

**Proposals for an
Administrative Procedures Act:
A Discussion Paper**

Law Reform Branch
Office of the Attorney General
December, 1991

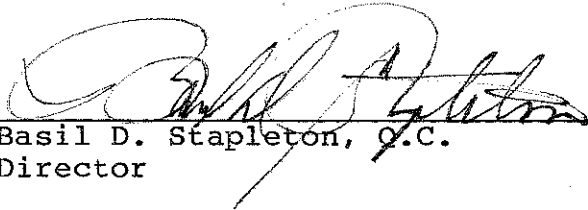
FOREWORD

This discussion paper is the result of research conducted by the Law Reform Branch of the Department of Justice. The study was prompted by research undertaken and legislation enacted in other jurisdictions and by representations received in the Department from various sources including the Administrative Law Subsection of the Canadian Bar Association - New Brunswick Branch, the Office of the Ombudsman and the Legislature's Standing Committee on the Ombudsman.

The proposals set forth in the discussion paper are tentative and do not represent policy of the Department of Justice or the Government. They are offered for consideration and reaction. All representations received will be considered before a final report is prepared for presentation to the Minister.

Those wishing to make representations are invited to do so by March 31, 1992. Communications should be directed to the office of the

Director
Law Reform Branch
Office of the Attorney General
P. O. Box 6000
Fredericton, N.B.
E3B 5H1


Basil D. Stapleton, Q.C.
Director

PROPOSALS FOR AN ADMINISTRATIVE PROCEDURES ACT

A DISCUSSION PAPER

INTRODUCTION

New Brunswick has numerous independent administrative agencies that are not courts but that have statutory authority to make decisions that affect the rights, interests and privileges of individuals. In this paper these independent administrative agencies will be referred to as tribunals. Tribunals have been and continue to be created in response to specific needs, and operate in a wide variety of contexts. However, there is little specific law governing the way in which these tribunals reach their decisions. Although the legislation creating each tribunal usually provides, to some extent, both **procedural safeguards** for individuals affected by the tribunal's decisions and **procedural powers** to enable the tribunal to carry out its decision-making function, the legislation that has evolved is, for the most part, vague and deficient. Ideally, the law governing the decision-making process of administrative tribunals would be clear, functional and reasonably consistent from tribunal to tribunal. Analysis of the existing law suggests that it is none of these things.

The **procedural safeguards** found in existing legislation vary from tribunal to tribunal and are rarely set out in detail. In relation to a number of tribunals, the legislation incorporates the procedural safeguards found in the regulations under the Inquiries Act, or incorporates them "in so far as they are not inconsistent with" the legislation creating the tribunal. The regulations under the Inquiries Act, however, are so lacking in detail that the cross-reference is virtually meaningless. Another legislative practice, though less frequent, is to apply to tribunals the practice and procedure of The Court of Queen's Bench of New Brunswick "as far as applicable". There is so much "practice and procedure" in the Court of Queen's Bench, though, and so little indication of what parts of it might be "applicable", that this approach, too, does little but add uncertainty as to the applicable law.

While it is not unusual to find in existing legislation provisions concerning such matters as notice, representation and evidence, most tribunals are left with a broad discretion for determining the procedures to be followed in their decision-making. In doing so, of course, they must be guided by the common law principles of natural justice and fairness, but unfortunately, while such principles are familiar to lawyers and perhaps to members of tribunals, they are understandably unfamiliar to most individuals who appear before and are affected by the decisions of tribunals. Furthermore,

the mere knowledge of these principles, which are very general in nature, is not of much help in determining how these principles should be put into practice.

The **procedural powers** accorded tribunals are equally poorly defined in existing legislation. Though some Acts confer specific powers, most follow the path of incorporating powers by reference: the powers of the Court of Queen's Bench, or a judge thereof; the powers of a conciliation board under the Industrial Relations Act; and above all, various permutations and combinations of the "powers", "privileges", "immunities", "duties" and "responsibilities" of commissioners under the Inquiries Act (though sometimes only "when applicable"). This approach makes it difficult to know in relation to a particular tribunal exactly what has been incorporated and, therefore, to know what law applies.

In our view, clearly defined procedural safeguards and powers need to be provided. There is no obvious reason for the statutory differences that currently exist, and we suspect that these differences result in reduced efficiency, fairness and comprehensibility in the decision-making process. We suggest that the enactment of an Administrative Procedures Act would provide the necessary means for remedying this situation.

We envisage legislation that would have as its main components the following:

- (1) Provisions establishing a basic framework of procedural safeguards and powers that would apply to all tribunals. The safeguards and powers under consideration are not exceptional; in one form or another they are all found or have been suggested elsewhere. However, we feel they are sufficient for purposes of setting out a general procedural framework within which tribunals would be expected to conduct their proceedings.

- (2) Provisions establishing a means for the development of rules of procedure based upon the legislated safeguards and powers. We envisage rules that would provide for certainty in the decision-making process of individual tribunals as well as for consistency in the conduct of proceedings from tribunal to tribunal, but which would also retain an element of flexibility to deal with the specific circumstances of particular tribunals.

We believe that legislation of this nature would be of significant value to tribunals as well as to individuals appearing before them and affected by their decisions. For tribunals, it would serve as a source of authority and direction. It would accord them powers that are adequate and appropriate for their efficient operation. For individuals, it would establish a legislated procedural framework within which they could expect tribunals to act. The proposed Act, while blending the principles of natural justice and fairness with the requirements of effectiveness and efficiency, could at the same time reduce the uncertainty and eliminate the unnecessary differences that currently exist.

SCOPE OF PROPOSED ACT

Determining the scope of the proposed Act is likely to be one of the most important and difficult tasks that has to be faced. The difficulty will be knowing where to draw the line as one considers the wide range of existing statutory authorities and their various responsibilities.

In our view, the proposed Act should at least apply in relation to tribunals that are expressly empowered or required by their governing legislation to conduct hearings before making a decision. Our research has so far identified thirty existing tribunals that meet that description. These tribunals

are listed in Appendix "A". Appendix "B" lists a further six tribunals that will meet that description upon proclamation of their governing legislation. We view a tribunal as being "expressly" empowered or required to hold a hearing whenever the relevant legislation clearly contemplates that a hearing may be held, whether or not the actual word "hearing" is found there. We view a tribunal as making a "decision" if it has the power to determine the outcome of the matter before it. This differentiates the bodies listed in Appendices "A" and "B" from, for example, advisory bodies.

We suggest that the proposed Act should also apply when a tribunal, although not expressly empowered or required by its governing legislation to conduct a hearing before making a decision, decides in a particular case to do so. We do not wish to impose on any of these tribunals a duty to hold hearings; their governing legislation has not done so, and in some cases they may well be able to reach proper decisions without holding formal hearings. Where, however, the tribunal does decide that a formal hearing should be held, we see no reason to exclude the application of the proposed Act. Our research has so far identified four tribunals that have the power to make "decisions" as contemplated in the preceding paragraph, but which are not expressly empowered or required by their governing legislation to conduct hearings before doing so. These tribunals are listed in Appendix "C".

There are, of course, other bodies in relation to which it may well be argued that the proposed Act should apply. Appendix "D" lists twelve tribunals that make recommendations only. These tribunals fall outside the categories listed above because their recommendations do not "decide" the issue. The "decision" is taken elsewhere. On the other hand, their recommendations are presumably an important part of the overall decision-making process. Should the proposed Act apply to their deliberations?

There is also the question of whether the proposed Act should apply to government officials who conduct hearings in the exercise of statutory decision-making powers. These officials are not "tribunals", so expanding the Act in their direction raises the spectre of imposing on them a quasi-judicial model of decision-making which may be inappropriate to the decisions they make. On the other hand, some of the statutory decisions for which some officials are responsible are virtually indistinguishable from decisions made by the tribunals we have identified, and if a hearing is in fact held as a part of the decision-making process, it is hard to see why the law relating to the hearing should not be the same as it would have been if the decision had been made by a tribunal. At present, therefore, we tend to feel that hearings conducted by government officials as part of a statutory decision-making process should be subject to the same legal

regime as those conducted by tribunals. We believe that the risk of imposing a quasi-judicial style of decision-making in places where it does not belong is limited, because, except where the relevant legislation requires a hearing, we see it as being up to the official in question to determine whether a hearing should be held. In some respects it might be necessary to apply the proposed Act to statutory officials with modifications. We doubt, for example, whether we would want such officials, by deciding to hold a hearing, to be able to assume compulsory powers not provided for in their legislation -- for example, the power to compel the attendance of witnesses. Our chief concern, though, as we consider the possibility of extending the proposed Act beyond "tribunals", with their relatively homogeneous nature, is whether it is realistic to hope to bring other bodies within the Act but still devise safeguards, powers and -- probably hardest of all -- procedural rules, that will be suitable to all of them. The danger is that by trying to bring too much in we may complicate matters and make it harder to achieve goals which, if we restrict ourselves to "tribunals", would be more readily and satisfactorily attained.

SUBSTANCE OF PROPOSED ACT

As mentioned above, we see the substance of the proposed Act as establishing a basic legal framework dealing with

procedural safeguards for the individual and procedural powers for the tribunal. We also believe it should provide a mechanism for the development of more detailed rules of procedure to be followed by tribunals as they deal with the matters before them.

Procedural Safeguards

We suggest, tentatively, that the proposed Act would contain the following procedural safeguards:

- (1) A tribunal should ensure that all interested persons are given reasonable and adequate notice of its proceedings.

The impact of this safeguard will, of course, depend upon the meaning of "reasonable and adequate notice" and "interested persons".

"Reasonable and adequate notice" is, at a minimum in our view, timely notice (which may vary depending on the issues involved) of the date, hour and place of the proceeding. The notice should also identify the legal authority under which the proceeding will be held and contain a brief statement of the purpose of the proceeding.

There may be, perhaps, more information that should be provided by the notice; we would welcome suggestions.

Who is an "interested person"? This is not an easy question to answer. In our view, in addition to the "parties" to the proceeding, there are other "interested persons" who should be given notice. For example, a person whose interests may be materially affected by the tribunal's decision is, in our view, an "interested person". As well, we would consider a person who is not a party to the proceeding but who has invoked the jurisdiction of the tribunal as an "interested person". Are there other "interested persons" to whom notice should be given?

In regard to the means of providing notice, we would suggest that the proposed Act empower tribunals to give notice by public advertisement where, because of the number of persons who might be affected by the decision or for any other reason, it would be impracticable to send a notice to all or any of the affected persons individually. From a practical point of view, would a provision of this nature be beneficial?

- (2) A tribunal should afford "interested persons" -- those to whom notice has been given -- an opportunity to make their views known.

We suggest that those individuals who are entitled to receive notice should have a reasonable opportunity to communicate their views and information to the tribunal. This is not intended to imply that each "interested person" would have equal status before the tribunal: there may be, perhaps, distinctions between the rights of the "parties" and those of other "interested persons". Nonetheless, all "interested persons" should have at least some opportunity to make their views known.

- (3) A tribunal should, as a general rule, conduct its proceedings in public.

Where formal hearings are held, they should be open to the public except where the tribunal's governing legislation provides otherwise or where the tribunal is of the opinion that matters involving public security or intimate financial or personal matters may be disclosed. In such cases, the tribunal should be empowered to exclude the public from the hearing or a portion of the hearing.

- (4) A tribunal should ensure that all information upon which it intends to rely in making its decision is disclosed to the participants in the proceeding.

In our view, this safeguard, by providing access to information that might not otherwise be disclosed, would lead to a more open process and would thereby result in more accurate and acceptable decisions. There may, however, be a need for exceptions, for example, in relation to some kinds of information that enjoy protected status under the Right to Information Act.

- (5) A participant in the proceeding should have the right to be represented by a person of his or her choice.

This safeguard should be made broader than the traditional "right to counsel", so as to embrace any representative of the individual's choice.

- (6) A participant in the proceeding should be accorded the right to adduce evidence.

The right to adduce evidence should include the right to call and examine witnesses, to

present arguments and submissions, to conduct cross-examinations of witnesses and to call rebuttal evidence. Again, however, we would emphasize that this is not intended to imply that all participants would have equal status before the tribunal. In our view, while the "parties" to the proceeding should be full participants as a matter of right, the level of participation by other "interested persons" should be left to the discretion of the tribunal.

- (7) A tribunal should be impartial in carrying out its function.

This safeguard would oblige tribunal members to excuse themselves from a proceeding where bias or a reasonable apprehension of bias could be established. In developing such a safeguard one would have to keep in mind the "built-in bias" that exists in legislation applicable to certain tribunals, particularly labour tribunals, which allows for the appointment of members who are predisposed towards a particular view. While such "built-in bias" is necessary and acceptable, it would still be improper for any tribunal member to

be involved in a proceeding in which such member is personally or financially interested.

Another concern with a statutory requirement of impartiality is that its implementation might result in the tribunal being unable to act, for example, where the withdrawal of a member reduces the tribunal membership below the required quorum or where a one-person tribunal exists. To deal with either situation provision could be made for the appointment of an ad hoc member to replace a member who must withdraw for reasons of bias.

- (8) A tribunal should provide written reasons for its decisions.

We suggest that tribunals be required to provide written reasons in every case. In making this recommendation we are provisionally rejecting some less categorical approaches that might be taken in relation to the giving of reasons: for example, that reasons would only be required upon the request of a participant, or when the decision is in some way adverse to the interests of a participant. In our view, only requiring

tribunals to provide written reasons on request or when an adverse decision is made, would encourage "after the fact" rationalization.

Tribunals should be required to send a copy of their decision to all active participants in the proceeding. Also, the proposed Act should empower tribunals to give notice of their decision by public advertisement where, because of the number of persons who might be affected by the decision, it would be impracticable to send the decision to all of them individually.

(9) A tribunal should keep a record of its proceedings.

We would propose that the record of the proceeding include: (a) any document by which the proceeding was commenced; (b) the notice of the proceeding; (c) any intermediate orders; (d) all documentary evidence filed with the tribunal; (e) the transcript, record or notes of the oral evidence given during the proceeding; and (f) the decision of the tribunal and the reasons therefor.

We have not determined for how long such records should be kept and in that respect we would welcome comment. Presumably the time period should be at least long enough to ensure that the record is available in the event of a possible appeal from or judicial review of the tribunal's decision, but there may well be other factors that should also be taken into account in determining a suitable time period.

We should mention at this point that language rights are not addressed in this paper because they have already been dealt with elsewhere. Provisions were added to the Official Languages of New Brunswick Act in 1990, and proclaimed effective June 1, 1991, by virtue of which a person who is a party to a proceeding before a "court" (which is defined in that Act as including a "judicial, quasi-judicial or administrative tribunal") has the right to be heard by a court that understands, without the need for translation, the official language in which the person intends to proceed. It would seem superfluous in light of those provisions to suggest that this matter be dealt with in the proposed Administrative Procedures Act; however, if there is a feeling that this right should be contained in the proposed Act we would reconsider.

Of course, there may be times when an individual appearing before a tribunal does not understand or speak either of the Province's official languages or is hearing impaired. An individual in those circumstances should be allowed to appear before the tribunal with the assistance of a competent interpreter. We raise this matter not to suggest that it has to be dealt with in the proposed Act but rather to call attention to it and to suggest that an individual in those circumstances who has been denied the ability to appear with the assistance of an interpreter has, in all likelihood, also been denied the right to a fair hearing.

Procedural Powers

In our view, in order to permit tribunals to manage and control their proceedings efficiently and effectively while giving effect to procedural safeguards such as those suggested in this paper, it would be necessary to accord tribunals certain statutory powers. We suggest, tentatively, that these powers include:

- (1) The power, on its own motion or on the application of any participant in the proceeding, to compel, by means of a summons to witness, the attendance of witnesses and the production of any papers, books or documents in order to obtain information that is relevant to the matter in issue.

- (2) The power to administer oaths and affirmations and to require evidence before the tribunal to be given under oath or affirmation.
- (3) The power to hear, accept and act upon any evidence and information whether admissible as evidence in a court of law or not.
- (4) The power to initiate contempt proceedings in The Court of Queen's Bench of New Brunswick or before a judge thereof where a person fails or refuses to attend or to produce any paper, book or document as required by a summons; refuses to be sworn as a witness; refuses to answer any relevant question; or disrupts or otherwise obstructs a proceeding of the tribunal.
- (5) The power to proceed in the absence of a participant who has been given notice of the proceeding but who does not attend.
- (6) The power, on its own motion or on the application of any participant in the proceeding, to adjourn the proceeding.

- (7) The power, on its own motion or on the application of any participant in the proceeding, to review a decision and to rehear or reconsider the matter.

It can be argued that certain of these powers, particularly the powers to issue a summons to witness, to administer oaths and affirmations and to initiate contempt proceedings, over-judicialize the decision-making process of administrative tribunals and confer upon them too many of the powers of a judge. Is there substantial support for this argument? We would, as well, appreciate obtaining some information as to the need for these powers from a practical point of view. How frequently, for example, do tribunals issue a summons to witness? And when a summons to witness is issued, is this done in most cases to bring before the tribunal a genuinely reluctant witness or is it more a means of satisfying a contractual provision between an employee and his or her employer for purposes of ensuring salary continuation? How often do issues of contempt arise, whether during a proceeding or by virtue of non-appearance at a proceeding? Is a contempt-like remedy the appropriate way of dealing with such circumstances, or might other powers be more appropriate?

There are other powers which have been suggested elsewhere that could also be contained in the proposed Act. In relation to these powers we require more information before

making any recommendation. We would be particularly interested in knowing, from a practical point of view, whether it would be useful to have these powers included in the proposed Act.

These powers include:

- (1) The power to consolidate proceedings.
- (2) The power to add participants.
- (3) The power to make interim orders and to provide interim relief.
- (4) The power to dispose of any proceeding of the tribunal by agreement of the parties to the proceeding or by a decision of the tribunal made without a hearing where the parties to the proceeding have waived such hearing. With appropriate safeguards in place for all "interested persons", we see no obstacle in the way of tribunals wishing to practise, in conjunction with this power, dispute resolution mechanisms that have been suggested elsewhere (such as conciliation and mediation services) as an aid to or a part of their decision-making process and, ideally, as an alternative to formal hearings whenever possible.

(5) The power to conduct pre-hearing conferences.

Pre-hearing conferences could be used by tribunals for a multitude of purposes such as defining issues to be addressed at a hearing and disclosing documents and other evidence prior to a hearing. Generally speaking, we see the possibility of pre-hearing conferences being used to consider any matter that might promote a just and expeditious hearing. Pre-hearing conferences could also be used, again in conjunction with the preceding power, to consider the possibility of resolving the matter before the tribunal without holding a formal hearing.

Rules of Procedure

In our view, establishing a legislated framework within which tribunals would be expected to act, while valuable, does not go far enough. In order for an individual to know what to expect and how to present his or her case before a tribunal, specific rules governing the conduct of proceedings before the tribunal are required. Also, in order to achieve the level of consistency from tribunal to tribunal that is desirable (particularly given that professional advisers such as lawyers may represent clients before various tribunals) these rules should be standardized wherever possible.

While various approaches might be adopted in this respect by the proposed Act, essential to them all, in our view, in order to achieve some consistency from tribunal to tribunal is the creation of a coordinating mechanism. As to the precise nature of this coordinating mechanism, we have no concluded view at present. It could function, for example, through an existing office such as that of the Ombudsman, or through an informal body established by the tribunals themselves, or through a specific statutory agency created for such purpose. Other possibilities may also exist; we would be pleased to receive suggestions.

Having created a coordinating mechanism, one approach the proposed Act could then take would be to encourage or perhaps even require individual tribunals to make and periodically review their own rules of procedure, and to do so in consultation with the coordinating body, which would attempt to secure an appropriate degree of consistency in the implementation of the legislated safeguards and powers possibly through developing a model set of rules. While this approach would undoubtedly result in some consistency from tribunal to tribunal, we think that a different approach would be both simpler to implement and more effective in terms of the objectives of the proposed Act.

We would suggest that the coordinating mechanism be given the responsibility, in consultation with tribunals, to prepare and periodically review uniform rules of procedure to be followed by all tribunals. In this way, the common part of all tribunal proceedings could be reduced to a single set of rules. The coordinating mechanism could, as well, be given the responsibility to develop special rules for particular tribunals where true differences demand that such rules be developed. The set of rules we envisage would secure as much uniformity among tribunals as is practicable while allowing for procedural diversity where it is demonstrably necessary.

We recognize that a small number of tribunals already have in place clearly defined and comprehensive rules of procedure most, if not all, of which conform with the legislated safeguards and powers contemplated. It is not our intention that such cases be disturbed. We would therefore propose that, where appropriate, a tribunal could be exempted, either in whole or in part, from the application of the rules developed in accordance with the proposed Act.

REMEDIES

The question of remedies, of how a person challenges a decision of an administrative tribunal, is largely beyond the scope of this paper. At a later date we intend to deal with

it, and we expect that we will examine then both the grounds for judicial review and the role of statutory appeal mechanisms. At present, however, our concern is with the processes leading up to the taking of the tribunal's decision rather than with whatever may happen afterwards.

Nonetheless, a limited comment on remedies is appropriate, in order to indicate how we see the Act and the rules of procedure we are proposing fitting into the existing framework of judicial review. There are two closely related issues to be examined. One is whether the Act and the rules would in any way alter the existing grounds for judicial review. The other deals with the extent to which a breach of the Act or the rules might itself provide a ground for judicial review of the decision of a tribunal.

On the first of these issues, we see our proposals and the existing law as being complementary. The existing law is essentially the duty of procedural fairness. We would not want to diminish that duty; rather, we see our proposals as an attempt at expressing it in an operational form. Our proposals are not, however, an exhaustive statement of the procedural law relating to the decision-making of tribunals. Unexpected circumstances may arise, and we would not want to deny the individual a remedy if the tribunal, though it acts properly in

respect of everything expressly mentioned in the Act and the rules, nonetheless proceeds in a manner that is unfair in the circumstances. In short, the remedy for breach of natural justice would remain. Of course, if we are successful in our aim of establishing by legislation fair administrative procedures, it should only be in unusual cases that the Act and the rules could be properly implemented but natural justice nonetheless violated.

What, then, would happen in cases where the Act or the rules were not properly implemented? What would be the legal consequences of a breach of the Act or the rules? This is the second of the two related issues.

Here again we see fairness as being the general context within which the law would operate. Some imperfections in a tribunal's implementation of the Act or the rules might be tolerable; significant ones would not. In general, we see a distinction between the provisions of the Act and those of the rules. Normally, one would expect redress to be available for most breaches of the Act, particularly of a safeguard it contains, since we regard the Act as expressing basic principles of administrative fairness. As for breaches of the rules, by contrast, some might be serious and sufficient in themselves to justify judicial review, but others are likely to

be treated as less significant, particularly where the departure is of a trivial nature. We would certainly welcome suggestions as to what the test should be for deciding whether, despite a breach of the Act or the rules, a decision should stand, but most of all, as we circulate this paper for comments, we wish to avoid creating the misconception that we see any and every breach of the Act or the rules as necessarily invalidating the tribunal's decision.

COMMENTS

Responses to the proposals contained in this paper are invited by March 31, 1992. The need for further consultation and study will be determined on the basis of the responses received. Responses to this paper should be directed to:

Director
Law Reform Branch
Office of the Attorney General
P. O. Box 6000
Fredericton, N.B.
E3B 5H1

APPENDIX "A"

Tribunals expressly empowered or required
to conduct hearings

1. **Regional Assessment Review Boards (Assessment Act)**

Review Boards hear appeals against property tax assessments.

2. **Civil Service Commission (Civil Service Act)**

The Commission hears appeals in relation to appointments made within the Civil Service.

3. **Provincial Planning Appeal Board (Community Planning Act)**

The Board hears appeals

(i) respecting the granting of a building permit or the approval of a development,

(ii) respecting standards prescribed by, or the proposed action of, a municipal council, and

(iii) from decisions made by the development officer.

4. **New Brunswick Crop Insurance Arbitration Board (N.B. Regulation 83-29 under the Crop Insurance Act)**

The Board has the exclusive jurisdiction to hear and determine all disputes between the New Brunswick Crop Insurance Commission and an insured person arising out of the adjustment of a loss under a policy.

5. **Employment Standards Tribunal (Employment Standards Act)**

The Tribunal hears appeals from decisions made by the Director in relation to complaints made under the Act.

6. **Review Boards (N.B. Regulation 81-132 under the Family Services Act)**

Review Boards may hold hearings in connection with a request to have a decision made under the Act reviewed.

7. **Farm Products Marketing Commission (Farm Products Marketing Act)**

The Commission hears appeals from decisions made by a local board except a decision fixing prices for a regulated product.

8. **Farm Products Appeal Tribunal (Farm Products Marketing Act)**

The Tribunal hears appeals from decisions made by a local board fixing prices for a regulated product.

9. **Fishing Industry Relations Board (Fisheries Bargaining Act)**

The Board conducts hearings respecting applications for certification, complaints under the Act, etc.

10. **New Brunswick Forest Products Commission (Forest Products Act)**

The Commission acts as conciliator in disputes between producers and consumers of primary forest products; investigates complaints in relation to marketing and conducts inquiries into costs, prices and any other matter related to marketing.

11. **New Brunswick Harness Racing Commission (Harness Racing Commission Act)**

The Commission may hold hearings in connection with the carrying out of its powers, which include the power to impose fines for the contravention of rules established under the Act and the power to refuse the granting of a licence or to suspend or revoke a licence.

12. **New Brunswick Human Rights Commission/Board of Inquiry**
(Human Rights Act)

The Minister of Labour may appoint a Board of Inquiry to hold an inquiry to investigate the subject matter of a complaint where the Commission is unable to effect a settlement of the matter.

13. **Industrial Relations Board** (Industrial Relations Act)

The Board conducts hearings respecting applications for certification, complaints under the Act, etc.

14. **Liquor Licensing Board** (Liquor Control Act)

The Board conducts public hearings in connection with the issuing, suspending or cancelling of liquor licences.

15. **Review Boards** (Mental Health Act)

Review Boards may hold hearings in connection with an inquiry into whether a patient suffers from mental disorder of a nature or degree so as to require hospitalization in the interests of his own safety or the safety of others.

16. **Mining Commissioner** (Mining Act)

The Commissioner hears and determines all questions, disagreements, matters or claims arising out of the application of the Act and regulations (respecting the issuance and cancellation of licences, respecting applications for leases, respecting boundaries, rights of entry, non-compliance with Act and regulations, etc.).

17. **Motor Carrier Board** (Motor Carrier Act)

The Board conducts hearings in connection with the issuance of licences permitting the operation of buses and trucks to carry people and goods for gain and hears appeals from decisions made by the Motor Vehicle Dealer Registration Board.

18. **New Brunswick Grain Commission** (New Brunswick Grain Act)

The Commission may investigate, arbitrate, adjudicate upon, or otherwise settle any dispute between producers, processors, dealers, distributors or transporters of grain or between any two or more of such classes of persons.

19. **Occupational Health and Safety Commission (Occupational Health and Safety Act)**

The Commission hears appeals from orders made under the Act by the Chief Compliance Officer.

20. **Pesticides Advisory Board (Pesticides Control Act)**

The Board may, after extending to the person holding the licence or certificate an opportunity to be heard, revoke any licence or certificate issued under the Act.

21. **New Brunswick Police Commission/Arbitration Board (Police Act)**

The Commission, or an arbitration board on appeal, may conduct hearings in connection with the disposition of a complaint relating to the conduct of a member of a police force.

22. **Private Investigators and Security Services Licensing Commission (Private Investigators and Security Services Act)**

The Commission conducts hearings in connection with the suspension or revocation of licences issued under the Act.

23. **Public Service Labour Relations Board (Public Service Labour Relations Act)**

The Board conducts hearings respecting applications for certification, complaints under the Act, etc.

24. **Public Utilities Board (Public Utilities Act)**

The Board conducts hearings in connection with complaints against public utilities and applications for the approval of, or providing for an increase or decrease in, the charges taken or collected by any public utility.

25. **Farm Land Identification Program Appeal Board (N.B. Regulation 84-75 under the Real Property Tax Act)**

The Board hears appeals from decisions of the Registrar in respect of the registration of real property under the Farm Land Identification Program.

26. **Salvage Dealers Licensing Commission (Salvage Dealers Licensing Act)**

The Commission may, after extending to the licensee an opportunity to be heard and to be represented by counsel, suspend or revoke any license issued under the Act.

27. **Social Welfare Appeals Board** (N.B. Regulation 82-227 under the Social Welfare Act)

The Board hears appeals from decisions made by a designated officer where application for assistance is denied, or assistance is insufficient, reduced, discontinued or delayed.

28. **Vocational Rehabilitation of Disabled Persons Appeal Board** (N. B. Regulation 91-5 under the Vocational Rehabilitation of Disabled Persons Act)

The Board hears appeals from decisions made by a designated officer respecting an applicant's eligibility for vocational rehabilitation services or the suspension or cancellation of such services.

29. **Workers' Compensation Board** (Workers' Compensation Act)

The Board hears and determines all matters and questions of fact and law necessary to be determined in connection with compensation payments and the administration thereof and the collection and management of the funds therefor.

30. Appeals Board (Workers' Compensation Act)

The Appeals Board hears appeals from any decision, order or ruling of any officer or officers of the Workers' Compensation Board.

APPENDIX "B"

Tribunals that will be expressly empowered or
required to conduct hearings upon
proclamation of their governing legislation

1. **Apprenticeship and Occupational Certification Board**
(Apprenticeship and Occupational Certification Act -
unproclaimed amendments: 1988, c.55)

The Board hears appeals from decisions made by the Director of Apprenticeship and Occupational Certification concerning the registration and cancellation of apprenticeships and the suspension and cancellation of certificates of qualification.

2. **Appeal Boards** (Loan and Trust Companies Act - unproclaimed)

When an appeal is provided for under the Act, the Minister of Justice may hear the appeal or appoint an appeal board to do so.

3. **Tribunals/Review Boards** (Mental Health Act, unproclaimed amendments: 1989, c.23)

A tribunal has the power to determine if a person should be admitted to a psychiatric facility as an

involuntary patient and to authorize the giving of routine clinical medical treatment without consent.

A review board reviews decisions made by a tribunal where the tribunal refuses to make an order authorizing the giving of routine clinical medical treatment without consent.

4. **Pensions Tribunal (Pensions Benefits Act - unproclaimed)**

The Tribunal hears appeals from orders and decisions made under the Act by the Superintendent of Pensions.

5. **Radiological Health Protection Advisory Committee
(Radiological Health Protection Act - unproclaimed)**

The Committee hears appeals from decisions made by an inspector or the Director under the Act.

6. **Review Board (Treatment of Intoxicated Persons Act)**

The Board conducts hearings to determine whether the continued detention of a person by virtue of the Act is warranted.

APPENDIX "C"

Tribunals neither expressly empowered
nor required to conduct hearings

1. **Apprenticeship and Occupational Certification Board**
(Apprenticeship and Occupational Certification Act)

The Board has the power to cancel, suspend or revoke certificates of qualification.

2. **Stationary Engineers Board** (Boiler and Pressure Vessel Act)

The Board may suspend or cancel the licence of a stationary engineer.

3. **New Brunswick Film Classification Board** (Film and Video Act)

The Board classifies films and videofilms for use or exhibition in the Province and permits or prohibits a performance in a theatre or the distribution of a videofilm.

4. **Board of Parole** (Parole Act)

The Board may order the release on parole of any prisoner, revoke or suspend a parole or re-commit a paroled person to jail.

APPENDIX "D"

Tribunals that make recommendations not decisions

1. **Ambulance Services Review Board (Ambulance Services Act - unproclaimed)**

The Board conducts reviews of decisions made in relation to the issuance, suspension or revocation of licences. Following its review, the Board's recommendation is submitted to the Minister of Health and Community Services for decision.

2. **Expropriations Advisory Officer (Expropriation Act)**

The Officer holds public hearings to consider objections to proposed expropriations and submits a report in respect thereof to the appropriate expropriating authority for consideration.

3. **New Brunswick Fisheries Development Board (Fish Processing Act)**

The Board hears appeals from decisions made by the Registrar under the Act and makes a recommendation in

respect thereof to the Minister of Fisheries and Aquaculture for decision.

4. **Insured Services Appeal Committee** (N.B. Regulation 84-167 under the Hospital Services Act)

The Committee advises the Minister of Health and Community Services on appeals by beneficiaries respecting an application to become or remain an entitled person or a refusal of a claim for payment for entitled services or a reduction of the amount so claimed.

5. **Professional Review Committee** (N.B. Regulation 84-20 under the Medical Services Payment Act)

The Committee reviews the patterns of Medicare billing by doctors in order to identify instances in which the quality of service provided was below a minimum acceptable level, instances in which the level of service provided was in excess of what could be considered to be medically required and instances of misuse of the fee schedule. Following its review, the Committee makes a recommendation to the Minister of Health and Community Services who, in turn, may suspend or refuse to enter into an agreement with a doctor.

6. **Outfitters Advisory Committee (Outfitters Act - unproclaimed)**

The Committee conducts hearings in relation to a complaint against an outfitter or any report of an outfitter's misconduct. The Minister of Natural Resources and Energy cannot take action against the outfitter before receiving the Committee's advice.

7. **Potato Disease Advisory Board (Potato Disease Eradication Act)**

The Board hears appeals by any person affected by an order, notice or authorization of an inspector under the Act following which it submits a recommendation to the Minister of Agriculture for decision.

8. **Panel of the Judicial Council (Provincial Court Act)**

A panel conducts hearings in connection with complaints against judges alleging misconduct, neglect of duty or inability to perform duties following which its report is placed before the Judicial Council for decision.

9. **Real Estate Council (Real Estate Agents Act)**

The Minister of Justice may, before deciding to grant or refuse an application for a licence, or to suspend or cancel any existing licence, or to reinstate a licence, refer any matter to the Council for its recommendations.

10. **Board of Examiners (Scalers Act)**

The Minister of Natural Resources and Energy, upon the advice of the Board, may cancel a scaler's licence.

11. **Minister's Advisory Board (Schools Act - unproclaimed)**

The Board conducts reviews and makes recommendations to the Minister of Education in relation to the issuance, suspension, cancellation and reinstatement of teachers' licences, permits and letters of standing.

12. **Student Aid Review Board (N.B. Regulation 87-18 under the Youth Assistance Act)**

The Board reviews applications for student aid referred to it by the Minister of Income Assistance. Following its review, the Board transmits its conclusions and recommendations to the Minister for decision.