.

Building Capacity

Assuming the indications from the preliminary assessment are confirmed by further research, what actions might the AJO and DRO consider to promote dispute resolution in the tribunal environment?

The initial research suggests that there may be opportunities for the AJO and DRO to promote dispute resolution in the tribunal environment by:

1. Helping tribunals to articulate and address both the practical and legal or policy barriers to increased utilization of dispute resolution processes:
 - Four tribunals listed resource or budget constraints as barriers while another identified procedural barriers as the problem. The AJO and DRO could help explore practical and realistic solutions to these problems with the affected tribunals.
 - Other tribunals indicated that they face legal and/or policy barriers to non-adjudicative resolution, such as an inability to negotiate statutory rights (e.g. WCAT). The AJO and DRO, in conjunction with the affected tribunals and responsible ministries, might consider researching the extent and appropriateness of these barriers.
2. Providing support and resource material for the development and application of dispute resolution process monitoring and evaluation tools. As discussed above, the tribunals' perception that clients are generally satisfied with their dispute resolution processes cannot be confirmed objectively (the HRT is an exception, having recently been the subject of a comprehensive client satisfaction study). Not all tribunals in the study sample evaluate the effectiveness of their processes and only one reported using 'client satisfaction' as a measure of effectiveness. In addition, standards and criteria for evaluation appear to vary. Consequently, the quality of dispute resolution processes in particular tribunals cannot be easily assessed.

The diverse nature of B.C. tribunals, (varying in size and perspective, each at different stages of development with distinct dispute resolution mandates), together with budget and resource constraints, make it unlikely that dispute resolution program evaluation will become a priority without support from the provincial government. The big tribunals are already doing it, in one way or another, and the smaller ones appear not to have the resources or expertise. The AJO and DRO could

provide leadership and guidance in the development of tools and criteria for evaluating dispute resolution processes in the administrative tribunal environment.

3. Working with tribunals to help address communication, education and training challenges, acting as a catalyst and as a link to the appropriate resources. For example:

- Limited client demand (clients prefer hearings or are sceptical about settlement processes) appears to be one of the most significant barriers to increased utilization identified by the study sample. This may indicate that the parties to tribunal processes do not utilize dispute resolution processes because they do not fully understand the nature and benefits of those processes.
- Although dispute resolution training is readily available and many tribunal chairs/members have participated in training courses and seminars, there may be an unmet need for specialized 'tribunal-centred' training to address system design issues and challenges associated with integrating dispute resolution processes into an adjudicative setting

Appendices

1. Tribunal Dispute Resolution Processes (Summary Descriptions)
2. Survey Synopsis and Responses

Appendix 1

Summary Descriptions

Tribunal Dispute Resolution Processes

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Notes

1. The information in this appendix was compiled from:
 - BC administrative tribunal websites, enabling legislation and other public sources.
 - a written survey of administrative tribunals conducted in February 2006.

The information was assembled to provide an overview of the processes used by BC tribunals to facilitate the settlement of disputes. The summaries are intended as an initial reference and a departure point for discussion on specific issues. They should not be viewed as a comprehensive review of tribunal processes.

2. Some tribunal websites provide detailed information on dispute resolution processes while others provide little or no information. Similarly, enabling legislation varies in its description of the dispute resolution processes available to particular tribunals.
3. Further research and direct contact with the tribunals is likely required to address specific issues and clarify the extent to which dispute resolution processes are integrated into tribunal case management systems. Follow-up on specific issues through telephone or face-to-face interviews is anticipated.
4. The summary includes information on 18 BC administrative tribunals selected by the AJO and DRO.
5. Under each tribunal heading, the tribunal's mandate, enabling legislation, case management process and dispute resolution process are described. In some cases, relevant sections of legislation, policy statements or procedural rules are appended.
6. Also included under each tribunal heading is a summary of the tribunal's responses to survey questions regarding criteria for evaluation, perception of client satisfaction, barriers to utilization, and self-assessment of dispute resolution processes.
7. For ease of reference in the digital version of this document, tribunal titles and references to enabling legislation are hyperlinked to the appropriate website or legislation (key CONTROL + 'click' to follow link). In some cases, key points for discussion are highlighted.

Agricultural Land Commission

Mandate:

The Agricultural Land Commission (ALC) is an independent agency mandated to:

- preserve agricultural land;
- encourage farming in collaboration with other communities of interest; and
- encourage local governments, First Nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

The Commission's objective is to seek compliance with the *Agricultural Land Commission Act* by working cooperatively with landowners, local governments, and other government agencies.

Enabling Legislation:

Agricultural Land Commission Act; Sections 1 to 10 of the *Administrative Tribunals Act* apply to the commission. Section 28 of the Administrative Tribunal Act does not apply.

Case Management:

If there is a potential infraction of the Act, the Commission may pursue various remedies including stop work orders, remediation orders and penalties. The Commission may also apply to the Supreme Court of British Columbia if it considers that a person or persons is not complying with an order or decision.

A person who is subject of a stop work order, determination, remediation order or penalty, may appeal to the Agricultural Land Commission. The Commission must hold a hearing to consider the appeal.

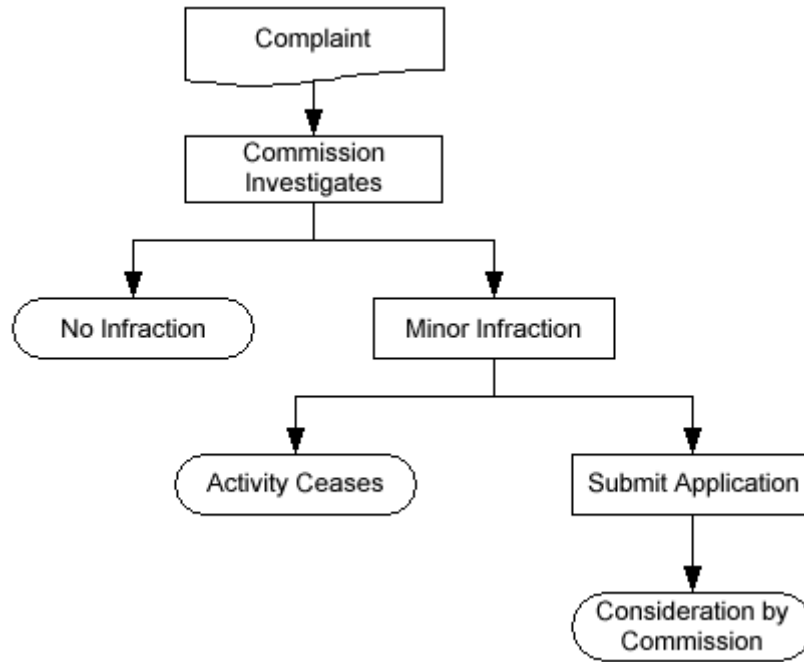
On an appeal, the commission may

- (a) confirm or reverse the determination, decision, order or penalty, or
- (b) refer the matter, with or without directions, back to the person who made the initial determination, decision or order.

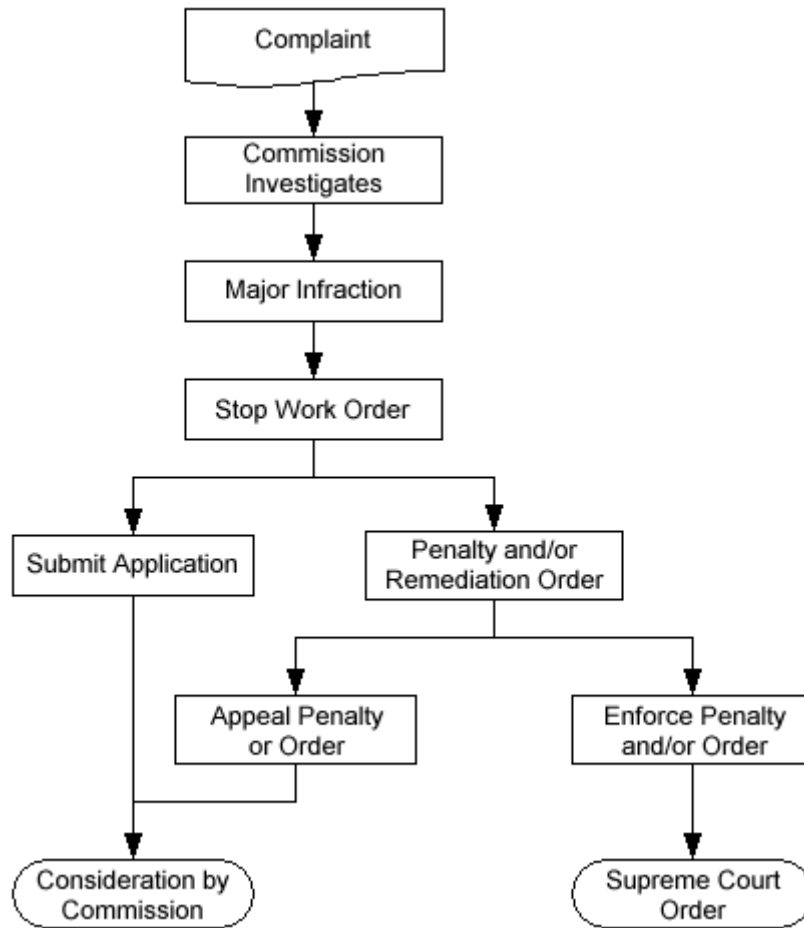
The commission must give notice of an appeal to any person the commission considers is affected by the appeal.

Complaint Management:

Minor Infraction



Major Infraction



Dispute Resolution:

The ALC advises that it makes every effort to resolve matters of non-compliance without resorting to legal action. However, the ALC website does not indicate what, if any, *dispute resolution processes* are utilized in complaint investigation and management.

Section 13 of the *Agricultural Land Commission Act* provides for “facilitated dispute resolution” on specific “community issues” involving local or first nation governments. This provision appears to enable a multiparty dispute resolution role but the ALC has used a section 13 process only once (in 2004), apparently because local governments have other more appealing options to achieve consistency with the ALC legislation. The process is initiated only with the consent of all parties. Settlement discussions are confidential.

Reference:

ALC - Section 13 - Dispute resolution on community issues

13 (1) In this section, "**community issue**" means a matter concerning one or more of the following:

- (a) an application for a use of agricultural land for a school, hospital, publicly funded institution or public utility, or another purpose prescribed by regulation;
- (b) a regional growth strategy under the *Local Government Act*;
- (c) the form and content of the official community plan of a local government;
- (d) an agreement under section 26 (1);
- (e) the form and content of a first nation government's plan that has the same or similar purposes as an official community plan of a local government.

(2) If a dispute arises on a community issue, the commission and the local government or the first nation government, as applicable, may agree to attempt to resolve the dispute by a method of facilitated dispute resolution.

(3) If an agreement is made under subsection (2), the commission and the local government or the first nation government, as applicable, may appoint a facilitator.

(4) In making a recommendation to resolve a dispute, a facilitator must give weight to the following values in descending order of priority:

- (a) agricultural values, including the preservation of agricultural land and the promotion of agriculture;
- (b) environmental, economic, social and heritage values, but only if
 - (i) those values cannot be replaced or relocated to land other than agricultural land, and
 - (ii) giving weight to those values results in no net loss to the agricultural capabilities of the area.

(5) Each party must pay its own costs under this section.

(6) The provisions of this section do not restrict or limit the provisions of section 2, 3 or 46.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to

utilization, and the adequacy of dispute resolution processes. The ALC response indicates that:

1. The only section 13 dispute resolution process ever undertaken by the ALC was informally evaluated for effectiveness without specific criteria. The ALC concluded that the party to the dispute reluctantly accepted the process but was not satisfied with the outcome.
2. The section 13 dispute resolution process is ‘more than adequate’, since the section is likely to be used only in very rare circumstances.
3. There is “little, if any, need” to increase the use of *dispute resolution processes* (local governments have other options).
4. A list of qualified or pre-qualified mediators/facilitators (with knowledge and experience for the specialized section 13 role) might help enhance the ALC dispute resolution process.

Community Care and Assisted Living Appeal Board

Mandate:

The Community Care Facility Appeal Board (CCALB) adjudicates disputes over the licensing of community care facilities, the registration of assisted living residences and the licensing of early childhood educators.

Enabling Legislation:

Community Care and Assisted Living Act, section 29; Sections 1 to 20, 22, 24 to 42, 44, 47 (1) (c) and (2), 48 to 55, 57, 58, 60 and 61 of the *Administrative Tribunals Act* apply to the board.

Case Management:

The CCALB hears appeals on decisions concerning the licensing of community care facilities, the registration of assisted living residences, and the certification of early childhood educators.

The CCALB uses early screening, pre-hearing conferences and mediation during the course of case management to facilitate the settlement of issues in dispute without an adjudicative hearing.

The chair may appoint a member or staff of the tribunal or other person to conduct a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute (Section 28, *Administrative Tribunal Act*).

Dispute Resolution:

The CCALB screens all cases for settlement opportunities. A dispute resolution process may be initiated on application by any one or more parties, with the consent of all parties. Settlement discussions are confidential and without prejudice to the parties in a subsequent hearing.

Under Rule 13 of the CCALB rules of practice and procedure the Board may conduct an Appeal Management Conference. The Board member or delegate appointed to conduct the Appeal Management Conference may “mediate issues on appeal” (see Rules for Appeals under the *Community Care and Assisted Living Act*).

In 2005, eight CCALB cases went through a dispute resolution process and four were settled.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals’ perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The CCALB response indicates that:

The CCALB does not evaluate the effectiveness of its dispute resolution processes.

The CCALB believes that its clients are generally 'satisfied' with its dispute resolution processes.

The CCALB describes its dispute resolution processes as 'adequate' and that the only barrier to increased utilization is limited demand.

The CCALB is interested in learning about the dispute resolution processes used by other tribunals.

Employment Standards Tribunal

Mandate:

The Employment Standards Tribunal (EST) is an independent agency and the only body with the legal authority to hear and decide appeals of determinations made by the Director of Employment Standards. A determination is any decision made by the Director of Employment Standards under section 22(2), 66, 68(3), 69(6), 73, 76(2), 78(3), 79, 83(2), 85(1)(f), 100 or 119 of the Employment Standards Act.

Enabling Legislation:

Employment Standards Act, Part 12; Sections 1 to 21, 28 to 30, 32, 34 (3) and (4), 35 to 40, 45, 46, 48, 49, 50 (2) to (4), 51 to 53, 55 to 58, 60 (a) and (b) and 61 of the *Administrative Tribunals Act* apply to the tribunal.

Case Management:

The EST hears appeals of determinations made by the Director of Employment Standards.

The EST uses early screening, settlement meetings and pre-hearing conferences to facilitate the settlement of issues in dispute without an adjudicative hearing.

The chair of the tribunal may appoint a member or staff of the tribunal or other person to conduct a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute (Section 28, Administrative Tribunal Act).

Dispute Resolution:

The EST screens all cases for settlement opportunities. In addition, Rule 27 of the EST Rules of Practice and Procedure provides that:

1. At any time during an appeal or reconsideration, the Tribunal may conduct a confidential and without prejudice settlement meeting to resolve one or more issues in dispute. The Tribunal may decide to conduct a settlement meeting on its own or when a party requests it.
2. The Tribunal may appoint a member or other person to conduct a settlement meeting.
3. If a member conducts a settlement meeting and the appeal or reconsideration is not settled, the member will not decide the merits of the appeal or reconsideration unless all parties consent.
4. Unless all parties consent, a person must not disclose or be compelled to disclose to any other person any documents produced or statements made during a settlement meeting.

In 2002, the Employment Standards Branch revised its operating model to include mandatory mediation at the front end of its processes. Therefore, the demand for dispute resolution at the EST has declined. No cases went through a dispute resolution process in fiscal year 2004/05.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The EST response indicates that:

1. The EST evaluates the effectiveness of its dispute resolution processes on the basis of settlement rate and time savings.
2. The EST believes that its clients are generally 'very satisfied' with the tribunal's dispute resolution processes.
3. The EST describes its dispute resolution processes as 'more than adequate', noting that demand has declined since the Employment Standards Branch began requiring mediation at the front end of its processes.

Environmental Appeal Board / Forest Appeals Commission

Mandate:

The Environmental Appeal Board (EAB) is an independent quasi-judicial agency which hears appeals from administrative decisions made under the Integrated Pest Management Act, the Environmental Management Act, the Water Act, the Wildlife Act, and the Health Act.

The Forest Appeals Commission (FAC) is an independent tribunal mandated to hear appeals made under the *Forest Practice Code*, *Forest and Range Practices Act*, the *Wildfire Act*, the *Private Managed Forest Land Act*, the *Forest Act* and the *Range Act*.

Enabling Legislation:

The EAB and FAC have different Chairs and operate independently. However, the members of the two tribunals are cross-appointed. The EAB office provides financial and administrative support for both the EAB and the FAC.

The EAB is enabled under the Environmental Management Act, Part 8. Section 28 of the *Administrative Tribunals Act (ATA)* does not apply to the EAB.

The FAC is enabled under the *Forest Practices Code of BC Act* and continued under the *Forest and Range Practices Act*. Section 28 of the ATA does not apply to the FAC.

Case Management:

The EAB and FAC use early screening, settlement meetings and pre-hearing conferences to facilitate the settlement of issues in dispute without an adjudicative hearing.

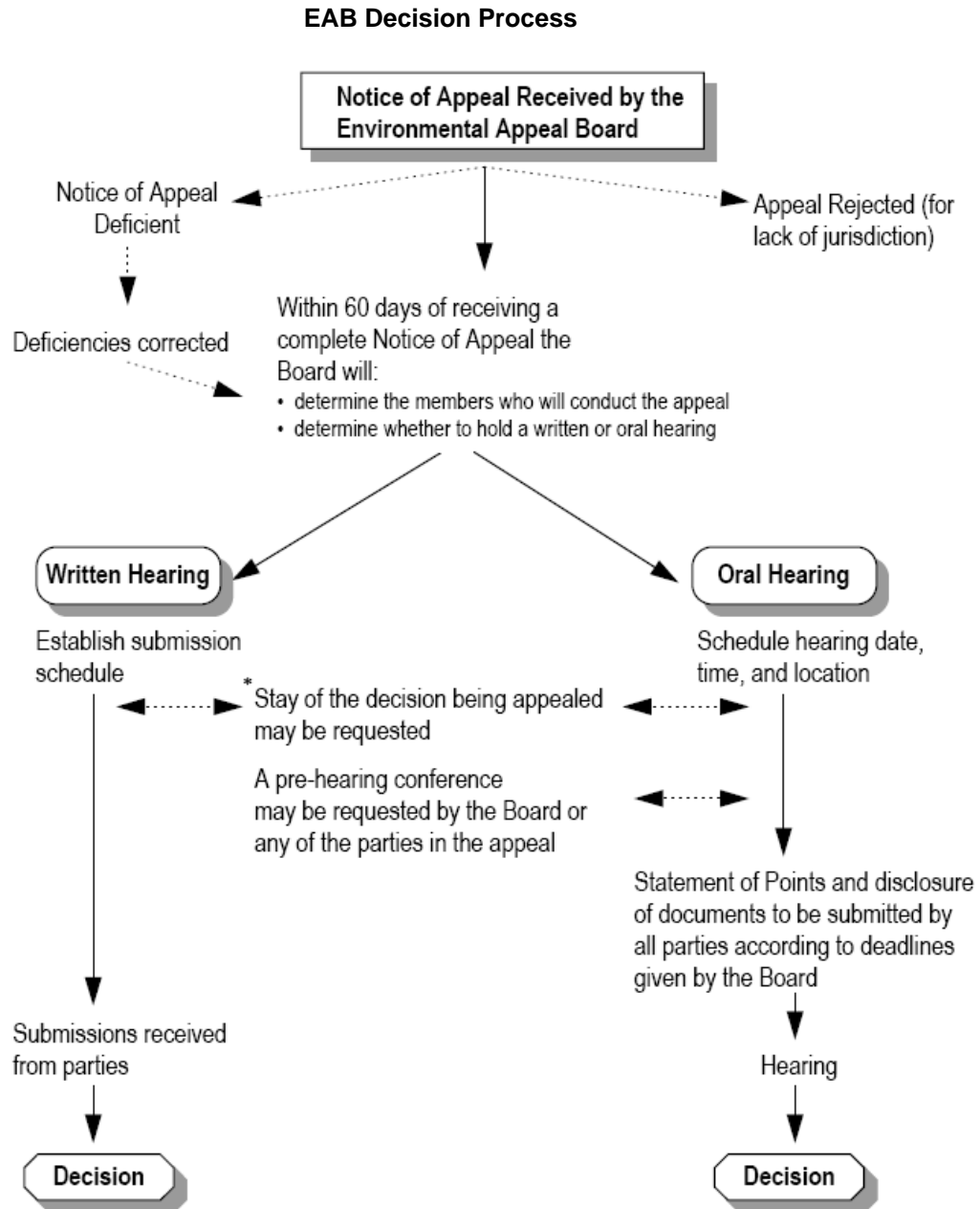
Dispute Resolution:

The EAB and FAC review notices of appeal to determine whether there is a potential for alternative dispute resolution. The Boards may, on their own initiative or at the request of any of the parties to the appeal, schedule a pre-hearing conference. A settlement conference or mediation may be initiated on application by any one or more parties, with the consent of all parties. In addition, appeals under the Forest Act may be held in abeyance for 30 days to allow parties to attempt resolution on their own.

A pre-hearing conference provides the parties with an opportunity to clarify the hearing procedures, narrow the issues to be dealt with at the hearing, and discuss any preliminary concerns. The pre-hearing conference is intended to facilitate a just, expeditious and inexpensive disposition of the matter. An appeal may be resolved at the pre-hearing conference.

Settlement discussions are confidential and without prejudice to the parties in a subsequent hearing.

In 2005, 132 cases went through a dispute resolution process, and 37 were settled.



* The Board's authority to issue a stay varies from one Statute to the next.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to

utilization, and the adequacy of dispute resolution processes. The EAB/FAC response indicates that:

1. The EAB/FAC evaluates the effectiveness of its dispute resolution processes on the basis of settlement rate, time savings and cost effectiveness.
2. The EAB/FAC believes that its clients are generally 'satisfied' with the EAB/FAC dispute resolution processes.
3. The EAB/FAC describes its dispute resolution processes as 'adequate', listing limited demand and incompatibility with statutory mandates as barriers to increased utilization. Regarding the latter, the EAB/FAC notes that: "Appeals to our tribunals are against government decisions made pursuant to various enactments. Many decisions were made in the public interest to prevent damage to the environment and/or the public (for example, contaminated site orders) and are not generally amenable to mediation/negotiated settlements (although can be subject to pre-hearing conferences to narrow issues and streamline process)."

Farm Industry Review Board

Mandate:

The Farm Industry Review Board (“FIRB”) is a statutory appeal body with additional responsibilities for the general supervision of marketing boards and commissions (“commodity boards”) – operating in the agriculture and aquaculture sectors. The mandate of FIRB is set out in the:

- *Natural Products Marketing (BC) Act* (the “NPMA”)
- *Agricultural Produce Grading Act* (the “APGA”), and
- *Farm Practices Protection (Right to Farm) Act* (the “FPPA”).

Complaints Role: The FIRB hears complaints from persons aggrieved by odour, noise, dust or other disturbances arising from farm operations.

Appellate Role: The FIRB hears appeals from any person who is aggrieved by or dissatisfied by an order, decision or determination of a commodity board in British Columbia.

FIRB’s regulated marketing decisions may be appealed only to the Supreme Court of British Columbia, and only on a question of law.

Enabling Legislation:

Natural Products Marketing (BC) Act: Sections 1 to 10, 27 to 30, 45, 46, 48, 57, 58 and 61 of the *Administrative Tribunals Act* apply to the Provincial board. The *Administrative Tribunals Act* (including s. 28) does not apply to the FIRB in its role of resolving complaints under the Farm Practices Protection (Right to Farm) Act.

Case Management:

Where possible, FIRB promotes dispute resolution without the need for formal panel hearings. If dispute resolution is not used or is unsuccessful, a hearing is convened.

The chair of the tribunal may appoint a member or staff of the tribunal or other person to conduct a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute (Section 28, Administrative Tribunal Act).

Dispute Resolution:

The FIRB uses early screening, settlement meetings, pre-hearing conferences and mediation to facilitate the settlement of issues in dispute without an adjudicative hearing. In addition, a case may be transferred from an appellate to a supervisory function, which allows for a less structured approach, including the use of mediation or other dispute resolution processes.

The FIRB screens all cases for settlement opportunities. In addition, a dispute resolution process may be initiated on application by any one or more parties, with the consent of all parties.

Settlement discussions are confidential and without prejudice to the parties in a subsequent hearing.

In 2005, 10 cases went through a dispute resolution process and 7 were settled.

The FIRB Annual Report summarizes the utilization and success rates of the farm practices complaints administration dispute resolution processes in fiscal year 2004/05:

1. Forty-two formal complaints have been received in the BC Farm Industry Review Board's (the "FIRB") first nine years of farm practices operation. The majority of complaints are filed on behalf of more than one person, with over 500 different neighbours represented in the complaints filed to date. These numbers can be attributed to increasing urban encroachment into farming areas; however, the changing nature of farming is also a factor. The increased size of farms, new types of farming (such as large-scale greenhouses and fish farms) and the diversification of farm operations to include on-farm processing and direct marketing can have a greater and broader impact on their neighbourhoods.
2. Five formal complaints were filed in 04/05. With carryovers, a total of 16 complaints were administered. One was resolved by settlement, 8 were heard, 5 are scheduled to be heard, 1 is in the initial stages and 1 is in the settlement process.
3. The settlement process continues to be the most effective method of resolving these disputes between neighbours. However, the increasing sensitivity, volatility and complexity of these interest-based disputes, along with their potential broader impact on both the farming and non-farming communities, raise issues which are sometimes best heard and decided by a FIRB hearing panel.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The FIRB response indicates that:

1. The FIRB evaluates the effectiveness of its dispute resolution processes on the basis of settlement rate, time savings and cost effectiveness.
2. The FIRB believes that its clients are generally 'satisfied' with the FIRB dispute resolution processes.
3. The FIRB describes its dispute resolution processes as 'adequate', listing budget and resource limitations as barriers to increased utilization.
4. The FIRB advises that it would definitely increase its utilization of dispute resolution processes if the barriers noted in item 3 were removed.

Statistics - Regulated Marketing Appeal Administration

Fiscal Year 2004/05

- The BC Farm Industry Review Board (FIRB) received 17 appeals in FY 04/05 (to January 14, 2005). With carryovers, a total of 38 appeals were administered as follows: 8 are scheduled for hearing, 11 have been heard, 1 has been decided by the FIRB, 6 have decisions pending, 5 were withdrawn outright and 14 have been adjourned.
- Comparative studies for the past three years are attached. The total of 17 appeals filed FY to date is about average for appeals filed each year over the last decade. The significant factor with appeals filed the last few FY is the number of appeals from the Chicken Board: 15 out of 20 in FY 02/03, 12 out of 18 in FY 03/04, and 7 out of 17 in FY 04/05. The appeals represent a cross-section of stakeholders (growers and processors) and issues (production penalties, specialty/niche marketing and allocation) that generally relate to the degree of regulation necessary for the industry. The Chicken Board has consulted with industry and has prepared new Orders to address many of the outstanding concerns. Many appeals related to specialty production issues in the supply-managed sector are currently adjourned pending the outcome of Ministerial and FIRB supervisory review processes that will bring certainty and finality to these issues.

Summary of Appeals Administered by Fiscal Year

Appeals	Fiscal Yr 2002/03	Fiscal Yr 2003/04	Fiscal Yr 2004/05
Carried over from previous year	34	28	21
New appeals filed	20	23	17
Total administered	54	51	38
Initial stages	17	2	0
Facilitated/Mediated	13	7	0
Withdrawn	4	10	5
Heard	20	15	11
Transferred to supervisory role	0	0	0
Scheduled for hearing	0	2	8
Adjourned	0	15	14
Total administered	54	51	38
Appeals disposed of	26	30	16
Active Appeals carried over	28	21	22

Note:

1. "Adjourned" normally means the appeal has been adjourned for further industry discussion/review which may include FIRB-sponsored facilitation/mediation.

Financial Services Tribunal

Mandate:

The Financial Services Tribunal (“FST”) hears appeals from individuals and institutions who want to contest enforcement decisions made by the Insurance Council of British Columbia, Real Estate Council of British Columbia, Superintendent of Real Estate, Superintendent of Pensions, Registrar of Mortgage Brokers and Superintendent of Financial Institutions. It provides an avenue of appeal for those who believe that they have been wrongly limited or denied the ability to work in one of the regulated occupations to which an appeal lies to the FST.

Enabling Legislation: *Financial Institutions Act* section 242.1

Case Management:

Appeals to the FST are appeals on the record, and must be based on written submissions unless otherwise permitted (section 242.2 (5) of the Act).

The FST will normally make its decision based purely on written material. In order to evaluate the relevance of new evidence, the tribunal member hearing the appeal may require that parties participate in any proceeding that might assist in clarifying or narrowing the facts or issues, or that may otherwise facilitate the appeal process.

The FST deals with only 15 - 20 cases per year.

Dispute Resolution: The FST does not use dispute resolution processes, noting that “given its legislative mandate, it is unlikely that many cases could be settled”. Section 28 of the Administrative Tribunal Act does not apply to the FST.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals’ perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The FIRB response indicates that:

1. Limited demand, resource limitations and incompatibility with statutory mandate are barriers to the utilization of dispute resolution processes in FST case management.
2. Utilization of dispute resolution processes would be ‘unlikely’ even if the barriers noted in item 1 were removed.

Forest Practices Board

Mandate:

The Forest Practices Board (FPB) is an independent public watchdog that reports to the public about compliance with the *Forest and Range Practices Act (FRPA)* and the achievement of its intent. The board's main roles under FRPA are:

- Auditing forest practices of government and licence holders on public lands.
- Auditing government enforcement of FRPA.
- Investigating public complaints.
- Undertaking special investigations of forestry issues.
- Participating in administrative appeals.
- Providing reports on board activities, findings and recommendations.

Enabling Legislation: *Forest and Range Practices Act, Part 8.*

Case Management:

The FPB will investigate and promote resolution of complaints at any time. This reflects the Board's problem-solving objective. The analyst will usually try to find or suggest a resolution or solution to the problem. If a complaint might be resolved with the help of a mediator or some other dispute resolution process, the analyst may assist in providing such help.

Resolution of the problem is the primary goal. Investigation and reporting is a less desirable solution.

While agreement among participants is ideal, an agreement may not, of itself, end an investigation. The Board decides whether or not to accept an agreement as resolution of the complaint. If the issues that arose in the complaint are of concern to the general public, the FPB could continue to investigate until a comprehensive report could be made.

If there is no general interest in the matters, the Board will stop the investigation under s. 123(2) of FRPA.

Dispute Resolution:

The FPB screens all cases for settlement opportunities and parties may be granted an opportunity to make representations on draft reports.

When the Chair determines that an audited or investigated party is potentially negatively affected by the Board's findings, the party is given an opportunity to make representations on its behalf. These are then reviewed, and where appropriate incorporated by Board staff and panels in preparing a final report.

All documentation prepared by and for the FPB is public, while the proceedings during preparation of report are confidential, particularly until audited or investigated parties have had an opportunity to see the draft material.

The FPB does not present itself as a dispute resolution body nor does it attempt to conduct formal mediation procedures. However, a dispute resolution process (i.e., the opportunity to make representations on a draft report) may be initiated at the discretion of the Chair. Individual investigators or auditors may initiate a problem solving process if it appears to be useful in the circumstances.

Attempts at resolution of issues are primarily informal and situational as a discretionary approach used by staff to simplify proceedings that may arise in an audit or investigation. The main reason for this is to avoid becoming a party in a process that requires the Board to publish an objective and independent account.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The FPB response indicates that:

1. The FPB evaluates the effectiveness of its dispute resolution processes (i.e., the opportunity to make representations) on the basis of settlement rate, time savings and cost effectiveness.
2. The FPB believes that its clients are generally 'satisfied' with the FPB dispute resolution process, but not necessarily the result/outcome.
3. The FPB is more concerned about whether or not clients believe the process of audit or investigation is accurate, timely, objective and fair.
4. The FPB describes its dispute resolution processes as 'adequate', noting that dispute resolution is a minor component of its work.
5. The FPB lists 'no legislative authority', together with budget and resource limitations as barriers to increased utilization of dispute resolution processes.
6. The FPB advises that it would 'possibly' increase its utilization of dispute resolution processes if the barriers noted in point 5 were removed.
7. If the FPB were to go further with dispute resolution as a specific function, it would require training of personnel and the necessary resources. The main issue would be the role shift into a participating rather adjudicating function that would not really be consistent with being an independent auditor or forest practices.

Hospital Appeal Board

Mandate:

The Hospital Appeal Board (HAB) hears appeals filed by medical or dental practitioners regarding:

- a decision of a hospital's board of management that modifies, refuses, suspends, revokes or fails to renew a permit to practise medicine or dentistry in a hospital; or
- the failure or refusal of a hospital's board of management to consider and decide on an application for a permit.

Enabling Legislation:

Hospital Act, section 46. Sections 1 to 20, 25 to 35, 37 to 39, 42, 44, 47 to 56, 57, 58, 60 (a), (b) and (d) to (f) and 61 of the *Administrative Tribunals Act* apply to the Hospital Appeal Board.

Case Management:

The board meets to deal with appeals as they arise (see section 46, *Hospital Act* for general procedure).

The chair of the HAB may appoint a member or staff of the tribunal or other person to conduct a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute (Section 28, *Administrative Tribunal Act*).

The HAB may affirm, vary, reverse or substitute its own decision for that of a board of management. The decision of the Hospital Appeal Board is final and binding.

Dispute Resolution:

The HAB uses early pre-hearing conferences and settlement meetings to facilitate the settlement of issues in dispute without an adjudicative hearing.

The HAB screens all cases for settlement opportunities. In addition, a dispute resolution process may be initiated with the consent of all parties.

Settlement discussions are confidential and without prejudice to the parties in a subsequent hearing. Notes or records kept by a person appointed by the HAB to conduct a 'dispute resolution process' in relation to a proceeding are inadmissible in HAB proceedings (s. 46.1(5), *Hospital Act*).

The HAB opened 2 case files in 2005. Both went through a dispute resolution process and one was settled.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study

sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The HAB response indicates that:

1. The HAB does not evaluate its dispute resolution processes.
2. The HAB doesn't know the level of 'client satisfaction' with its dispute resolution processes.
3. The HAB describes its dispute resolution processes as 'adequate'.
4. The HAB lists 'limited demand' and 'low case volume' as barriers to increased utilization of dispute resolution processes.
5. The HAB advises that it is 'unlikely' that it would increase its utilization of dispute resolution processes if the barriers noted in item 4 were removed, noting that it uses a dispute resolution process where appropriate.

Human Rights Tribunal

Mandate:

The B.C. Human Rights Tribunal is an independent, quasi-judicial body created by the *B.C. Human Rights Code*. The Tribunal is responsible for accepting, screening, mediating and adjudicating human rights complaints that arise in British Columbia and are covered by the *Human Rights Code*.

Enabling Legislation: *Human Rights Code*, section 31. Sections 1, 4 to 10, 17, 29, 30, 34 (3) and (4), 45, 46, 48 to 50, 55 to 57, 59 and 61 of the *Administrative Tribunals Act* apply to the tribunal.

Case Management:

The HRT offers the parties to a complaint the opportunity to try to resolve the complaint through a dispute resolution process. If the parties don't resolve the complaint, the tribunal holds a hearing.

Dispute Resolution Process:

As part of its pre-hearing process, the HRT offers parties to a complaint the opportunity to attend a settlement meeting. A settlement meeting is only scheduled where both the complainant and respondent agree to attend.

In many human rights cases, the parties resolve the complaint through settlement discussions without the need for a hearing.

In a settlement meeting, the parties to a complaint meet with a neutral person whose role is to assist the parties to settle the complaint. If the settlement process is not successful, there will be a hearing before a member of the tribunal.

The procedure at a settlement meeting is flexible, and the parties can agree to the procedure that best suits their needs. Common procedures that might be used at a settlement meeting include:

- **Mediation**, where the parties meet with a mediator to discuss their interests and goals and try to resolve all or part of the complaint
- **Early evaluation**, where the parties meet with a neutral person who tells each party the strengths and weaknesses of their case to help the parties decide how best to resolve the complaint
- **Structured negotiations**, where the parties meet at the tribunal, and a neutral person gives them some assistance to negotiate their own settlement
- **Final determination of the merits** of all or part of the complaint by a tribunal member mediating the complaint, if settlement is not achieved and if the parties consent

In addition, the tribunal may employ a combination of mediation and adjudication -- preliminary determination of a legal issue (or some legal issues) and then mediation of the balance of a complaint.

The settlement meeting may be conducted by a member of the tribunal, or by another neutral person. If a member conducts a settlement meeting, that member will not hear or decide the complaint if it is not settled, unless the complainant and respondent both consent. The meeting is private. Members of the public are not allowed. No one else may participate in the settlement meeting unless the parties consent.

The discussions at the settlement meeting are confidential. The information exchanged at the settlement meeting cannot be used as evidence at the hearing unless the party who gave the information consents.

If a tribunal member conducted the settlement meeting, that member will not conduct the hearing unless all the parties consent.

Survey of Tribunal Dispute Resolution Capacity:

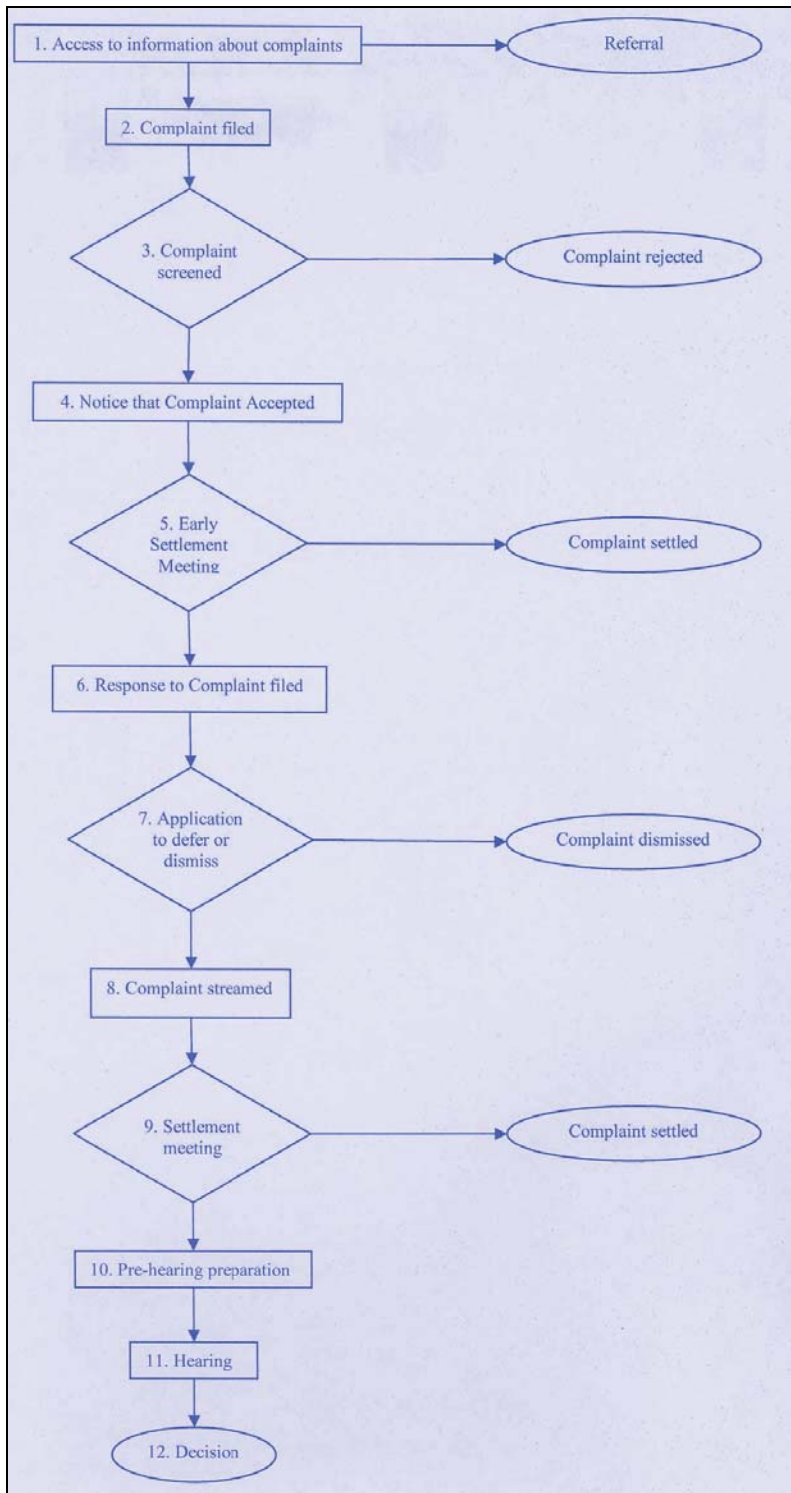
In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The HRT response indicates that:

1. The HRT evaluates the effectiveness of its dispute resolution processes on the basis of settlement rate, time savings and cost effectiveness, noting that UBC conducted an in-depth review of the HRT mediation services in fiscal year 2004/05.
2. The HRT believes that its clients are generally 'very satisfied' with HRT dispute resolution processes.
3. The HRT describes its dispute resolution processes as 'more than adequate', noting that without its high settlement rate, budget constraints would likely prevent the timely and efficient processing of complaints.

The HRT has considered making dispute resolution mandatory but decided against it, given concerns about power imbalances between the parties.

Reference: (see following page)

HRT Decision Process



Labour Relations Board - Mediation Services

Mandate:

The Labour Relations Code (the “Code”) establishes the Labour Relations Board (the “Board”). The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents.

The Board must exercise the powers and perform the duties in a manner that ... encourages the use of mediation as a dispute resolution mechanism (Code: sec 2(f)).

Enabling Legislation: Labour Relations Code, Part 7, Division 1 - Mediation; Sections 1 to 10, 43, 46, 47 (1) (c), 48, 49, 56, 57, 58 (1) and (2) and 61 of the Administrative Tribunals Act apply to the board. Section 28 does not apply.

Case Management: see Labour Relations Code, Part 7, Division 1 - Mediation

Dispute Resolution:

The Mediation Services Division of the LRB has a range of conflict prevention and resolution programs, including:

- Collective Bargaining Mediation
- Essential Services Mediation
- Grievance Mediation
- Joint Consultation Committees
- Relationship Enhancement Program

These programs include early screening, settlement meetings, pre-hearing conferences and formal mediation. The LRB screens all cases for settlement opportunities. In addition, a dispute resolution process may be initiated on application by any one or more parties or by a Chair/Member, with the consent of all parties.

Settlement discussions are confidential and without prejudice to the parties in a subsequent hearing. However, the parties can agree to have discussions used in adjudication; and/or have the same Vice-Chair adjudicate the matter (if a Vice-Chair was conducting settlement discussions).

In 2004, 447 cases went through a dispute resolution process and 287 of these cases were settled.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The LRB response indicates that:

1. The LRB evaluates the effectiveness of its dispute resolution processes on the basis of settlement rate, time savings and cost effectiveness.
2. The LRB believes that its clients are generally 'very satisfied' with the LRB dispute resolution processes.
3. The LRB describes its dispute resolution processes as 'more than adequate'.

Mediation and Arbitration Board

Mandate:

The Mediation and Arbitration Board (MAB) is an independent, quasi-judicial body resolving conflicts between land owners (holders of surface rights) and companies or individuals (holders of subsurface rights) seeking access to land to explore for, and develop, subsurface resources including oil and natural gas, minerals, coal and geothermal resources.

Enabling Legislation: The Board is created under section 13 of the *Petroleum and Natural Gas Act* and has authority under the *Geothermal Resources Act*, the *Mineral Tenure Act*, the *Mining Right of Way Act*, and the *Coal Act*. 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.

Case Management:

If a company holds the rights to petroleum or natural gas resources, and needs to enter private land to access those resources, they will generally employ a land agent to notify the landowner and provide the owner with details of the company's intentions as well as the compensation that the company is prepared to offer for use of the land. If an agreement is reached, the parties sign a standard surface lease form and *Land Title Act* documents, allowing the company to register the lease.

However, the landowner may refuse any offer of compensation, or disagree with the proposed well-site location or access route. Either party may apply to the Board for assistance in resolving the dispute.

Dispute Resolution:

Mediation Hearing

At a mediation hearing, the Board Chair or an assigned Board Member hears representations by the company and the landowner. The mediator may issue an order permitting entry onto the land, settling the amount of compensation and other issues. When the compensation has been paid, the company may enter and use the land according to the *Petroleum and Natural Gas Act* and the *Mineral Tenure Act*.

Unresolved issues may continue to be negotiated by both parties. Either party may request an arbitration hearing – the final and most formal step in the process.

Arbitration Hearing

An arbitration panel, consisting of one or more board members, hears the case, which may involve witnesses and representation by legal counsel. After reviewing the record and the information presented, the arbitrator will issue a board order awarding compensation according to the provincial legislation. Such an order is binding on both parties.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The MAB did not reply to the AJO/DRO questionnaire.

Reference: Steps in the Mediation and Arbitration Process (see <http://www.em.gov.bc.ca/dl/Mining/Exploringthefuture/MediationandArbitration.pdf>)

Mental Health Review Board

Mandate:

The Mental Health Review Board (MHRB) determines whether or not a psychiatric patient should remain involuntarily in the custody of the mental health facility or hospital.

Enabling Legislation: Mental Health Act , section 25.

Case Management:

Mental Health Review Panels are convened at the request of an involuntarily admitted patient or someone on his/her behalf.

Review panels are made up of an appointee of the health facility to which the patient whose case is under review is admitted; a person appointed by the patient; and one member, designated as chair, selected from a pool appointed by the Minister of Health.

The member appointed by the patient's health care facility must be a physician licensed to practice medicine in British Columbia; the member appointed by the patient may not be a member of the patient's family.

Review panels hear evidence from the facility and from the patient.

“Mental Health Review Panels adjudicate disputes between detained psychiatric patients and the physicians who are detaining and treating them involuntarily under the Mental Health Act. For those detained patients who decide to apply for a hearing, we must deploy three-member review panels (legal, medical and community members) to every part of the province within 14 and 28-day statutory time limits. A review panel decides promptly after a hearing whether the patient should continue to be detained, and has no other jurisdiction (for example, it cannot make conditional discharge orders). The Panels typically do no advance file reviews, evidence accumulates in the medical record right up to the minute the hearing starts, and most oral hearings are concluded within 2 to 3 hours.

Many cases settle before hearing (about two thirds) with either the patient withdrawing their application (historically about half) or the psychiatrist either releasing the patient or changing their status to voluntary. I can't see how we could intervene early and effectively with ADR techniques such as pre-hearing conferences without expending as much effort as we do now for the actual hearings, if not more to meet even shorter time limits, and I don't know how welcome such an effort would be (facilities already feel pressed accommodating case presentations at hearings on top of their treatment caseloads; and I expect the effect of ADR efforts on the therapeutic alliance between doctor and patient would be a sensitive matter). I don't know how we could ascertain whether a useful ADR program could be developed without very labour-intensive efforts, and even then, I'm not sure what it would look like or how it could be accommodated in the larger mental health system without fundamental changes in the way we have always operated so far.”

Dispute Resolution:

The MHRB does not use dispute resolution processes.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The MHRB response indicates that:

1. The MHRB lists the following barriers to utilization of dispute resolution processes: limited demand, procedural barriers, no legislative authority, statutory times constraints, budget limitations, resource limitations and incompatibility with statutory mandate.
2. The MHRB advises that it would 'possibly' utilize dispute resolution processes if the barriers noted in item 1 were removed.

Passenger Transportation Board

Mandate:

The Passenger Transportation Board (PTB) is a licensing board that makes decisions on applications for special authorizations to operate passenger directed vehicles and inter-city buses in British Columbia. The PTB also makes decisions on appeals of administrative penalties (including fines and licence suspensions) that have been imposed on an operator by the Registrar, Passenger Transportation.

Enabling Legislation:

Passenger Transportation Act, Part 3. The definitions of “appointing authority”, “member”, “privative clause”, “tribunal” and “tribunal’s enabling Act” in section 1 of the Administrative Tribunals Act and sections 2 to 10, 26, 30, 31, 41, 42, 44, 57, 58 and 61 of that Act apply to the board. Section 28 does not apply.

Case Management:

The Registrar of Passenger Transportation accepts applications to operate commercial passenger vehicles. Applications requiring special authorization are forwarded to the PTB for a decision, and if approved by the Board, a licence may be issued by the Registrar. The Registrar is also responsible for enforcement and compliance for the Passenger Transportation Act, including complaints.

Certain sanctions imposed by the Registrar may be appealed to the PTB within 30 days of the licence holder receiving notice of the sanction being imposed by the Registrar. In any case where a sanction imposed by the Registrar is subject to appeal to the Board, the Registrar is obligated to advise the person of the appeal option.

Dispute Resolution:

The PTB uses pre-hearing conferences to narrow the scope of issues before going to hearing (i.e., to establish what a submitter and applicant are not in disagreement about).

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals’ perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The PTB response indicates that:

1. The PTB does not evaluate its dispute resolution processes (i.e., pre-hearing conferences).
2. The PTB believes that its clients are generally ‘satisfied’ with its dispute resolution processes.
3. The PTB describes its dispute resolution processes as ‘adequate’.
4. The PTB lists ‘incompatibility with statutory mandate’ as a barrier to increased utilization of dispute resolution processes.

5. The PTB advises that it is 'unlikely' that it would increase its utilization of dispute resolution processes if the barrier noted in item 4 was removed, noting that its function is licensing.

Property Assessment Appeal Board

Mandate:

The Property Assessment Appeal Board (PAAB) is an independent tribunal that hears appeals from decisions of Property Assessment Review Panels determining whether:

- a property is assessed at actual (market) value;
- a property is properly classified; or
- an exemption from property taxation applies.

The objectives of the PAAB are to:

- resolve appeals justly and consistently, in accordance with the principles of procedural fairness and natural justice.
- complete appeals as quickly as possible, at minimum cost to all parties.

Enabling Legislation: The Board is created under section 43 of the *Assessment Act* and has authority under the *Greater Vancouver Transportation Authority Act*. Sections 1 to 11, 13 to 16, 17 (2), 18 to 20, 28, 29, 31 (1) (a), (b) and (e), (2) and (3), 32, 33, 34 (3) and (4), 35, 37 to 40, 44, 48, 49, 50 (2) to (4), 51, 53 to 56, 60 (a) and (b) and 61 of the *Administrative Tribunals Act* apply to the Board.

Case Management:

The PAAB uses early screening, settlement meetings, pre-hearing conferences, mediation and non-binding case evaluation to facilitate the settlement of issues in dispute without an adjudicative hearing.

If the appeal is not resolved through appeal management, the Board may hold hearings by telephone conference, by written submission, or in-person.

Dispute Resolution:

The PAAB screens all cases for settlement opportunities. In addition, a dispute resolution process may be initiated on application by any one or more parties or at the discretion of the Chair/Member.

The Board may require the parties to take part in an Appeal Management Conference, usually conducted by telephone. The purpose of an Appeal Management Conference is to discuss the issues, likely evidence and whether the appeal can be resolved without a hearing. Decisions about how the appeal will proceed are generally made during the teleconference. The Board may order the parties to produce information to each other and to the Board, and may make any other orders to help resolve the appeal.

Settlement Conferences are sometimes arranged to attempt to resolve the appeal issues. This approach is usually only practical and cost-effective for more complicated appeals or those which would require considerable hearing time. Settlement Conferences are confidential and without prejudice to the positions the parties may take in a hearing.

In 2005, 1417 appeals were resolved without a hearing either directly as a result of the Board's dispute resolution processes or by the parties without the assistance of the Board. This represents 83.5% of total appeals completed in 2005 (1695).

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The PAAB response indicates that:

1. The PAAB evaluates its dispute resolution processes on the basis of settlement rate, time savings and cost effectiveness.
2. The PAAB believes that its clients are generally 'very satisfied' with its dispute resolution processes.
3. The PAAB describes its dispute resolution processes as 'adequate'.
4. The PAAB lists 'time constraints', 'budget limitations' and 'skepticism and reluctance on the part of clients' as barriers to increased utilization of dispute resolution processes.
5. The PAAB advises that it is 'possible' but 'unlikely' that it would increase its utilization of dispute resolution processes if the barriers noted in item 4 was removed.

Safety Standards Appeal Board

Mandate:

The Safety Standards Appeal Board (SSAB) hears appeals from decisions of safety officers and safety managers to determine if the decisions were fairly made in accordance with the provisions of the *Safety Standards Act* and regulations, consistent with the maintenance and enhancement of public safety.

Enabling Legislation:

Safety Standards Act, Part 8. Sections 1 to 22, 24, 26 to 30, 31 (1) (a) to (e), (2) and (3), 32, 33, 34 (3) and (4), 35 to 42, 44, 47 to 58, 60 and 61 of the *Administrative Tribunals Act* apply to the appeal board.

Case Management:

The SSAB uses early screening, settlement meetings, pre-hearing conferences, mediation and non-binding case evaluation to facilitate the settlement of issues in dispute without an adjudicative hearing. If the appeal is not resolved, the Board will hold a hearing.

Dispute Resolution:

The SSAB screens all cases for settlement opportunities. In addition, a dispute resolution process may be initiated on application by any one or more parties, with the consent of all parties.

At any time after receiving a notice of appeal, on the written application of a party, or on the board's own initiative, the board may require the parties to attend a settlement conference; or consider participation in a dispute resolution process.

Settlement conferences are conducted by a member appointed by the chair. A member who conducts a settlement conference will not hear the appeal unless all parties consent.

The member has discretion in the manner in which a settlement conference will be conducted and, without limitation, may

- (a) facilitate discussion between the parties towards a settlement of the issues;
- (b) meet with each party individually;
- (c) provide non-binding opinions on any issue under appeal;
- (d) provide an evaluation on the likelihood of success in a hearing on any issue under appeal;
- (e) make any order that may be made at an appeal management conference;
- (f) adjourn the settlement conference;
- (g) refer the appeal or any issue under appeal to the registrar to schedule an appeal management conference or a hearing;
- (h) report the results of the settlement conference including any settlement reached and any interim orders made.

The chair may appoint a member or staff of the board or a mediator from a list of mediators approved by the board to conduct a mediation.

Settlement discussions are confidential and without prejudice to the parties in a subsequent hearing. Where a member conducts a mediation, the member may make pre-hearing orders in respect of the appeal but must not hear the appeal unless all parties consent.

Six case files were opened in 2005. Two were settled, one was resolved by hearing, and the remainder are in progress.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The SSAB response indicates that:

- 1 The SSAB reviews the effectiveness of its dispute resolution processes but has not yet had enough cases to evaluate according to specific criteria.
- 2 The SSAB believes that its clients are generally 'satisfied' with its dispute resolution processes.
- 3 The SSAB describes its dispute resolution processes as 'adequate'.

Reference: SSAB Rules of Practice and Procedure

Utilities Commission

Mandate:

The British Columbia Utilities Commission is an independent regulatory agency of the BC Government that operates under and administers the *Utilities Commission Act*. The Commission's primary responsibility is the regulation of British Columbia's natural gas and electricity utilities but it also regulates intra-provincial pipelines and universal compulsory automobile insurance.

Enabling Legislation:

Utilities Commission Act . Sections 1 to 3 and 5 to 13, 15, 18 to 21, 28 to 30, 32, 34 (3) and (4), 35 to 42, 44, 48, 49, 54, 56, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the commission. applies.

Case Management:

The Commission is responsible for ensuring that customers receive safe, reliable and non-discriminatory energy services at fair rates from the utilities it regulates, that shareholders of these utilities are afforded a reasonable opportunity to earn a fair return on their invested capital, and that the competitive interests of B.C. businesses are not frustrated. It approves the construction of new facilities planned by utilities and their issuance of securities. The Commission's function is quasi-judicial and it has the power to make legally binding rulings. Decisions and Orders of the Commission may be appealed to the Court of Appeal on questions of law or jurisdiction.

The Commission also reviews energy-related matters referred to it by Cabinet. These inquiries usually involve public hearings, followed by a report and recommendations to Cabinet. In addition, under Part 7 of the *Pipeline Act*, the Commission establishes tolls and conditions of service for intraprovincial oil pipelines. The Commission also has responsibilities under the UCA for electricity transmission facilities and energy supply contracts, matters that are likely to become more active as the reorganization of the energy industry proceeds.

The Commission considers major applications through public hearings. Such applications include revenue requirements, rate design, certificates of public convenience and necessity (for significant new facilities or additions by utilities), and major energy projects or reviews assigned by the Lieutenant Governor in Council. Hearings may also be initiated by the Commission in response to a complaint by a customer or an affected third party.

The Commission receives complaints from utility customers who are unable to resolve disputes with their respective utilities without assistance. The Commission is available to assist the public in the resolution of complaints with utilities in the following areas:

- Utility Practices / Procedures
- Customer Billings

- Service Disconnections
- Gas Mains / Powerline Extensions
- Third-Party Billings
- Easement / Right-of-Way Maintenance
- Meter Reading and Estimates

Prior to accepting a complaint, the Commission must be satisfied that the customer has made a serious attempt to settle the dispute with the utility. While many complaints are successfully resolved between the customer and the utility, the Commission is available to assist in the resolution of unresolved disputes.

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the Ombudsman's Office to review the process used.

The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman may recommend reconsideration of a matter rather than order change.

Dispute Resolution:

Alternative Dispute Resolution/Negotiated Settlement Process

Since the inception of the Alternative Dispute Resolution process in 1994, many utility applications have been resolved using this alternative method of reviewing utility filings.

This process has led to a significant decrease in the number of oral public hearing days and related costs. Guidelines outlining the Negotiated Settlement Process were issued by the Commission in January 1996 and updated in October 2000.

The Commission continues to explore different methods of regulation that offer alternatives, or are complementary to its basic hearing structure. While not all applications made to the Commission are suited to the Alternative Dispute Resolution/Negotiated Settlement Process, a pre-hearing negotiation may be used to reach agreement on issues that traditionally would be examined at a public hearing. As a result, the settlement of certain issues can significantly reduce hearing time and costs.

See: Negotiated Settlement Process

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The BCUC response indicates that:

1. The BCUC evaluates its dispute resolution processes on the basis of time savings, cost effectiveness and client satisfaction. The effectiveness of each and every

Negotiated Settlement Process (NSP) is reviewed by Commission or the panel assigned to consider the application before a decision is rendered to ensure, among other things, that the NSP was conducted appropriately and that the proposed resolution is in the public interest.

2. The BCUC believes that its clients are generally 'satisfied' with its dispute resolution processes.
3. The BCUC describes its dispute resolution processes as 'more than adequate'.

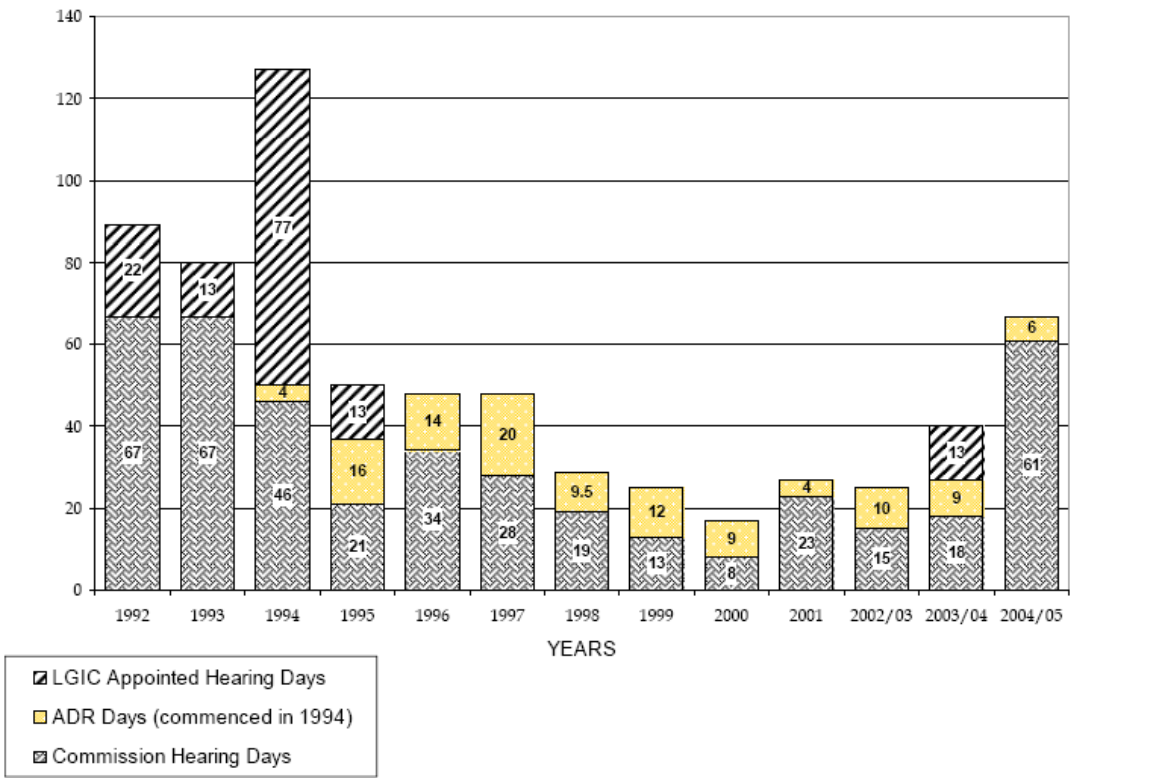
Reference:

Statistics: Hearing and Alternative Dispute Resolution Days (Fiscal 2004/05)

The Negotiated Settlement Process is part of the Commission's efforts to improve the quality and efficiency of regulation.

Use of the Negotiated Settlement Process, which is also referred to as Alternative Dispute Resolution, requires considerable work before, during and after the negotiations. Revised "Negotiated Settlement Process: Policy, Procedures and Guidelines" were issued on January 23, 2001 (Letter No. L-3-01). Alternative Dispute Resolution, the use of formulas for setting ROEs, and multi-year performance based settlements have all contributed to the declining trend in the number of hearing days.

Matters referred to the Commission by the Lieutenant Governor in Council, such as the Kemano Completion Project and the Heritage Contract Inquiry, can have a dramatic affect on the number of hearing days; for example, in 1994 the Kemano Completion Project was reviewed over 77 hearing days and the Heritage Inquiry was reviewed over 13 days.



Workers Compensation Appeal Tribunal

Mandate:

The Workers' Compensation Appeal Tribunal (WCAT) is the final level of appeal in the workers' compensation system of British Columbia. It is independent of the Workers' Compensation Board (WCB). The other component of the system is the internal WCB Review Division.

Enabling Legislation:

Workers' Compensation Amendment Act (No 2), 2002; Sections 1, 11, 13 to 15, 28 to 32, 35 (1) to (3), 37, 38, 42, 44, 48, 49, 52, 55 to 58, 60 (a) and (b) and 61 of the Administrative Tribunals Act apply to the appeal tribunal.

Case Management:

The WCB Review Division provides the first level of review for most WCB decisions concerning compensation, vocational rehabilitation, assessments, and occupational safety and health. For some types of decisions, the Review Division decision is final.

WCAT hears appeals from many types of Review Division decisions. It also hears appeals directly from decisions of WCB officers concerning discriminatory action complaints and decisions of WCB officers where a party has specifically applied for reopening of a claim.

The chair of the WCAT may establish any rules, forms, practices and procedures required for the efficient and cost effective conduct of appeals to the appeal tribunal, including employing voluntary alternative dispute resolution (ADR) processes [s. 234(2)(d)(iii)].

Dispute Resolution:

The WCAT uses settlement meetings, pre-hearing conferences and mediation to seek a consensual resolution to a dispute, between or among the parties to an appeal. Representatives from the Board may also be involved in the ADR process where appropriate.

Pre-hearing conferences are used most frequently to settle issues. Mediation is used rarely, generally in the area of discriminatory action appeals (where there are two parties) to settle the amount of an award but only after a WCAT panel has decided entitlement.

The WCAT screens all cases for settlement opportunities. A dispute resolution process may be initiated on application by any one or more parties or by the Chair/Member, with the consent of all parties.

Since December 3, 2004, alternative dispute resolution (ADR) has been limited to discriminatory action appeals under section 240(1) and appeals from classification decisions under section 37(2). It is unlikely that WCAT will utilize ADR to address

compensation entitlement issues (although pre-hearing conferences are sometimes used to settle issues).

If ADR is undertaken but does not result in a consensual resolution, WCAT will proceed to adjudicate the appeal. Unless the parties otherwise agree, evidence or records from an ADR process which does not produce a consensual resolution will be destroyed and will not be placed on file. The appeal will be assigned to a WCAT panel which did not have any involvement in the ADR process in the particular case.

Where a consensual resolution is achieved by the parties, a settlement agreement will be drafted by the parties' representatives, or the mediator may assist in preparing the written agreement after the parties have reached settlement.

The settlement agreement will be reviewed by a WCAT panel, to ensure it is not inconsistent with the WCA. The panel will dispose of the case through a final order, confirming that a consensual settlement was reached which is lawful under the Act.

Survey of Tribunal Dispute Resolution Capacity:

In February 2006, the Administrative Justice (AJO) and Dispute Resolution (DRO) Offices conducted a survey of tribunals in their dispute resolution needs assessment study sample. The survey explored the tribunals' perceptions of client satisfaction, barriers to utilization, and the adequacy of dispute resolution processes. The WCAT response indicates that:

1. The WCAT does not evaluate the effectiveness of its dispute resolution processes.
2. The WCAT believes that its clients are generally 'satisfied' with its dispute resolution processes.
3. The WCAT describes its dispute resolution processes as 'adequate', noting that: "We have not developed alternative dispute resolution processes at WCAT with respect to most appeals. It does not lend itself well to our subject area because we do not typically have inter-party disputes. Further, it is the Workers' Compensation Board that must implement our decisions. For alternative dispute resolution to be successful used to resolve cases, as opposed to just settling issues, the Workers' Compensation Board would need to agree to the process. This type of dispute resolution does not lend itself to questions of statutory entitlement."

Reference:

WCAT Manual of Rules of Practice and Procedure (MRPP)

6.00 ALTERNATIVE DISPUTE RESOLUTION

As of December 3, 2004, ADR at WCAT has been limited to discriminatory action appeals under section 240(1) and appeals from classification decisions under section 37(2). It is unlikely that WCAT will utilize ADR to address compensation entitlement issues.

The chair may establish any rules, forms, practices and procedures required for the efficient and cost effective conduct of appeals to the appeal tribunal, including employing voluntary ADR processes [s. 234(2)(d)(iii)].

A WCAT panel may recommend to the parties to the appeal that an alternate dispute resolution process be used to assist in the resolution of an appeal [s. 246(2)(g)]. The purpose of ADR is to seek a consensual resolution to a dispute, between or among the parties to an appeal. Representatives from the Board may also be involved in the ADR process where appropriate.

ADR is used by WCAT on a limited basis. When ADR will be appropriate will be determined by WCAT based on the particular circumstances of the issue under appeal, and the willingness of the parties of interest to attempt to achieve a consensual resolution. ADR may be requested by a party or recommended by a WCAT panel.

If ADR is undertaken but does not result in a consensual resolution WCAT will proceed to adjudicate the appeal. Unless the parties otherwise agree, evidence or records from an ADR process which does not produce a consensual resolution will be destroyed and will not be placed on file. The appeal will be assigned to a WCAT panel which did not have any involvement in the ADR process in the particular case.

Where a consensual resolution is achieved by the parties, a settlement agreement will be drafted by the parties' representatives, or the mediator may assist in preparing the written agreement after the parties have reached settlement.

The settlement agreement will be reviewed by a WCAT panel, to ensure it is not inconsistent with the WCA. The panel will dispose of the case through a final order, confirming that a consensual settlement was reached which is lawful under the Act. The terms of the settlement will be recorded on the Board file, but need not be contained in the WCAT decision to be published on the internet.

The final consensual settlement and the WCAT decision will both be placed on the Board file. Unless the parties otherwise agree, records concerning the process used to reach the agreement will be destroyed and will not be placed on file.

Where ADR is attempted but is unsuccessful the chair may, where necessary, extend the time for the making of a WCAT decision on the basis of the complexity of the proceedings in the appeal [s. 253(5)(a)].

Appendix 2

Synopsis

Tribunal Dispute Resolution Survey

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
1. Does the tribunal have an overall strategy for managing its cases?	Yes	Yes	Yes	Yes	No ²⁴	Yes	No	Yes	Yes	Yes	?	No	Yes	Yes	Yes	Yes
2. Does the tribunal use <i>DR processes</i> to resolve cases or settle issues?	Yes ²⁵	Yes	Yes ²⁶	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes ²⁷	Yes
3. What <i>DR process(es)</i> does the tribunal use?																
▪ Early screening		✓	✓	✓	✓	✓			✓	✓			✓	✓	✓	
▪ Settlement meetings			✓	✓	✓			✓	✓	✓			✓	✓	✓	✓
▪ Pre-hearing conferences		✓	✓	✓	✓			✓	✓	✓		✓	✓	✓	✓	✓

²⁴ Under development.

²⁵ The sec 13 ALCA DR process has only been used once.

²⁶ Since 2002, the Employment Standards Branch has required mandatory mediation at the front end of its processes. Therefore the demand for ADR at the EST has declined.

²⁷ The BCUC has utilized dispute resolution processes since 1990 and has developed negotiated settlement guidelines, the most recent version of which, "Negotiated Settlement Process - Policy Procedures and Guidelines" dated January 2001, is available on the BCUC website at www.bcuc.com under Guidelines.

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
<ul style="list-style-type: none"> ▪ Mediation 		✓		✓	✓				✓	✓			✓	✓		✓
<ul style="list-style-type: none"> ▪ Non-binding case evaluation 									✓				✓	✓		
<ul style="list-style-type: none"> ▪ Other 	✓ ²⁸			✓ ²⁹	✓ ³⁰	✓ ³¹			✓ ³²							
4. Are settlement discussions during the tribunal's <i>DR process(es)</i> confidential and without prejudice to the parties in a subsequent hearing?	Yes	Yes	Yes	Yes	Yes	33		Yes	Yes	Yes			Yes	Yes	Yes	Yes
5. How is (are) the <i>dispute resolution process(es)</i> initiated?																
<ul style="list-style-type: none"> ▪ Tribunal initiates as part of case management 		✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓		✓

²⁸ Voluntary DR under section 13 ALCA.

²⁹ Hold appeal in abeyance for 30 days to allow all parties to attempt resolution on their own (Forest Act appeals only).

³⁰ Transfer to supervisory role

³¹ Opportunity for representations on draft reports

³² A combination of mediation and adjudication, preliminary determination of a legal issue (or some legal issues) and then the mediation of the balance of the complaint.

³³ All documentation prepared by the Board is public, while the proceedings during preparation of the report are held confidential, particularly until audited or investigated parties have had the opportunity to see the draft material.

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
<ul style="list-style-type: none"> ▪ On application by any one or more parties 		✓	✓	✓	✓					✓			✓	✓	✓	✓
<ul style="list-style-type: none"> ▪ Only with the consent of all parties 	✓	✓	✓		✓			✓	✓					✓		✓
<ul style="list-style-type: none"> ▪ At the discretion of the Chair/Member 			✓			✓				✓			✓		✓	✓
<ul style="list-style-type: none"> ▪ Other 				✓ ³⁴												
6. Does the tribunal evaluate the effectiveness of its <i>DR processes</i> ?	Yes / No ³⁵	No	Yes	Yes	Yes	Yes		No	Yes	Yes		No	No	Yes	Yes	No
7. What criteria does the tribunal use to evaluate the effectiveness of <i>DR processes</i> ?																
<ul style="list-style-type: none"> ▪ Settlement rate 			✓	✓	✓	✓			✓	✓			✓			

³⁴ Mediation and settlement conferences are only with the consent of the parties.

³⁵ No criteria but general in-house discussion and evaluation.

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
<ul style="list-style-type: none"> ▪ Time savings 			✓	✓	✓	✓			✓	✓			✓		✓	
<ul style="list-style-type: none"> ▪ Cost effectiveness 				✓	✓	✓			✓	✓			✓		✓	
<ul style="list-style-type: none"> ▪ Client satisfaction 															✓	
<ul style="list-style-type: none"> ▪ Other 									✓ ³⁶						✓ ³⁷	
8. Generally, how would the tribunal assess 'client satisfaction' with the tribunal's <i>DR processes</i> ?																
<ul style="list-style-type: none"> ▪ Very satisfied 			✓						✓	✓			✓			

³⁶ UBC recently conducted an in-depth review of HRT mediation services consisting of short survey of all participants and an in-depth, in-person or telephone survey with the participant's consent.

³⁷ The effectiveness of each and every NSP is reviewed by Commission or the panel assigned to consider the application before a decision is rendered to ensure, among other things, that the NSP was conducted appropriately and that the proposed resolution is in the public interest.

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
▪ Satisfied		✓		✓	✓	✓						✓		✓	✓	✓
▪ Unsatisfied	✓ ³⁸					✓										
▪ Don't know								✓								
9. How would the tribunal assess its <i>DR processes</i> ?																
▪ More than adequate	✓		✓						✓	✓					✓ ³⁹	
▪ Adequate		✓		✓	✓	✓		✓				✓	✓	✓		✓
▪ Inadequate																

³⁸ Client reluctantly accepted process but not outcome.

³⁹ The BCUC dispute resolution process (NSP) has to date been working quite well and most of the parties who appear before the Commission and are involved in its proceedings are familiar and comfortable with the process.

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
10. What may be preventing the tribunal from utilizing or increasing the utilization of <i>DR processes</i> ?																
▪ Limited demand		✓		✓			✓	✓			✓					✓
▪ Procedural Barriers											✓					✓
▪ No legislative authority						✓					✓					
▪ Statutory time constraints											✓		✓			
▪ Budget limitations					✓	✓					✓		✓			
▪ Resource limitations					✓	✓	✓				✓				✓	

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
<ul style="list-style-type: none"> DR incompatible with mandate 				✓			✓				✓	✓				✓
<ul style="list-style-type: none"> Other 	✓ ⁴⁰							✓ ⁴¹					42			
11. If the barriers identified in question 10 were removed, would the tribunal utilize or increase the use of <i>DR</i> processes?																
<ul style="list-style-type: none"> Definitely 					✓									n/a		✓
<ul style="list-style-type: none"> Possibly 						✓					✓		✓			
<ul style="list-style-type: none"> Unlikely 	✓	✓					✓	✓				✓	✓			

⁴⁰ Little, if any, need (local governments have other options).

⁴¹ Limited volume of cases.

⁴² Client skepticism

TRIBUNAL SURVEY SYNOPSIS

	ALC	CCALB	EST	EAB/ FAC	FIRB	FPB	FST	HAB	HRT	LRB	MHRB	PTB	PAAB	SSAB	BCUC	WCAT
12. What specific tools, resources or other assistance might assist the tribunal in expanding or enhancing the tribunal's <i>DR processes</i> ?	43						44		45				46			
13. In 2005, or the most recent year for which data is available:																
(a) How many case files were opened?		8	213	201	20	30	20	2	n/a	2400	1150	n/a	1868	6	-- 47	5880
(b) How many cases were carried over from previous years?		2	58	40	34	3	4	0		722	50		970	n/a		9882
(c) How many cases went through a dispute resolution process?		8	0	132	10	2	0	2		447	0		all		6	1
(d) How many cases in (c) were settled?	n/a	4	0	37	7	2	0	1		287	0		-- 48	2	6	1

⁴³ List of qualified mediators

⁴⁴ Increased staff, Legislative authority

⁴⁵ HRT has considered mandatory ADR but have decided against it due primarily to power imbalances among parties.

⁴⁶ Video conferencing, On-line conferencing

⁴⁷ BCUC data is not organized or readily available for these purposes though, if necessary and helpful, further data could be compiled.

⁴⁸ In 2005 we conducted 781 AMC's involving 2,548 appeals (some appeals have more than one AMC and some AMC's involve more than one appeal). We conducted 43 Settlement Conferences. In 2005, 1,417 appeals were resolved without a hearing either directly as a result of the Board's dispute resolution processes or by the parties without the assistance of the Board. This represents 83.5% of the total appeals completed in 2005 (1,695). Total completions in 2005 increased 22.5% over 2004.

TRIBUNAL SURVEY SYNOPSIS