LAW REFORM COMMISSION

MANITOBA

COMMISSION DE RÉFORME DU DROIT

REPORT

ON

ADMINISTRATIVE LAW; PART I:

PROCEDURES OF PROVINCIAL GOVERNMENT AGENCIES

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The Manitoba Law Reform Commission was established by *"The Law Reform Commission Act"* in 1970 and began functioning in 1971.

The Commissioners are:

Clifford H.C. Edwards, Q.C., *Chairman*
Knox B. Foster, Q.C.
D. Trevor Anderson
George H. Lockwood, C.C.J.
Lee Gibson

Chief Legal Research Officer:

Ms. Donna J. Miller

Legal Research Officers:

Ms. Colleen Kovacs
Ms. Valerie C. Perry
Ms. Janice Tokar

Secretary:

Miss Suzanne Pelletier

The Commission offices are located at 521 Woodsworth Building, 405 Broadway, Winnipeg, Manitoba R3C 3L6. Tel. (204) 945-2896.

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FOREWORD

Administrative law may be defined as that area of the law which concerns the powers and procedures of administrative agencies; in short, it is the law of governmental administration.[1] The Commission's project on administrative law began with a reference from the then Attorney-General requesting that we inquire into the advisability of enacting an Administrative Procedures Act, a draft copy of which was enclosed for our review and comments.[2] (See Appendix A for a copy of the draft Act.) Following further consultation with the then Attorney-General, it was agreed that our mandate would no longer be restricted to a review of the draft Act but, instead, was to extend to an inquiry and consideration of the procedures generally governing provincial government agencies. The scope of our inquiry was further broadened to include a study concerning the advisability of reform in the area of judicial review of administrative actions. This report on administrative law therefore consists of two parts. In Part I, we review the procedures of provincial government agencies and recommend changes where improvement is deemed necessary. The reform of judicial review of administrative decisions is explored in Part II of this Report, to be published at a later date.

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[1] I Kenneth Culp Davis, *Administrative Law Treatise* (2d ed.) at s. 1:11, p. 1.

[2] The draft *Administrative Procedures Act* originated in the Canadian Bar Association (see *Canadian Bar Papers*, 1961 at 47) and was revised by the Law Reform Commmittee of Manitoba, the Commission's predecessor.

The importance of the Commission's project on administrative law confirmed by the focus given to this area of the law by legislatures and reform committees during the past decades, both in Canada and abroad. Bern Schwartz, a leading American scholar in the field, has described the Uni States as being "in the midst of a virtual administrative law explosion" Although perhaps less dramatically so, Canadian administrative law too been in a continual state of flux, particularly since the Royal Commiss Inquiry into Civil Rights in Ontario submitted its series of reports beginn in 1968.[4] This was followed by a package of Ontario legislation based u the Royal Commission's recommendations.[5] In 1971, Parliament passed *Federal Court Act*,[6] which revamped the law governing judicial review decisions made by federal administrative agencies. More recently, enactment of the *Canadian Charter of Rights and Freedoms* ("*Charter*")[7] had made a profound impact upon the power and procedures administrative agencies.

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[3]Bernard Schwartz, "Recent Developments in American Administrative L (1980) 58 Can. B. Rev. 319. See also the statement of Mr. Justice Kir Chairman of the Australian Law Reform Commission, that "Australia is in midst of a revolution in its administrative law". "Administrative Law Ref in Action" (1978) 2 U.N.S.W. Law Journal 203.

[4]*Royal Commission Inquiry into Civil Rights*. Honourable J.C. McRu Commissioner (1968) [hereinafter called the "McRuer Commission Report"].

[5]Aside from the *Statutory Powers Procedure Act*, S.O. 1971, c. 47 the *Judicial Review Procedure Act*, S.O. 1971, c. 48, the following statu based upon the McRuer Commission Report were enacted into legislation: *Public Inquiries Act*, S.O. 1971, c. 49; the *Civil Rights Statute Amendment Act*, S.O. 1971, c. 50; and the *Judicature Amendment Act* (No. S.O. 1970, c. 97.

[6]*Federal Court Act*, S.C. 1970-71-72, c. 1. This Act came into eff on June 1, 1971.

[7]The *Canadian Charter of Rights and Freedoms* is Part I of *Constitution Act, 1982*, as enacted by the *Canada Act* (U.K.) c. proclaimed in force April 17, 1982.

The reform of administrative law has not been confined to the executive and legislative arms of government. The courts too have developed administrative law in the field of judicial review of administrative decisions.[8] Indeed, this role has broadened with the enactment of the *Charter* for it has given the courts the right and concomitant responsibility of striking down administrative decisions which are made in violation of *Charter* principles and, additionally, any legislation inconsistent therewith. The doctrine of fairness is one example of the court's role in developing administrative law; the emergence of this doctrine means that procedural requirements may be imposed upon those administrative agencies not classified as judicial or quasi-judicial. Other common law developments include a refinement of the concept of jurisdictional error and a relaxation of standing requirements regarding entitlement to commence judicial review proceedings.

The changing conception of administrative law mirrors the expanding role of government in Canadian society generally and Manitoba in particular. The immediacy of the impact of government is witnessed by the increasing number of decisions in the public sector affecting a person's life.[9] Much

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[8]Lord Diplock of the English House of Lords has referred to the "progress towards a comprehensive system of administrative law . . . as having been the greatest achievement of the English courts in [his] judicial lifetime". See *R. v. Inland Revenue Comrs. ex p. National Federation of Self-Employed and Small Businesses Ltd.* [1982] A.C. 617 at 641. The American scholar, Kenneth Culp Davis, has estimated that "about nine-tenths of American administrative law is judge-made law. . . " *supra* n. 1 at s. 2.18, p. 140. That same scholar has said that "[i]n the context of the entire American legal system, judge-made administrative law has become an area of special strength" *supra* n. 1, at s. 2.18, p. 142.

[9]See J. Evans, N.H. Janisch, D. Mullan, R. Risk, *Administrative Law: Cases, Text and Materials* (1980) at 10ff. for an excellent description of the effect of government decision-making upon a person's life in a normal day.

of the reform in administrative law appears to stem from the concern that mechanisms of control governing decision-making in the public sector (th mechanisms being legislative protections and judicial review) n re-strengthening to meet this more expansive role of government. Indeed, was probably this thinking which lead some advocates of the McRuer legislat in Ontario to hail it as "A New Magna Carta".[10]

The administrative law project has been a long and difficult st for the Commission. The project involved not only considerable research i Canadian law, but comprised as well a detailed review of developments in Commonwealth, especially the United Kingdom and Australia, and in the Uni States. Some of this work was delegated to consultants. In particular, Commission wishes to acknowledge the advice and assistance of David J. Mull Prof. of Law, Queen's University, distinguished co-author of *Administrat Law Cases, Text and Materials*.[11] Prof. Mullan prepared a position pa for the Commission on the "Reform of Administrative Law Remedies" which particularly helpful in our study concerning the reform of judicial revi The Commission also had the good fortune to engage the services of D. Cameron Harvey, LL.B., LL.M., Prof. of Law, University of Manitoba, provided us with a paper concerning the desirability of an administrati procedures statute. Prof. Harvey is author of *The Law of Habeas Corpus Canada*[12] and, as Chairman of the Land Value Appraisal Commission Manitoba, was able to share his practical knowledge of the administrati process with the Commission. Although the individual contributions Professors Mullan and Harvey undoubtedly improved the quality of our work, should be noted that in many respects our recommendations do diff significantly from their suggestions for reform. Of course, only the membe of the Commission have responsibility for the recommendations contained this Report.

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[10]See the editorial of the Toronto Globe and Mail, April 22, 197 referred to in D.J. Mullan, "Reform of Judicial Review of Administrati Action - The Ontario Way" (1974) 12 O.H.L.J. 125.

[11]*Supra* n. 9.

[12]D.A. Cameron Harvey, *The Law of Habeas Corpus in Canada* (1974).

We should also like to thank Sandra J. Geddes, LL.B., who worked diligently to supply us with research on provincial administrative bodies, and William K. Greenaway, Ph.D., LL.B., who was able to guide the Commission on research methods appropriate for this study. M. Bernard Nepon, B.A., LL.B., LL.M., Prof. of Law, University of Manitoba and Ross A.L. Nugent, Q.C., a Winnipeg practitioner, also assisted us in the field of judicial review and, accordingly, we wish to record our appreciation for their contribution.

Most reports published on the reform of administrative law invariably begin with a discussion concerning the relative powers of the executive, legislative and judicial arms of government. This is perhaps inevitable as the general consensus in reforming administrative law, both abroad and in Canada, has been to increase the measure of accountability of administrative agencies to other institutions within one or more parts of this constitutional triad. In particular, reform has been introduced in England, New Zealand and parts of Canada (in particular, Ontario, British Columbia, New Brunswick and Nova Scotia) and Australia to simplify the procedures governing judicial review of administrative decisions. These changes permit more ready access to the superior courts which have been historically entrusted with original supervisory jurisdiction to review decisions made by inferior courts[13] and administrative agencies. In the legislative arm of government, standing committees of legislatures have been created in certain American States to review proposed or adopted rules of administrative agencies. Within the executive branch of government in England, Australia and the United States there exist monitoring bodies with wide consultative powers for determining

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[13]An inferior court in this context means a court of special, limited or statutory jurisdiction. (See *Black's Law Dictionary* (5th ed.) In Manitoba, the "superior" trial court is the Court of Queen's Bench and the "inferior" trial court is the Provincial Court of Manitoba.

appropriate rules of procedure of administrative agencies. Another notable example of an executive institution which increases the accountability of administrative agencies is that of the office of Ombudsman which has a statutory mandate, in Manitoba, to investigate decisions or recommendations made by departments or agencies of the government. All of these reforms just mentioned, regardless of whether they are localized in the executive, legislative or judicial arms, have been implemented to provide more meaningful checks against the exercise of "naked power by government".

The Commission concurs with earlier studies that the task of any inquiry into the need for the reform of administrative law centres upon an examination of the sufficiency of the level of accountability of administrative agencies to other offices and institutions of government. We think it should be recognized, however, that some of the safeguards which ensure an optimum level of accountability lie within the internal processes and machinery of government, quite beyond the reach of law reform:

> These safeguards largely depend on a highly professionalized civil service, an adequate technique of administrative application of legal standards, a flexible, appropriate and economical procedure (always remembering that "in the development of our liberty insistence upon procedural regularity has been a large factor"), easy access to public scrutiny, and a constant play of criticism by an informed and spirited bar.[14]

Notwithstanding this limitation, there is yet a substantial area of administrative law which can be scrutinized by a law reform agency to determine the desirability of reform; in particular, the reform and improvement of the areas of judicial review of administrative decisions and that of administrative procedures, the dual reference points of our study.

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[14]Felix Frankfurter, *The Task of Administrative Law*, (1927) 75 U.Pa. L. Rev. 614 at 618.

In some respects, we regard the establishment of appropriate administrative procedures as a more important tool for the protection of rights than that of judicial review. As Walter Gellhorn stated, "judicial review of bad administrative decisions is a poor substitute for good administrative decisions in the first place".[15] When appropriate procedures for decision-making are determined, citizens are given some assurance that matters before administrative agencies will receive full and fair consideration so that determinations when made will not be 'arbitrary', but will reflect wise and informed deliberation.[16] Judicial review does, however, play an important role in supporting a system of checks and balances and its function is strengthened when administrative procedures are determined and codified into legislation. When this occurs, the courts must not only enforce the principle of legality that has developed at common law, but they must also ensure substantial compliance with statutory standards of procedure.

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[15]W. Gellhorn, *Federal Administrative Proceedings* (1941), at 43.

[16]*Ibid.*

CHAPTER 1

INTRODUCTION

1.01 The subject of Part I of this Report is the procedures governing provincial government agencies. In particular, we examine the effectiveness of the procedures which govern the decisions of provincial government agencies to determine whether there is a need for their improvement and reform. By the term "provincial government agency" we mean any board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which (or all of the members of the board of management or board of directors of which) are appointed by legislation or by order of the Lieutenant Governor in Council. The term also includes those boards whose members are not appointed by legislation or by order of Lieutenant Governor in Council but, in the discharge of their duties, are public officers or servants of the Crown or are, directly or indirectly, responsible to the Crown.[1]

1.02 It is important to clarify at the outset the boundaries of this Commission's work in the study of administrative procedures. The Commission has not concerned itself with - nor was it asked to concern itself with - the efficacy of delegating functions generally or in particular to provincial government agencies. Neither were we charged with the responsibility of examining the wisdom of particular decisions, regulations or policies of administrative agencies or the system of appointments to such government agencies. Instead, our task is a singular one: to examine the adequacy of the procedures governing the administrative agency process and to recommend reform in these procedures where improvement can be achieved.

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[1]The term "agency of the government" is defined similarly in *"The Ombudsman Act"*, C.C.S.M. c. O45, in circumscribing the jurisdiction of the office of Ombudsman. See also *"The Civil Service Act"*, C.C.S.M. c. C110.

Members of a board will be considered "public officers or servants of the Crown" if the board is an agency of the government. The determination of whether a board is an agency of the government will depend upon the degree of executive control over the board. See, for example, *Pike* v. *Ont. College of Art* [1972] 3 O.R. 808 (H.C.) and *MacLean* v. *Liquor Licence Bd. of Ont.* (1976) 9 O.R. (2d) 597 (Div. Ct.).

1.03 As stated, our study of the administrative process is confined to provincial government agencies. Through our own research and with the assistance of public officials in each government department, we were able to compile a list of those agencies which are the focus of our study. This list, along with the source of authority for each agency (statute, order-in-council, ministerial directive) are set forth in Appendix B to this Report. The agencies are classified according to the Department to which the appropriate Minister is accountable. In devising this list, we have attempted to ensure that it is representative of all active agencies[2] created by provincial legislation or under the authority of the royal prerogative of the Crown in Manitoba. By definition, our study of the procedures of provincial government agencies excludes an examination of the procedures governing the decision-making of many public officials in the executive branch, such as Ministers, Directors and Registrars, who are charged with important statutory responsibilities directly affecting many people. It also excludes school boards, agencies created by municipalities and other local governments as well as self-governing professional and occupational associations. Nevertheless, our study does encompass a review of the procedures of well over 200 boards, commissions and tribunals which fall within the definitional ambit of a provincial government agency. This, in itself, is a challenging task given the limitations of present budget and resources. These agencies have been aptly described as providing a "buffer-zone between the wholly independent decision-making of the courts and the more partisan decisions made by Ministers and departmental officials".[3]

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[2]For example, the Advisory Committee on Civil Defence and the Cabinet Civil Defence Committee, which are provincial government agencies falling under the authority of the Minister of Government Services, are excluded from Appendix B becaue of their present inactivity. The legislative authority for each agency is respectively sections 6 and 5 of *"The Emergency Measures Act"*, C.C.S.M. c. E80.

[3]A. Robbins, *Administrative Tribunals in Victoria* (1982) at 33.

1.04 No single feature is more striking in a review of the provincial administrative agencies than the variety of the duties which they are entrusted to perform. There are agencies whose function is mainly regulatory; these agencies regulate a particular activity, such as the Public Utilities Board which sets prices for the use of utilities. Some agencies, like the Liquor Licensing Board, perform primarily a licensing function, while others, such as the Workers' Compensation Board, are essentially compensatory. The Labour Relations Board is an example of an agency which exercises primarily arbitral powers in that it resolves disputes between two or more adversaries. Finally, there are also advisory agencies, such as the Manitoba Advisory Council on Fitness and Amateur Sport, which advise the appropriate minister or the Lieutenant-Governor-in-Council on matters within the agency's jurisdiction.

1.05 Just as there is a variety of duties performed by agencies, there is also a variety of reasons for their creation. In many cases, a function is entrusted to an agency rather than to a court because the particular role in question is not an appropriate element of the court's jurisdiction: licensing, regulatory and advisory duties are three examples. Concurrently, these same functions often are not assigned to a branch or department of the executive government because it is perceived to be more desirable for them to be delegated to a body of persons which is institutionally more independent from a politically-responsible executive and has, with a specially defined role, greater propensity to develop expertise. Arbitral functions are sometimes delegated to an agency, rather than to a court, so that particular technical or professional qualifications may be brought to bear upon the dispute-resolution process. Other reasons cited for entrusting decision-making to agencies rather than courts invoke such words as expeditiousness, informality and accessibility. There are no limitations upon delegating jurisdiction to an agency rather than a court save one important constitutional restriction: provincial governments cannot validly assign to an agency what are essentially superior court functions because such a delegation is said to be contrary to section 96 of the *Constitution Act, 1867* which reposes in the Governor General the sole power to appoint judges

of the superior, district or county courts.[4]

1.06 The procedures which govern administrative agencies are derived fro rules prescribed by legislation and principles required to be followed by th Canadian Constitution and the common law. Statutorily-prescribed procedur occurs when the Legislature builds into the statute which creates and empower a particular agency, procedure for it to follow in exercising a power o decision. Agencies themselves are often authorized to enact their ow procedure but occasionally, when authority to enact agency procedure is given it may be conferred upon the Lieutenant Governor in Council rather than th agency. Often when procedure is adopted by agencies, it is not enacted in th regulations but is, instead, contained in unpublished orders which may or ma not be available for public inspection. In Appendix C to this Report there i a table which sets forth whether legislative authority is given to either th agency or the Lieutenant Governor in Council to enact rules of procedure fo each government agency under study and the precise nature of that authorit Procedure is also prescribed by the superior courts when administrati decisions are reviewed in a superior court. The courts have devised bro standards of procedure which must be followed by those agencies which a required to comply with the principles of natural justice and fairness. "T principles of fundamental justice" have recently been constitutionally

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[4]Section 96 reads as follows:

> The Governor General shall appoint the Judges of the Superior, Distric and Country Courts in each province, except those of the Courts of Prob in Nova Scotia and New Brunwick.

For a more recent application of an *ultra vires* function delegated to provincial government agency, see *Desmeules* v. *Pret Hypothecaire* (1983) D.L.R. (4th) 609 (Que. C.A.). See also *Re A-G Que. and Grodin* (1983) D.L.R. (4th) 605 (S.C.C.) and *The Constitution of Canada: A Sugges Amendment Relating to Provincial Administrative Tribunals*, Department Justice (August, 1983).

entrenched by the *Canadian Charter of Rights and Freedoms*.[5] The procedures which presently apply to provincial administrative agencies are summarized in further detail in Chapter 2.

1.07 In determining what procedures should govern administrative agencies, regard must be given to the purpose and function of each agency. Administrative agencies are not courts nor are they, strictly speaking, part of a government department. Accordingly, it would be inappropriate to impose indiscriminately the rules of court upon all administrative agencies just as it would be to apply the political process.[6] The general characteristics of administrative agencies defy an unexamined and automatic application of either the judicial or the political model of procedure.

1.08 We think that administrative procedures should be concerned with three primary norms or values. These are fairness, efficiency and accuracy. The concept of fairness in the administrative process is derived principally from the courts and, in a democratic society, is concerned with a satisfactory level of participation in the decision-making process by those who are so affected. Efficiency is also important in determining what procedures should apply to a specific agency so that decisions can be reached effectively in an inexpensive and expedient manner, yet fairly, so as to reduce friction in the machinery of government. Finally, decisions should be based upon accurate

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[5]Section 7 of the *Canadian Charter of Rights and Freedoms* states that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".

[6]Regarding the application of court rules to the administrative process, see the comment of Mr. Justice Frankfurter in *F.C.C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 at 143 (1940) that the differences in the origin and function of administrative agencies "preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of courts".

facts. Factual accuracy is normally achieved when a decision is reache th
fairly so that those affected by it are given notice of the case against the re
and an opportunity to meet it. on
or

1.09 The task of determining what procedures should govern th
administrative process involves a reconciliation of these three norms so as t
achieve a fair balance between the critical need for an economical process o
the one hand, and a responsible administration on the other, to ensure tha
private interests will be adequately protected against improper or unwis
decision-making. The following are, in our view, some of the relevant factor
for determining the appropriate procedures to govern decisions of governmen th
agencies: ap
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1) the private interest which will be affected by the decision; ju

2) the risk of inaccuracy by the procedures adopted and the value, if any, of additional or substitute procedural safeguards; and de
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3) the government's interest, including the functions involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.[7] pr

The first criterion is one that has been traditionally cited by the courts a
generally determinative of whether the principles of natural justice and
fairness apply to the decision or order being reviewed.[8] The second and ac
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[7]These factors are taken principally from the Supreme Court of th
United States in their decision of *Mathews* v. *Eldridge*, 424 U.S. 319 a
334-35 (1976).

[8]Mr. Justice Dickson (as he then was) established several helpfu
criteria in the "pre-Charter days" for determining whether a decision or orde
is required to be made on a judicial or quasi-judicial basis, thereby invokin
the principles of natural justice. See *M.N.R.* v. *Coopers and Lybran*
(1979) 92 D.L.R. (3d) 1 at 6-7 (S.C.C.). See also Chapter 2 of this Repor
where a more detailed description of the principles of natural justice an
fairness is set forth.

third factors point to the increasing public concern of the cost of the regulatory process and the growing awareness that procedural protections can only be justified where they will result in greater accuracy in a decision or order and, concurrently, a higher degree of fairness to those affected:

> The required degree of procedural safeguards varies directly with the importance of the private interest affected and the need for and usefulness of the procedural safeguard in the given circumstances and inversely with the burden and any other adverse consequences of affording it.[9]

1.10 Identifying the procedural values and the factors which influence their relative importance is a comparatively simple task. Locating an appropriate balance of these values with respect to the procedures which should govern the various decision-making powers of each agency is far more difficult. It must be borne in mind that the demands imposed by natural justice and fairness are extremely variable or flexible, not rigid, and hence, defy a simple, singular model of procedure. In Chapter IV of this Report, we address the difficulty of determining appropriate procedures for the provincial government agencies under study.

1.11 Administrative law in Canada continues to be treated as law controlling the administration, and not as law produced by the administration.[10] Consequently, outside the area of judicial review of administrative decisions, there is a lack of published information on administrative law, particularly on the topic of the substance of procedures of administrative agencies at the provincial level.[11] It was therefore

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[9]Judge Henry J. Friendly, "Some Kind of Hearing" (1975) 123 U. Pa. L. Rev. 1267 at 1278.

[10]A similar comment was voiced earlier in this century by Ernest Freund with respect to American administrative law. See E. Freund, *Cases on Administrative Law V* (2d ed. 1928).

[11]The Law Reform Commission of Canada has published helpful monographs on the substance and procedures of several federal administrative agencies. See, for example, Stephen Kelleher, *Canada Labour Relations Board* (1980), a study paper prepared for the Law Reform Commission of Canada.

necessary for us to engage in some research concerning administrative agencie and their procedures so that our recommendations in this Report could be base upon fact, rather than preconception.

1.12 This research essentially comprised two areas. The first has bee previously referred to (see para. 1.03) and involved the compilation of a lis of administrative agencies at the provincial level in Manitoba and the sourc of each agency's authority (Appendix B). The second part of our stud concerned a review of the procedures of these agencies. Due to limitations budget and staff, it was unfortunately not within the bounds of our prese resources to undertake an informal observation of the procedures of ea tribunal. Instead, our research was necessarily confined to a review of tho procedures prescribed by statute or by regulation. A summary of the procedures is set forth towards the close of the next Chapter and a mo detailed description is found in Appendix D to this Report.

CHAPTER 2

THE PROCEDURES OF PROVINCIAL GOVERNMENT AGENCIES

2.01 In Chapter 1, we stated that the procedures which govern administrative agencies are derived from rules prescribed by legislation and principles required to be followed by the Canadian constitution and the common law. In this Chapter, we describe in greater detail the types of procedures governing administrative agencies. Administrative procedure is presently imposed upon agencies from three sources: (1) the common law; (2) the *Canadian Charter of Rights and Freedoms*; and (3) legislation. A summary of the procedure prescribed by each of these three sources follows.

A. COMMON LAW IMPOSED PROCEDURE: NATURAL JUSTICE AND THE DUTY TO ACT FAIRLY

2.02 The principles of natural justice and the duty to act fairly generally ensure that government agencies which decide rights meet certain procedural standards of decency and fairness. These principles may be imposed upon government agencies in Manitoba when application is made to the Court of Queen's Bench to exercise its original supervisory jurisdiction by issuing prerogative relief, more of which will be explained in Part II of this Report. Suffice it to say here that the procedural standards of natural justice and fairness are imposed by superior courts, such as the Court of Queen's Bench, when, upon an application for judicial review, they strike down decisions of government agencies for violating these procedural standards.

2.03 As stated, it is not all government decision-making for which the courts will compel adherence to the standards of natural justice and fairness. So as not to impose a judicial model of procedure upon the entire array of public decision-making, the courts initially carved out a small section of decisions which they identified as being charged with the

responsibility of being made on a judicial or quasi-judicial basis. Later, we shall subsequently describe in this Chapter, the doctrine of fairness developed in Canada. This had the effect of allowing courts to intervene in wider range of decisions than those classified as judicial or quasi-judicial To understand the fairness doctrine, it is necessary first to explain t application of the judicial/quasi-judicial classification process administrative agencies and the practical constituent elements of the rules natural justice.

1. Application of the rules of natural justice

2.04 An early judicial pronouncement distinguished judicial quasi-judicial decision-makers from other public authorities as being tho "affecting the rights of subjects, and having the duty to act judicially"[1] Later, in a decision of Mr. Justice Dickson (as he then was), the Supre Court of Canada formulated some very helpful criteria for determining whet a decision or order is one required by law to be made on a judicial quasi-judicial basis:

(1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?

(2) Does the decision or order directly or indirectly affect the rights and obligations of persons?

(3) Is the adversary process involved?

(4) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?[2]

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[1] *R.* v. *Electricity Commissioners* [1924] 1 K.B. 171 at 205 (C.A per Atkin, L.J.

[2] *M.N.R.* v. *Coopers and Lybrand* (1978) 92 D.L.R. (3d) 1 at 7 (S.C.C.).

As the Court explained, none of these factors is alone determinative of whether the rules of natural justice apply. Together, however, they assist in directing agencies and other public decision-makers generally as to the procedural requirements, if any, which may be imposed upon them.

2. The Constituent Elements of Natural Justice

2.05 What are the procedural requirements imposed upon judicial and quasi-judicial decision-makers? We stated earlier that these decision-makers are subject to the principles of natural justice and that these principles, in turn, invoke procedures involving decency and fairness. More specifically, it can be said that there are two principles of natural justice which, in legal circles, are expressed in these Latin maxims: (1) *nemo judex in causa sua*, no person may be a judge in his own cause; and (2) *audi alteram partem*, parties must be given an opportunity to be heard. The first principle requires that an adjudicator be disinterested and unbiased and is relatively straightforward in its application. It is the second which is more frequently litigated; this is due to the broad potential for what may be defined as an opportunity to be heard. In the following paragraphs, we attempt to describe some of the practical requirements of both principles.

2.06 Notice. As mentioned above, the rule of natural justice expressed in the Latin maxim, *audi alteram partem*, requires that persons affected by a judicial or quasi-judicial decision be given an opportunity to be heard. This right can only be exercised if those persons are given notice of the fact that a decision is to be made. The requirements which natural justice impose upon notice have developed into a fairly complex set of rules. However, as always, the requirements of notice will depend upon what constitutes a reasonable opportunity to be heard in the circumstances. It is difficult to simplify, but generally speaking the degree of the sufficiency of the notice which the courts will require from an agency varies in direct proportion to the degree of sanction or penalty which may be imposed by a decision. Accordingly, where a person faces a charge of committing an unfair labour practice, for example,

the courts would demand greater details of notice to be given to that perso than they would from, say, a liquor licensing board notifying an applicant o a hearing date.

2.07 Where potentially a decision may amount to a penalty or sanction, th courts have consistently held that the notice of the hearing of that decisio must be sufficient to allow the person to defend himself/herself adequately In the event a decision may be reached which affects a collectivity, it i normally sufficient that notice be given by publication in a newspaper whos subscribers are representative. Collective forms of notice are common wher the principal function of an agency is rate-making. The Public Utilitie Board is an example. It is also one of the forms of notice used b environmental agencies, such as the Clean Environment Commission.

2.08 Hearing. The *audi alteram partem* principle requires that a perso be given an opportunity to be heard. Although it has been assumed in ma cases that the *audi alteram partem* principle entitles a person to have a oral hearing, the word "hearing" in administrative law is more properly use in a broad sense to include the making of written submissions or comments. With the recent emergence of the doctrine of fairness which we shall speak shortly, the legitimacy of written comments has become particularly accepte in those cases for which no procedural protections previously existed.

2.09 Disclosure of information. Disclosure by the decision-maker information upon which the decision might be based is another element of au *alteram partem*. As in the case of the notice requirement, the opportunity be heard only "breathes life" when a party is given sufficient information

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[3]See *Hoffman-La Roche Limited* v. *Delmar Chemical Limited* [196 S.C.R. 575 and *Quebec L.R.B., Ex p. Komo Construction Inc.* [1968] S.C.R. 172

concerning the facts within the possession of an agency to be able to participate adequately in its decision-making process. The duty upon an agency to disclose information is particularly important when an agency is statutorily clothed with wide investigative powers through which it arrives at preliminary findings of fact, which may occur, for example, in an inquiry process of the Manitoba Securities Commission. Disclosure of information is a constituent element of natural justice. However, it is not total disclosure of information which is required. Natural justice only requires the disclosure of material evidence.[4]

2.10 Right to counsel. It is clear that, where a person faces a serious sanction or penalty, the right to counsel should not be lightly disregarded by an agency. This principle has emerged from several decisions, most notably a judgment of Lord Denning, M.R. where he said ". . . that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor."[5] As to an inmate's right to counsel in parole or disciplinary proceedings, the decisions are mixed as to whether there should be entitlement.[6]

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[4]*Kane* v. *Univ. of B.C. Bd. of Gov.* [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311; *Pfizer Co. Ltd.* v. *Deputy M.N.R.* (1975), 68 D.L.R. (3d) 9 (S.C.C.).

[5]*Pett* v. *Greyhound Racing Association Ltd.* [1968] 2 All E.R. 545 at 549 (C.A.), app'd *Joplin* v. *Chief Constable of the City of Vancouver* (1982), 144 D.L.R. (3d) 285 (B.C.S.C.).

[6]See *Dubeau* v. *National Parole Board* [1981] 6 W.W.R. 672 (Fed. C.A.) where it was held that failure to allow counsel at a parole hearing was, in the circumstances, also a failure to act fairly. But see *Re Blanchard and Disciplinary Board of Millhaven Institution* (1982), 69 C.C.C. (2d) 171 (F.C.) and *Re Howard and Presiding officer of Inmate Disciplinary Ct. of Stony Mountain* (1983) 4 D.L.R. (4th) 147 (F.C.). See also *Martineau* v. *Matsqui Institution Disciplinary Board* (1979) 106 D.L.R. (3d) 385 at 392 (S.C.C.) for general principles concerning the judicial review of decisions of inmate disciplinary boards.

2.11 Reasons for decision. Apart from a statutory requirement, there is no duty upon an agency to give reasons. The giving of reasons has never been part of the common law principle of natural justice. This, notwithstanding, it cannot be disputed that a lack of written reasons effectively limits rights of appeal and judicial review as errors are not apparent and it will be difficult to establish a *prima facie* case that a power has been improperly exercised.

2.12 Impartiality. We stated earlier that the first principle of natural justice - *nemo judex in causa sua* - requires that an adjudicator be disinterested and unbiased. We think it fair to say that this requirement has not been strictly or narrowly applied by the courts and that decisions have been upheld where a person sustained no substantial hardship from an adjudicator's prior involvement in a decision.[7] There must be a reasonable apprehension of bias before a court will strike down an agency's decision; the standard of "reasonableness" will vary according to the function of the agency under analysis. In some instances, such as labour arbitrations, it has been traditionally accepted by the parties to the dispute, as well as the courts, that the individual membership of an agency may be pre-disposed towards a particular view. Each of the parties to the dispute appoint members to the board and, accordingly, the statute or the collective agreement which authorizes their appointment is said to have a "built-in bias". More recently, this philosophy has been applied by the judiciary with respect to the composition of a school board:

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[7]See, for example, *Law Society of Upper Canada* v. *French* (1974) 49 D.L.R. (3d) 1 (S.C.C.) and *Re Paine and University of Toronto* (1981) 131 D.L.R. (3d) 325 (Ont. C.A.).

> One can reasonably expect that duly elected public representatives will have preconceived views on particular subjects. Indeed, these views often form the basis on which they are elected. Surely, they should not be condemned or be found to have failed in their duty to act fairly because they held to their views and seek to bring about that which they were elected to do, provided they act in good faith.[8]

3. The Fairness Doctrine

2.13 The foregoing comprises the basic practical requirements of the principles of natural justice but it is, by no means, representative of all of the procedural protections to which a party may be entitled before a government agency. Administrative agencies should be viewed as comprising a continuum of functions that collectively cross various degrees of benefit and harm to citizens: generally, the greater the sanction or penalty confronting a person or group of persons, the greater the requisite indices of procedural protections. The Supreme Court of Canada has recognized this concept of a spectrum of decision-making in government administration:

> . . . a function that approaches the judicial end of the spectrum will entail substantial procedural safeguards. Between the judicial decisions and those which are discretionary and policy-oriented will be found a myriad [of] decision-making processes with a flexible gradation of procedural fairness through the administrative spectrum.[9]

At the judicial end of the spectrum one may find - in addition to notice, disclosure, hearing and legal representation - procedures pertaining to pre-hearing discovery, cross-examination of parties and witnesses, subpoenas, pleadings and so forth, all emulating the judicial model of procedure. These

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[8] *Howden Parents' Association* v. *Bd. of School Trustees of St.Boniface* (1979), 5 Man. R. (2d) 278 at 293 (Q.B.), per Morse, J. For the application of the *nemo judex* principle to specialized agencies, see *Chevron Canada Resources Limited* v. *Angell* Man. Q.B. unreported, May 9, 1984, 1069/84, Kroft, J.; appeal heard by Man. C.A. June 1, 1984, (judgment reserved).

[9] *Martineau* v. *Matsqui Institution Disciplinary Board supra* n. 6 at 410 (S.C.C.).

court-like agencies chiefly comprise disciplinary bodies whose sanctions ar
severe enough to affect a person's livelihood. Those at the administrativ
end of the spectrum include agencies whose functions are research and policy
where decisions transcend individual concerns and no accountability may b
expected save perhaps one that is politically responsible. In between thes
two extremes lie agencies, for example, which are clothed with the power t
issue licences,[10] permits and other benefits.

2.14 It was the realization that administrative law required a
independent model of procedure which led to the emergence of the doctrine o
fairness in Canada. As we have seen, administrative decisions do not len
themselves to rigid classifications such as the judicial and quasi-judicial
categories, previously spoken to. The effect of carving out a portion o
administrative agencies as judicial or quasi-judicial meant that th
requisites of fairness and decency - practically translated into th
procedures of notice, disclosure, hearing, possibly legal representation an
impartiality - applied only to a small number of agencies; the vast majorit
were outside the judicial/quasi-judicial ambit and for these no procedura
requirements were judicially imposed.

2.15 The doctrine of fairness emerged therefore in the 1970's to allow for
a flexible application of due process to administrative agencies. Although a
concept of fairness had previously existed - in the sense that decision-maker
were bound to exercise their powers in good faith with a bona fid
consideration of all relevant issues - until the last decade the concept o
fairness had never imposed procedural requirements upon public
decision-makers.[11] Initial decisions regarding the duty to act fairly
tended to view it as a doctrine distinct from the principles of natural

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[10] As opposed to agencies empowered to suspend a licence.

[11] See D.J. Mullan, "Fairness: The New Natural Justice?" (1975) 25 U. of
T. L.J. 281.

justice: natural justice was seen as encompassing the procedures we have already identified while fairness was seen as "something less". This early distinction logically followed from the effect of the fairness doctrine which was to broaden the application of procedural standards to a fuller array of agencies, thereby allowing for more variety in those protections. The broader application of procedural standards arose because, under the fairness doctrine, the courts became more willing to intervene in cases where the decision under attack affected the rights of a person. In particular, the courts were prepared to strike down a decision whenever there was a violation of the rules of "fair play in action"[12] provided the public body had decided a matter ". . . affecting the rights, interests, property, privileges, or liberty of any person".[13]

2.16 The attempt to maintain a distinction between the concepts of natural justice and fairness, however, has been criticized by our highest Court:

> In general, Courts ought not to seek to distinguish between the two concepts, for the drawing of a distinction between a duty to act fairly, and a duty to act in accordance with the rules of natural justice, yields an unwieldy conceptual framework.
>
> . . . .
>
> It is wrong, in my view, to regard natural justice and fairness as distinct and separate standards and to seek to define the procedural content of each.[14]

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[12] *Kane* v. *Univ. of B.C. Bd. of Gov.* [1980] 1 S.C.R. 1105 at 1113, per Dickson, J. (as he then was), quoting Harman, L.J. in *Ridge* v. *Baldwin* [1962] 1 All E.R. 834 at 850 (C.A.).

[13] *Martineau* v. *Matsqui Institution Disciplinary Board*, *supra* n. 6, at 410.

[14] *Martineau* v. *Matsqui Institution Disciplinary Board*. *supra* n. 6, at 410-11, per Dickson, J. (as he then was).

This recognition of a singular concept of fairness by the Supreme Court of Canada is beneficial for it replaces a rigid classification system with a continuum of procedural rights. It acknowledges that procedural protections are not fixed but will vary according to the functions of the body under analysis. In other words, although the concept of fairness remains constant, an interpretation of its demands will vary considerably according to whether a person's rights or interests are affected and, if so, according to their nature and extent.[15]

2.17 Practically speaking, the doctrine of fairness has not had a major impact upon the basic constituent elements of natural justice - notice, disclosure, hearing, right to counsel and impartiality - save in one area. As previously noted, the doctrine of fairness has helped to broaden the concept of a hearing to include written comments, particularly with respect to those decisions which, prior to its emergence, were not subject to any procedural requirements because they were outside the judicial/quasi-judicial classification.

B. CONSTITUTIONALLY-IMPOSED PROCEDURE

2.18 With the passage of the *Constitution Act, 1982*, the procedural standards of decency and fairness in the common law became constitutionally entrenched. The provision chiefly responsible for this effect is section 7 of the *Canadian Charter of Rights and Freedoms* ("*Charter*"). The text of that section is as follows:

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[15]The fairness doctrine appears to be similar in application to the American concept of due process. That is, compliance with due process in the United States "will vary to a considerable extent with the nature of the substantive right, the character and complexity of the issues, the kinds of evidence and factual material, the particular body or official, and the administrative functions involved in the hearing". *N.B.C.* v. *F.C.C.* 76 App. D.C. 238, 132 F. 2d 545 at 560 (1942), aff'd 319 U.S. 239, 63 S. Ct. 1035, 87 L. Ed. 1374 (1943), per Rutledge, J.

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Some courts have interpreted the phrase "the principles of fundamental justice" as being essentially analogous to the common law principles of natural justice.[16] The phrase, however, may signify more than procedural safeguards in that there is some case law to date which has interpreted it as extending to the protection of substantive rights.[17]

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[16]The Supreme Court of Canada has yet to render judgment on s. 7 of the *Charter*. However, in *Duke* v. *The Queen* (1972), 28 D.L.R. (3d) 129 at 134 (S.C.C.) Chief Justice Fauteux, speaking for the majority of the Court, construed the phrase "principles of fundamental justice" in the *Canadian Bill of Rights* as meaning "generally, that the tribunal which adjudicates upon . . . rights must act fairly, in good faith, without bias and in a judicial temper, and must give [the party] the opportunity adequately to state his case". See also *Re Jamieson and the Queen* (1982) 70 C.C.C. (2d) 430 (Que. S.C.); *Re Cadeddu and the Queen* (1983) 146 D.L.R. (3d) 629 (Ont. H.C.) app'd *Re Nunery and The Queen*, 9 W.C.B. 105 (Ont. S.C.); also app'd *Re Lowe and The Queen* (1983) 149 D.L.R. (3d) 732 (B.C.S.C.).

[17]See *Reference Re s. 94(2) of the Motor Vehicle Act of B.C.* (1983) 4 C.C.C. (3d) 243 [1983] 3 W.W.R. 756 (B.C.C.A.). But see, for example, the statement of Hall, J.A. in *R.* v. *Hayden* (1983) 3 D.L.R. (4th) 361 at 363 (Man. C.A.) ". . . that the phrase 'principles of fundamental justice' in the context of section 7 and the *Charter* as a whole does not go beyond the requirement of fair procedure and was not intended to cover substantive requirements as to the policy of the law in question". See also *Re Jamieson and the Queen* (1982) 70 C.C.C. (2d) 430 (Que. S.C.) and *R.* v. *Holman* (1982) 28 C.R. (3d) 378 (B.C. Prov. Ct.).

2.19 Regardless of whether section 7 has merely procedural or also substantive effect, it is clear that there is a great distinction between the rules of natural justice and fairness under the common law and the principles of fundamental justice under the *Charter*. That difference pertains to the application of each concept to primary and delegated legislation. The common law rules of natural justice and fairness ". . . must be ascertained by reference to the legislative framework under which the administrator is working. . . .".[18] Accordingly, courts will imply procedural protections only in the absence of express provisions to the contrary.[19] Although the legal protections granted by section 7 of the *Charter* may also be implied where there are no express legislative provisions, its application is not so limited. One justice has stated:

> The actions [referring to administrative procedures] may be authorized by the common law or *by federal or provincial legislation*, but if the actions do not accord with the principles of fundamental justice or are arbitrary, the law authorizing them is, to that extent, void and of no effect (*Constitution Act, 1982*, s. 52).[20]

2.20 The effect of section 7 is particularly important therefore in its assertion of the superiority of the principles of fundamental justice over that of legislative provisions. Aside from negating legislation contrary to (at least) procedural due process, it may also lend credence to the invalidity of privative clauses which seek to oust superior courts from their supervisory jurisdiction to review jurisdictional error, at least where one of the successful grounds for review is found to be a breach of the procedural standards of fair play.

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[18] *Re Caddedu*, *supra* n. 16 at 636

[19] See the remarks of LeDain, J. in *A.-G. Can.* v. *Inuit Tarpirisat* (1978) 95 D.L.R. (3d) 665 at 671 (Fed. C.A.).

[20] *Re Caddedu*, *supra* n. 16 at 640-41, per Potts, J. (emphasis added).

2.21 Apart from section 7, there are other provisions in the *Charter* which have been applied in the review of decisions of administrative agencies. For example, paragraph 2(b) of the *Charter*, which guarantees, *inter alia*, "freedom of expression, including freedom of the press and other media of communication", has been applied to determine whether administrative proceedings held in private should be open to the public.[21] In addition, wide investigative powers statutorily entrusted to certain administrative agencies have been struck down pursuant to section 8 of the *Charter*, which entitles everyone to be secure against unreasonable search or seizure.[22] That same section has also been applied to regulate the legislative power given to some administrative agencies to compel the production of documents.[23] Section 13 of the *Charter*, which gives a constitutional protection against self-incrimination, has been found to apply to administrative proceedings where a person may be exposed to a criminal charge, penalty or forfeiture.[24] The foregoing comprises merely some of the effects of the *Charter* on administrative proceedings.

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[21]See, for example, *Re Edmonton Journal and A.G. for Alta.* (1983) 22 A.C.W.S. (2d) 471 (Alta. Q.B.) where McDonald, J. held that legislation requiring a portion of a fatality inquiry relating to confidential health records be held in private did not contravene s. 2(b) of the *Charter*.

[22]See *Southam Inc.* v. *Hunter* [1983] 3 W.W.R. 385 (Alta. C.A.).

[23]*Re Alta. Human Rts. Comsn. and Alta. Blue Cross Plan* (1983) 1 D.L.R. (4th) 301 (Alta. C.A.).

[24]*Re Donald and the Law Society of B.C.* [1984] 2 W.W.R. 46 (B.C.C.A.). The protection against self-incrimination under s. 13 of the *Charter* is similar to the protection that exists under s. 5 of the *Canada Evidence Act*, R.S.C. c. E-10 and s. 7 of *"The Manitoba Evidence Act"*. Both of these provisions do not excuse a witness from giving incriminating evidence; however, they generally do ensure that incriminating evidence cannot be used against a witness in a subsequent proceeding. As to the right of a person charged with an offence, not to testify in a proceeding in respect of that offence, see s. 4 of the *Canada Evidence Act* and s. 11(c) of the *Charter*.

2.22 Section 11 of the *Charter* guarantees the right of any person charged with an offence, *inter alia*: (1) to be informed without unreasonable delay of the specific offence; (2) not to be a compellable witness in proceedings in respect of the offence; and (3) to have a fair and public hearing by an independent and impartial tribunal. It is uncertain whether section 11 has any application to administrative proceedings where a person faces a serious sanction or penalty. Most of the case law to date has restricted the section's scope to criminal and quasi-criminal matters.[25] Many of those who argue that the Supreme Court of Canada should favour a broader interpretation point out that the comparable provision in the *Canadian Bill of Rights* applied to a "*criminal* offence" and maintain that the dropping of the adjective "criminal" widens the section's application to administrative decisions which confer penalties or sanctions.[26]

2.23 The *Charter* has not only constitutionally entrenched the procedural standards of fair play. It may also broaden the role of judicial review insofar as it applies to prerogative powers of the Crown. In the Federal

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[25]*Law Society of Manitoba* v. *Savino* [1983] 6 W.W.R. 538, 23 Man. R. (2d) 293 (C.A.); *Rosenbaum* v. *Law Society of Manitoba* (1983) 22 Man. R. (2d) 260 at 262 (Q.B.), var'd (1983) 3 D.L.R. (4th) 768 (C.A.); *Re James and Law Society of B.C.* (1982), 143 D.L.R. (3d) 379 (B.C.C.A.). But see *Re Lazarenko and Law Society of Alberta* (1983) 4 D.L.R. (4th) 389 (Alta. Q.B.) where Sinclair, C.J.Q.B. held that s. 11(c) of the *Charter* (which gives a person charged with an offence the right not to be a compellable witness in proceedings in respect of that offence) applied to a person whose conduct was being investigated by the Law Society. The statutory power of the Law Society to compel the applicant to testify, however, was found not to be contrary to the *Charter* because it was viewed as a reasonable limit "demonstrably justified" under s. 1 thereof. See also *Re Nash and The Queen* (1982) 70 C.C.C. (2d) 490 at 494 (Nfld. Prov. Ct.).

[26]See, for example, Manning, *Rights, Freedoms and the Courts* (1983) at 362.

Court of Appeal case of *R.* v. *Operation Dismantle*,[27] a majority of the judges of that court, in *obiter*, held that decisions which derive their authority from the royal prerogative are subject to judicial review under the *Charter*. Authority for the expanded realm of judicial review as a result of the *Charter* can be found in s. 52(1) which declares the Constitution to be, *inter alia*, "the supreme law of Canada . . . ". Should the Supreme Court of Canada affirm the Federal Court of Appeal decision on this point, it may mean that, in appropriate cases, the procedural standards of fair play will be expected from Ministers of the Crown and the Lieutenant-Governor in Council even where they exercise those powers of their office which are not derived from legislation.

C. STATUTORILY-IMPOSED PROCEDURE

2.24 We stated in Chapter 1 that procedure may be established in the legislation which creates and empowers a particular agency, or in the delegated legislation where authority to enact rules of procedure is conferred upon either the agency or Lieutenant Governor in Council. Just as the courts have devised principles for determining whether to strike down a decision for breaching one or more of the constituent elements of natural justice and fairness, so too have they created rules for ascertaining when to strike down decisions for violating procedure imposed by legislation.

2.25 In determining the effect of non-compliance with statutorily-imposed procedure, a distinction is drawn among forms of legislation which are mandatory, directory or permissive. It is quite simple to distinguish permissive legislation from the other two categories: such legislation employs the verb "may" which, by the statutory rules of interpretation, is to be viewed as permissive and empowering.[28] To differentiate between mandatory and directory legislation is more difficult; both types of

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[27](1983) 3 D.L.R. (4th) 193 (Fed. C.A.). But see *Wilson* v. *Min. of Justice* Fed. T.D., unreported, November 7, 1983, T-1403-83, where Nitikman, D.J. at p. 32 of the judgment stated that "The Charter has no applicability to the issue of the royal prerogative".

[28]*"The Interpretation Act"*, C.C.S.M. c. I80, s. 8(3).

legislation employ imperative language, such as "shall" and comparable wording. However, although non-compliance with a mandatory procedural provision may invalidate a decision, a breach of a directory provision is generally inconsequential.

2.26 A court may apply several criteria to distinguish between directory and mandatory legislation. Chief among these are the importance of the provision that has been disregarded and the degree of hardship or inconvenience which will result by treating it as mandatory.[29] In determining the relative importance of the provision breached, "regard may be had to its significance as a protection of individual rights, the relative value that is normally attached to the rights that may be adversely affected by the decision and the importance of the procedural requirement in the overall administrative scheme established by the statute".[30] The courts will not normally strike down a decision unless substantial prejudice has been caused to those immediately affected such as the failure to give notice or generally to meet the standards of procedural fairness where private rights are affected.

2.27 We indicated in Chapter 1 that part of the research conducted by the Commission comprised a review of the procedure of provincial administrative agencies which is prescribed either by statute or regulation. In Appendix D to this Report, there is set forth a table containing a description of which principles of natural justice and fairness - specifically, notice, disclosure, hearing and right to counsel - are explicitly established, either by legislation or regulation, for each of the provincial government agencies under study. This appendix also contains information concerning which agencies are required by legislation to give reasons for their decisions and

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[29]See *Re Vialoux* (1983) 2 D.L.R. (4th) 187 (Man. C.A.).; *Bilodeau* v. *A.-G. of Manitoba* (1981) 61 C.C.C. (2d) 217, [1981] 5 W.W.R. 393 (Man. C.A.), appeal heard by S.C.C. commencing June 11, 1984 (judgment reserved); and *R.* v. *Smith* (1980) 110 D.L.R. (3d) 636 (Man. Co.Ct.).

[30]*de Smith's Judicial Review of Administrative Action* (4th ed. J.M. Evans 1980) at 142.

those decisions from which there is a right of appeal. We are cognizant of the fact that the procedures reviewed for each agency in Appendix D are by no means exhaustive of the total range of procedures which could potentially govern a decision-making process. They are, in our view, however, major indices of the extent to which the provisions of primary and delegated legislation acknowledge the importance of some level of participation in the decision-making process by those affected by it.

2.28 In Appendix D, we have divided the provincial government agencies into one of four categories entitled "individual interests", "collective interests", "administrative" and "agencies not affecting interests". These categories are described below:

1. Individual interests. The agency makes determinations respecting the rights and entitlements of persons on a case by case basis directly affecting individual parties.

2. Collective interests. The agency makes determinations of rights and entitlements which directly affect a specific class of people, such as construction workers, or a specific organization.

3. Administrative. These agencies may still affect the rights and entitlements of persons or groups indirectly but they make their determinations according to statutory or policy guidelines and often have little discretion in applying these guidelines.

4. Agencies not affecting interests. These agencies may affect rights eventually, but only by way of another arm of government. This group includes many agencies who advise in policy matters of government, whether they receive input into their decision-making from outside interests or not.

2.29 The agencies were divided into these four groupings in accordance with their principal mandate. The fact that an agency is grouped under the first heading, for example, so that its decisions were found to affect individual interests, should not be interpreted to mean that individual interests are affected by all of its decisions; many of the agencies listed

under this heading also devise broad rules of policy and procedure relating to internal management which could not be said to affect individual interests. Similarly, an agency may be placed within the third or fourth category despite the fact that occasionally it may make decisions which affect individual or collective interests. The Natural Products Marketing Council, for example, is statutorily authorized to hear appeals from the Vegetable Producers' Marketing Board and certain other marketing boards concerning the deregistration of producers listed for that marketing board. Should the Council exercise this appeal jurisdiction, any decision made pursuant to that authority will affect individual interests. Principally, however, the Council functions as a regulatory and supervisory body for the producer boards and marketing commissions and, consequently, it is grouped under the third category in accordance with its major purpose.

2.30 In attempting to discern the degree to which an agency affects interests, it was often difficult to determine at which point an agency warranted inclusion in one category rather than another. We referred to the difficulty of classifying agencies previously in reference to the procedural standards of fair play which were traditionally confined to agencies classified as judicial or quasi-judicial. Acknowledging the limitations of any classification system, we nevertheless concluded that it was preferable to draw a general depiction of the extent to which interests are affected by the decisions of each agency than none at all. In this manner some general conclusions could be drawn concerning the extent to which the statutory sources of procedure contain the basic constituent elements of natural justice and fairness and the relative importance of their inclusion. Our observations concerning the formal procedure set forth for government agencies in Manitoba are summarized in accordance with the four groupings devised:

1. Individual interests

Of the 60 agencies which were classified as affecting individual interests, greater than one-third have notice provisions in the legislation or regulations which govern their procedure (26 out of 60 or 43.3%). More than one-half have provision for some type of hearing (38 out of 60 agencies or 63.3%). There were fewer agencies which specifically allow for the right of legal representation (16 out of 60 or 26.6%), the disclosure of documents (2 out of 60 or 3.3%) or that make some provision in regard to the giving of reasons for a decision (5 out of 60 or 8.3%).

2. Collective interests

26 agencies were classified as affecting collective interests. As compared to those agencies which were interpreted as affecting individual interests, these agencies have marginally fewer procedural protections outlined by statute or regulation. For example, just less than one-third of these agencies have notice provisions (8 out of 26 or 30.7%) while just under one-half have some requirement for a hearing (12 out of 26 or 46.1%). As in the case of those agencies affecting individual interests, few agencies in this classification have some provision in regard to the requirement of reasons for decision (3 out of 26 or 11.5%). Nor are there many specific provisions regarding legal representation (only the Board of Arbitration has legislation allowing legal representation while 2 out of 26 or 7.6% have special provisions. Note: see key to this Appendix). None of the agencies classified in this grouping had legislation pertaining to the disclosure of information.

3. Administrative

Of the 31 agencies which were classified as administrative, very few contain procedural provisions. Of the two agencies for which provision of a hearing is made, each also provides for notice to interested parties. Aside from the Elections Commission, no body within this classification has disclosure rules. None makes any requirement for reasons of decision.

4. Agencies not affecting interests

Those agencies which do not affect interests contain set procedures even less frequently. This classification is dominated by agencies whose principal task is policy and research.

D. CONCLUSIONS CONCERNING THE PRESENT LAW GOVERNING ADMINISTRATIVE PROCEDURES

2.31 Based upon our observations of the administrative procedures summarized in Appendix D, we have concluded that the provincial legislation (whether primary or delegated) governing provincial agencies does not contain a very high incidence of procedural provisions. This conclusion is supported even with respect to agencies which are empowered to make decisions which affect either individual or collective interests. This means that the rules of procedure for the majority of agencies are mostly governed by the common law principles of natural justice and fairness and certain provisions of the *Charter*, unless an agency has devised procedure through the use of internal rules.[31] These internal rules of agencies have been rightly condemned by one learned American commentator as "secret law".[32]

2.32 A system of administrative procedure which is widely based upon non-legislative sources is inadequate in several respects. First, although the emergence of the duty of fairness now avoids the need to classify agencies to determine the application of the principles of natural justice, it is still

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[31]By internal rules, we refer to those rules devised by agencies which are not published in The Manitoba Gazette pursuant to *"The Regulations Act"*, C.C.S.M. c. R60. That Act expressly provides that, upon publication in The Manitoba Gazette, a regulation is valid as against all persons. However, it is silent as to the effect of non-publication. A regulation is defined in the Act, *inter alia*, as a rule "of a legislative nature made or approved under the authority of an Act of the Legislature". We interpret this as including rules of procedure of those government agencies which adjudicate rights and interests of members of the Manitoba public. This interpretation has been confirmed with the Registrar of Regulations.

[32]I Kenneth Culp Davis, *Administrative Law Treatise* (2d ed.) at s. 1:11, p. 39.

uncertain as to which agencies' decisions will be found to affect "the rights, interests, property, privileges or liberty of any person".[33] Notwithstanding the fact that the application of the fairness doctrine will likely be clarified to some extent as the number of judicial decisions multiply, "that development will not be systematic and it will inevitably be a slow process attended by much uncertainty. . .".[34] Not only is there some doubt with respect to when the rules of procedural fairness will be judged applicable; what is also uncertain is how the content of those rules will be applied to a given situation. Although undoubtedly the administrative process benefits from a flexible application of the concept of fairness, it is precisely this attribute which makes for uncertainty in terms of predicting how a court will interpret that concept for the agency under analysis.

2.33 There is a further disadvantage of the existing heavy reliance upon procedures emanating from the common law principles of natural justice and fairness. This has to do with the need for administrative agencies to be accessible to those persons and groups in society who are affected by its decisions. The principles of natural justice and fairness are concepts generally familiar to lawyers and perhaps public administrators who have made themselves aware of common-law imposed procedure. However, they are understandably unfamiliar to most. Surely it would be beneficial if those who are affected by an administrative process could be informed of the procedural rules which should govern a decision without necessarily having to retain counsel or rely upon the knowledge of public officials as to their procedural rights.

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[33] *Martineau* v. *Matsqui Institution Disciplinary Board*, *supra* n. 6 at 410.

[34] *Royal Commission Inquiry into Civil Rights*, Honourable J.C. McRuer, Commissioner (1968) Report No. 1, vol. 1 at 209, referring to the disadvantages of leaving the development of the law relating to procedure to the Courts.

2.34 Published rules of procedure would allow parties the advantage of being advised prior to the proceedings of the procedures to be followed in the decision-making process.[35] Experience in other jurisdictions points to the desirability of such procedure.[36] Not only would rules of procedure provide for certainty. They would also ensure that where agencies perform analogous functions (such as licensing), the administrative process would be more uniform. It is appropriate that there be some consistency between the procedures of agencies performing similar functions. The American National Conference of Commissioners on Uniform State Laws has offered some instructive comments concerning the benefits of uniformity for administrative procedure:

> Obviously, it is desirable to secure as much uniformity among the procedural rules of the several agencies as "is practicable" in light of their differing circumstances. Such uniformity as is feasible will ease the burden on the public of familiarizing itself with agency procedures. It will also eliminate the additional agency costs involved in the independent formulation by each agency of procedural rules with unnecessary differences.[37]

2.35 Published rules of procedure would also allow for the imposition of procedure which is not prescribed by either the common law or the *Canadian Charter of Rights and Freedoms*. In Chapter 4 of this Report, we study the desirability of requiring particular agencies to state reasons for their decisions, at least when requested (see para. 4.08ff.). As we explained earlier in this Chapter, the giving of reasons is not a requirement of the common law; nor has it yet been stipulated by *Charter* jurisprudence. The drafting of published rules would therefore allow for the imposition of appropriate procedures upon

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[35]Rather than *post factum* through the judicial review of the administrative decision.

[36]See, for example, the statement in H.W.R. Wade, *Administrative Law* (5th ed.) at 804 that "Experience has shown that published rules of procedure are highly desirable".

[37]Uniform Law Commissioners' Model State Administrative Procedure Act (1981), *14 Uniform Laws Annotated: Civil Procedural and Remedial Laws* at 75 (Commissioners' Comment to s. 2-105 of the Act).

agencies, such as a statement of reasons, where no similar standards are prescribed either by common law or constitutional law.

2.36 In acknowledging the desirability of published rules of procedure, we are not suggesting that rules be devised for all of the provincial government agencies under study. Many of these agencies (as we have previously observed) perform research and policy functions, for example, and need not be governed by published rules of procedure. Should such agencies wish to enact rules of procedure for the smoother conduct of their meetings, most are statutorily authorized to do so (see Appendix C for a summary of the legislation which authorizes the making of rules of procedure for each agency). However, we do not think that it is in the public interest that published rules of procedure be devised for agencies unless one of their major functions directly affects the rights or interests of a person or a group of persons. For the benefits therefore of certainty, accessibility, uniformity and further procedural protections, we recommend the following:

RECOMMENDATION 1

That provincial government agencies which principally make decisions directly affecting the rights or interests of a person or group of persons have published rules of practice and procedure to govern those decisions.

2.37 In several instances, it is not difficult to identify those agencies which mainly make decisions directly affecting the rights or interests of a person or group of persons. Those agencies which are charged with the responsibility of issuing sanctions, licences and benefits should be subject to this recommendation. So too should those agencies whose primary function is arbitral or rate-making. It is also clear from several decisions that courts will not exempt agencies from the necessity of complying with the principles of natural justice and fairness merely because their role is

investigatory or advisory.[38] We recommend that the following agencies should have published rules of practice and procedure:

RECOMMENDATION 2

That, in particular, the following provincial government agencies should have published rules of practice and procedure:

DEPARTMENT OF AGRICULTURE: Agricultural Credit Corporation Board of Director; Agricultural Crown Land Advisory Committee; Manitoba Farm Lands Ownership Board; Crop Insurance Act Appeal Tribunal; Manitoba Dairy Board; Farm Machinery Board; Veterinary Medical Board of Manitoba; Milk Prices Review Commission.

DEPARTMENT OF ATTORNEY-GENERAL: Criminal Injuries Compensation Board; Manitoba Human Rights Commission; Insurance Licence Advisory Board; Law Enforcement Review Board; Legal Aid Services Society of Manitoba; Liquor Control Commission; (Liquor) Licensing Board; Manitoba Police Commission.

DEPARTMENT OF BUSINESS DEVELOPMENT AND TOURISM: Manitoba Horse Racing Commission; Small Business Interest Rate Relief Board.

DEPARTMENT OF COMMUNITY SERVICES AND CORRECTIONS: Day Care Staff Qualifications Review Committee; Parole Board.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS: Embalmers and Funeral Directors' Board of Administration; Manitoba Securities Commission; Public Utilities Board.

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[38]Two significant facts often considered for determining the appropriate extent of procedural protections for advisory and investigatory agencies are the degree of proximity between the report and the decision and the exposure to harm of the person investigated. See, for example, *Fraternite Inter-Provinciale des Ouvriers en Electricite* v. *Office de la Construction du Quebec* (1983) 148 D.L.R. (3d) 626 (Que. C.A.); *Re Seaway Trust and The Queen in Right of Ontario* (1983) 143 D.L.R. (3d) 252 (Ont. H.C.); *Re Abel and Director, Penetanguishene Mental Health Centre* (1979) 97 D.L.R. (3d) 304 (Ont. Div. Ct.); *Re Pergamon Press Ltd.* [1971] 1 Ch. 388 (C.A.).

DEPARTMENT OF CO-OPERATIVE DEVELOPMENT: no applicable agencies.

DEPARTMENT OF CROWN INVESTMENTS: no applicable agencies.

DEPARTMENT OF CULTURE, HERITAGE AND RECREATION: no applicable agencies.

DEPARTMENT OF EDUCATION: Certificate Review Committee; Collective Agreement Board; Student Aid Appeal Board; Board of Arbitration.

DEPARTMENT OF EMPLOYMENT SERVICES AND ECONOMIC SECURITY: Social Services Advisory Committee.

DEPARTMENT OF ENERGY AND MINES: Mining Board; Oil and Natural Gas Conservation Board; Surface Rights Board.

DEPARTMENT OF ENVIRONMENT AND WORKPLACE SAFETY AND HEALTH: Clean Environment Commission.

DEPARTMENT OF FINANCE: no applicable agencies.

DEPARTMENT OF FITNESS AND SPORT: Boxing and Wrestling Commission.

DEPARTMENT OF GOVERNMENT SERVICES: Manitoba Disaster Assistance Board; Land Value Appraisal Commission.

DEPARTMENT OF HEALTH: Hearing Aid Board; Medical Review Committee; Minister's Board (Mental Health Act).

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION: Highway Traffic Board; Licence Suspension Appeal Board; Medical Review Committee; Motor Transport Board; Taxicab Board.

DEPARTMENT OF HOUSING: Rent Appeal Panel.

DEPARTMENT OF INDUSTRY, TRADE AND TECHNOLOGY: no applicable agencies.

DEPARTMENT OF LABOUR: Apprenticeship and Tradesman's Qualifications Board; Manitoba Labour Board; Power Engineers Advisory Board; Conciliation Boards; Fire Department's Arbitration Board; Greater Winnipeg Building Construction Wages Board; Heavy Construction Wages Board; Rural Building Construction Wages Board; Industrial Inquiries Commission; Minimum Wage Board.

DEPARTMENT OF MUNICIPAL AFFAIRS: Civic Service Board; Municipal Board.

DEPARTMENT OF NATURAL RESOURCES: Arbitration Board of Forestry Branch; Rivers and Streams Protection Authorities; Boards of Conservation Districts.

DEPARTMENT OF NORTHERN AFFAIRS: No applicable agencies.

AGENCIES UNDER THE SUPERVISION OF A MINISTER: Civil Service Commission; Manitoba Lotteries Foundation Board; Rates Appeal Board of the Manitoba Public Insurance Corporation; Workers' Compensation Board.

2.38 Having concluded, for the reasons earlier cited, that published rules of procedure are desirable, we examine in Chapter 3 the available options in which to enact published rules. In our study, reference was continually made to reforms introduced in Canada (principally, Ontario), the United Kingdom, the United States and Australia. In the succeeding chapter, the advances made in administrative procedure in these jurisdictions are summarized so as to assess better the appropriate manner in which to implement published rules of procedure for the foregoing provincial government agencies.

CHAPTER 3

REFORM IN OTHER JURISDICTIONS

3.01 An analysis of the reform introduced in other jurisdictions leads to the conclusion that there are essentially three avenues available for the improvement of administrative procedures. The first is the enactment of a statute which would provide for uniform rules of procedure for those agencies or types of decisions which come within the scope of the statute in question. The second approach is to devise rules of procedure, either in each statute creating the agency or in the regulations pursuant to that statute, so that procedural reform is addressed on an agency-by-agency basis. The final option is a combination of the first two: that is, the enactment of uniform rules of procedure as well as separate rules where generally greater detail is considered desirable. Each of these three approaches is described in this Chapter. At the close of the Chapter, we summarize our conclusions concerning the most appropriate manner in which to implement rules of procedure for those government agencies earlier designated in recommendation 2.

A. UNIFORM RULES OF PROCEDURE

3.02 Uniform rules of procedure for administrative agencies have been enacted in Ontario[1] and Alberta.[2] Legislation incorporating minimum administrative procedural safeguards for federal agencies has been tentatively recommended by the Law Reform Commission of Canada.[3] The Administrative Procedures Act which was forwarded by the then Attorney-General for our

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[1] *Statutory Powers Procedure Act*, R.S.O. 1980 c. 484.

[2] *The Administrative Procedures Act*, S.A. 1966, c. 1.

[3] L.R.C.C. Working Paper 25, *Administrative Law: Independent Administrative Agencies* at 140-141.

comments concerning the appropriateness of its enactment in Manitoba is also an example of the uniform administrative procedures approach (see Appendix A). In the United States, there has been federal[4] and model state legislation[5] on administrative procedures since the 1940s. The common feature of each of these statutes and proposed statutes is that they seek to establish, in varying degrees of particularity and comprehensiveness, a general code of procedure so as to allow for minimum administrative procedure requirements. We now summarize each of these enactments and proposed enactments separately.

1. The Statutory Powers Procedure Act of Ontario

3.03 Following the recommendations of the McRuer Commission, the Ontario Legislature enacted a package of legislation for the purpose of reforming administrative law. One of these statutes establishes uniform rules of procedure applicable to tribunals exercising a statutory power of decision "where the tribunal is required by or under [an Act of the Legislature] or otherwise by law to hold or to afford to the parties to the proceedings an opportunity for a hearing before making a decision".[6] This statute is called the *Statutory Powers Procedure Act* and it is a companion to the *Judicial Review Procedure Act*,[7] an enactment which establishes a comprehensive court procedure for the judicial review of administrative decisions, which will be described in Part II of this Report.

3.04 As stated, the uniform procedural code in Ontario applies whenever a agency is required, either by statute or by law, to hold a hearing for the

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[4]*Administrative Procedure Act* (Public Law 404-79th Congress), approved June 11, 1946.

[5]*Model State Administrative Procedure Act* (1946), revised (1961).

[6]*Supra* n. 1, s. 3(1); note that this subsection is subject to s. 3(2) of the Act where several exceptions, including the courts and the Legislative Assembly, are set forth.

[7]R.S.O. 1980 c. 224.

exercise of a statutory power of decision.[8] It will be recalled from Chapter 2 that some form of hearing is essential whenever the rules of natural justice and fairness are found to apply to a particular agency. Accordingly, it can be stated that the Ontario code of procedure applies to those statutory powers of decision which are either subject to the common law rules of natural justice and fairness or for which, by statute, a hearing is required.

3.05 The rules of procedure relating to these decisions are comprehensive relative to the other codes or proposed codes of procedure which we shall review shortly. The Ontario Act deals with notice, public hearings, cross-examination, disclosure of information, maintenance of order at hearings, the right of parties and witnesses to counsel or agent, power of summons, contempt proceedings, rules of evidence, written reasons for decision or order on request, the compilation of a record, power to prevent abuse of process and a declaration that an appeal will generally operate as a stay in the administrative process.

3.06 The Ontario Act "has introduced a comparatively elaborate procedural code which has crystallized the contents of 'natural justice' and, in a number

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[8]The Administrative Law Section of the American Bar Association is opposed to the legislative application of uniform rules of procedure federally whenever a case is required "by law" to be determined after a hearing. The section is of the view that it "may . . . result in the imposition of unnecessary burdens and deprive administrative agencies of needed flexibility in fashioning administrative procedures". It would also extend the formal procedures set forth in the *Administrative Procedure Act* to cases where a hearing is not only required by statute or the Constitution, but also by agency rules. It therefore "might have the undesirable effect of inhibiting agencies from providing for hearings by regulation even though the statute does not require them". See "Report of the Section of Administrative Law" (1979) 204 *Reports of the American Bar Association*, at 559-60.

of important aspects, increased the parties' procedural rights before administrative tribunals beyond those included in any common law formulation of natural justice".[9] Paradoxically, it is these very attributes of the Ontario statute which also describe its limitations. As one Ontario scholar has observed:

> The Legislature [of Ontario] was overtaken by history in the sense that it attempted to clarify the law by reducing to statutory language the flexible concept of natural justice, shortly before the courts explicitly recognized the very different procedural forms that it is capable of taking.[10]

The Ontario legislation has indeed been eclipsed by case law and, particularly, those decisions from which the doctrine of fairness has emerged. As we pointed out earlier in Chapter 2, with its emergence the courts rejected the strict demarcation between judicial and non-judicial decision-making and the consequent full panoply or vacuum of rights that each respectively embraced. They adopted in its place the more appropriate model of a continuum of rights and interests which allows for the application of flexible and variable standards of administrative procedure, viewing the system as a whole. In short, the relevant question for public administrators is no longer "Is this person entitled to a hearing?" as the Ontario statute suggests, but rather "What sort of hearing, if any, is (s)he entitled to?"

3.07 There is a further limitation of the Ontario statute and for this we must return to what we cited in the previous chapter as one of the major benefits of published rules of proceedings: certainty. Critics of a uniform procedural code point out that the application of a monolithic set of rules to various agencies necessitates that procedure be recited in very general

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[9]J.M. Evans, "Remedies in Administrative Law", *L.S.U.C. Special Lectures (1981)* 429 at 435.

[10]*Id.*, at 438.

terms.[11] Although the Ontario Legislature used relatively precise languag in its uniform procedural code, it nevertheless condescended (perhap unavoidably) to draft some very general terms which do not entirely clarif the common law. For example, the use of the terms "reasonable notice" (s 6(1)) and the right to cross-examine witnesses that is "reasonably required (s. 10(c)) preserve the flexibility of the common law yet retain th disadvantage of its uncertainty. Vague too is the requirement tha "reasonable information" be provided where the character of a party is i issue (s. 8).

3.08 Not only does the Ontario statute fail, in some instances, to remov uncertainty; it may also be a new source. First, given the generality o uniform codes, it is usually desirable that the statute creating the agenc particularize procedure where greater certainty can be achieved.[12] Th Ontario statute, however, appears to limit this possibility to some extent a s. 32 states, *inter alia*, that the statute's provisions "prevail over" othe provisions and regulations, rules or by-laws which conflict therewith "unles it is expressly provided in any other Act [to the contrary]". This woul appear to strike down, in sweeping language, any procedure covered by the Ac which was set forth in other statutes prior to 1971 (when the Act came int effect), unless these other statutes were subsequently amended to clarif their superiority over the uniform code. The preceding discussion raise another uncertainty, of course, and that is resolving when another statut "conflicts" with the *Statutory Powers Procedures Act*. To avoid uncertainty it would appear that an overriding clause, such as "notwithstanding th *Statutory Powers Procedures Act*", would be necessary whenever the

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[11]See, for example, K.J. Keith's monograph prepared for the Public an Administrative Law Reform Committee (New Zealand) entitled *A Code o Procedure for Administrative Tribunals* (1974) at 48.

[12]The McRuer Commission recognized that detailed rules for each agenc might have to be made, in addition to the uniform minimum rules of procedure and recommended that this task be delegated to the Statutory Powers Rule Committee, a monitoring body which they recommended be established. *Supr* n. 8 at 220-221.

Ontario Legislature wishes to adopt more detailed procedure for an agency governed by the minimum rules.

3.09 The Ontario statute is subject to a further criticism. As previously stated, the uniform procedures operate whenever a hearing is required, either by statute or law, to exercise a "statutory power of decision". A "statutory power of decision" is defined in the legislation to mean certain powers or rights "conferred by or under a statute" (s. 1(1)(d) of the Act). This means that the uniform rules of procedure have no application to those agencies which are created by order-in-council, pursuant to the royal prerogative, or to those bodies operating internally within a department without specific statutory sanction.[13] The determination of whether procedural protections should attach to an agency's decision-making process should not, in our view, depend upon the source of an agency's authority. What is relevant instead is the function of the agency under analysis and, particularly, whether it exercises decisions directly affecting a person's rights or interests. The courts have also viewed the source of a public agency's authority as generally an irrelevant consideration in determining whether the principles of natural justice and fairness should apply.[14]

2. The draft Administrative Procedures Act for Manitoba (Appendix A) and The Administrative Procedures Act of Alberta

3.10 *The Administrative Procedures Act*[15] of Alberta has less detailed provisions than the Ontario Act. Notice, access to facts or allegations contrary to interest, the right to furnish evidence, to cross-examine and make representations, as well as the right to receive a written decision with reasons, comprise the procedure contained in this statute. The Manitoba draft statute is somewhat more detailed as it also provides for representation by counsel and for the issuance of subpoenas.

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[13]See *Re Raney and the Queen in right of Ontario* (1974) 4 O.R. (2d) 249 (C.A.).

[14]See, for example, *R. v. Criminal Injuries Compensation Board* [1967] 2 Q.B. 864 (C.A.).

[15]*Supra* n. 2.

3.11 Neither avoids the disadvantages of the Ontario statute; indeed, as the statutes attempt to be less detailed, it could be said that they are plagued with greater uncertainty. Flexible standards such as "adequate notice", "reasonable opportunity", "sufficient detail" and "fair opportunity" are found throughout their provisions. The Alberta statute contains a section which suggests that it is subordinate to other statutes (s. 9); the Manitoba draft, however, has potentially wider application for it suggests that it is only subordinate to those laws which allow for greater procedural protections than those contained in the Act (s. 3(2)). Both Acts apply only to those authorities which the Lieutenant Governor in Council by regulation so includes. The criticism that such a provision could unduly limit a statute's application has been realized in Alberta. That Act applies to less than a dozen agencies.[16]

3. The tentative recommendations of the Law Reform Commission of Canada

3.12 In a recent working paper[17] the federal Commission tentatively recommended the enactment of legislation establishing minimum rules of procedure for agencies at the federal level. Although the proposal for administrative procedure legislation is preliminary, and accordingly somewhat vague, the Commission lists some of the matters which should be dealt with in such legislation:

> reasonable notice of a hearing to parties to any proceedings; public notice with opportunity to comment in the context of rule-making; provision for a hearing with the full panoply of traditional procedural safeguards in proceedings where the imposition of significant sanctions is being considered; the making of official decisions in writing; and the giving of reasons for decisions, at least on request by a party.[18]

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[16]A regulation under *The Administrative Procedures Act* 135/80.

[17]Working Paper 25, *Administrative Law: Independent Administrative Procedures* (1980).

[18]*Id.*, at 141.

3.13 It is difficult for us to comment upon this proposal as it is not set forth in draft legislative form. However, to the extent the final recommendations will provide for variations of procedural protections depending upon the nature and degree to which interests are affected, the proposed legislation would be an improvement upon the monolithic codes contained within the Ontario and Alberta statutes and the Manitoba draft.

4. The American Administrative Procedure Acts

3.14 Inspired by the 1941 report of the Attorney-General's Committee on Administrative Procedure, the United States Congress passed a federal *Administrative Procedure Act* which became law in July 1946.[19] In the same year, a *Model State Administrative Procedure Act* was first approved by the American Bar Association and the National Conference of Commissioners on Uniform State Laws. It was revised in 1961 and again in 1981.[20]

3.15 Both the federal Act and the Model State Act of 1961 contain detailed provisions regarding access to information and formal trial-type procedures for contested cases of any "agency". Both also have wide application in terms of the authorities to which each applies. Subject to certain exceptions, the federal Act applies to "each authority of the Government of the United States, whether or not it is within or subject to review by another agency" (s. 551(1)) while the model State Act applies to "each state [board, commission, department, or officer] . . . authorized by law to make rules or to determine contested cases" (s. 1(1)).

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[19]*Supra* n. 4. For an excellent historical analysis of the American legislation, see Paul R. Verkuil, "The Emerging Concept of Administrative Procedure" (1978) 78 Columbia L. Rev. 258 at 261-278.

[20]The 1961 Model State Act has been adopted by 29 states. A list of these appears in *14 Uniform Laws Annotated: Civil Procedural and Remedial Laws* (1983 supplement) at 149.

3.16 When the *Model State Administrative Procedure Act* was revised in 1981, the National Conference approved a creative concept for administrative procedure legislation. Instead of adopting a monolithic code of formal procedure, the Conference approved three procedural models for adjudication. The first, called "formal adjudicative hearing" is a development of the trial-type procedures set forth in the 1946 and 1961 Acts. The other two models are new. They are entitled "conference adjudicative hearing" and "emergency and summary adjudicative proceedings".

3.17 Unlike the "formal adjudicative hearing", the conference hearing does not have a pre-hearing conference, discovery, or testimony by non-parties. The Model Act contemplates that the conference hearing will apply to matters in which there is no disputed issue of material fact, or which involve either a small monetary amount or certain disciplinary sanctions. The "emergency and summary adjudicative proceedings" contain relatively less procedural protections. The statute authorizes its application in very minor matters.[21]

3.18 An American administrative law scholar has described the 1981 Model State Administrative Procedure Act in the following terms:

> [T]he superiority of the new Model Act over the 1946 and 1961 versions fully reflects the advances in administrative law thinking, and in some respects the new draft is providing a leadership in the direction of a better system.[22]

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[21]Including "any matter having only trivial potential impact upon the affected parties", (s. 4-502(3)(viii)) provided the use of the proceedings does not violate any provision of the law, and "the protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties" (s. 4-502(2)).

[22]Kenneth Culp Davis, *1982 Supplement to Administrative Law Treatise* at s. 1:11, p. 6.

The Model State Administrative Procedure Act (1981) is an improvement upon administrative procedure legislation for its recognition of the need for an independent model of administrative procedure. While that model acknowledges that certain matters involving important sanctions may require trial-type procedures similar to those prescribed for the courts, it also recognizes the need for greater flexibility in determining appropriate protections. In this manner, it reflects more closely the common law reforms in both the Commonwealth and the United States.[23]

B. SEPARATE RULES OF PROCEDURE

3.19 In 1955, a committee was appointed in the United Kingdom to consider and make recommendations concerning, *inter alia*, the constitution and working of tribunals and inquiries and their administrative procedures. Popularly referred to as the Franks Committee, the Committee reported to Parliament in 1957 with a number of important recommendations concerning the reform of administrative law.[24] Many of these recommendations found expression through administrative and legislative measures; the latter by means of the *Tribunals and Inquiries Act 1971*.[25]

3.20 Aside from a requirement upon certain tribunals and any Ministers to

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[23]See *Mathews* v. *Eldridge*, 424 U.S. 319 at 348 (1976) where the Supreme Court of the United States recognized the need for procedural flexibility. See also *Goss* v. *Lopez* 419 U.S. 565 (S.C. 1975) and *United States* v. *Florida E. Coast Ry* 410 U.S. 224 (S.C. 1973). For earlier decisions of the Supreme Court which adhered to a more rigid due process content procedure, see *Goldberg* v. *Kelly* 397 U.S. 254 (1970) and *Wong Yang Sung* v. *McGrath* 339 U.S. 33 (1950).

[24]*Report of the Committee on Administrative Tribunals and Inquiries* Cmnd. 218.

[25]*Tribunals and Inquiries Act 1971*, c. 62. The Act was first enacted in 1958 and was revised in 1966.

give reasons (written or oral) for a decision upon request,[26] the *Tribunals and Inquiries Act 1971* contains no procedural rules for tribunals. This follows the views of the Franks Committee which recommended against the adoption of uniform rules of procedure:

> Because of the great variety of the purposes for which tribunals are established . . . we do not think it would be appropriate to rely upon either a single code or a small number of codes. We think that there is a case for greater procedural differentiation and prefer that the detailed procedure for each type of tribunal should be designed to meet its particular circumstances.[27]

Pursuant to the recommendations of the Committee, Parliament established a permanent council, *inter alia*, to monitor and make recommendations concerning tribunal and inquiry procedure. Known as the Council on Tribunals, this monitoring body has supervision over more than 50 tribunals.[28] One of its principal functions since its inception in 1958 has been the revision of procedural rules for each of the agencies under its supervision. Their work in this area has been described as "extremely valuable".[29]

3.21 Minimum rules of procedure have not only been rejected in the United Kingdom. Although the federal Parliament of Australia enacted legislation in the 1970s which achieved comprehensive reform of Australian administrative law,[30]

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[26]*Id.*, s. 12(1).

[27]*Supra* n. 24, at para. 63.

[28]See the Special Report of the Council on Tribunals entitled *The Functions of the Council on Tribunals* (January, 1980) at para. 5.2.

[29]J.F. Garner, "The Council on Tribunals" [1965] Public Law 321 at 344.

[30]See *The Administrative Appeals Tribunal Act 1975* (since amended by *The Administrative Appeals Tribunal Amendments Act 1977*), *Ombudsman Act 1976* and the *Administrative Decisions (Judicial Review) Act 1977*.

minimum rules of procedure for federal Australian agencies were not part of this reform package.[31] However, the Australian Parliament established a multi-functional monitoring body known as the Administrative Review Council. Two of this Council's functions pertain to the improvement of administrative procedure; the legislative text of these is as follows:

> to inquire into the adequacy of the procedures in use by tribunals or other bodies engaged in the review of administrative decisions and to make recommendations to the Minister as to any improvements that might be made in those procedures;
>
> . . .
>
> to make recommendations to the Minister as to ways and means of improving the procedures for the exercise of administrative discretions for the purpose of ensuring that those discretions are exercised in a just and equitable manner.[32]

Again, it would appear that the approach which has been adopted is the preparation of separate procedural rules for each agency under analysis.

C. "THE HYBRID APPROACH": UNIFORM AND SEPARATE RULES OF PROCEDURE

3.22 The first two approaches to the improvement of administrative procedures need not be viewed as alternatives. In some jurisdictions where uniform rules of procedure have been legislated - Ontario and the United States, for example - provision has also been made for the establishment of a monitoring body to devise rules of procedure (1) for agencies outside the ambit of the uniform rules; and (2) for those falling within, where greater

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[31]Notwithstanding the fact that minimum procedural rules were recommended by a Committee chaired by Mr. Justice Kerr: *Report of the Commonwealth Administrative Review Committee*, Parl. Paper No. 144 (1971) at para. 342.

[32]*The Administrative Appeals Tribunal Act 1975*, s. 51(1)(d) and (g).

detail is considered desirable.[33]

3.23 The monitoring body in Ontario is known as the Statutory Powers Procedure Rules Committee and it is charged with the responsibility of examining the procedures of statutory agencies, including agencies required by statute or otherwise by law to hold a hearing to reach a decision and those which are not.[34] Accordingly, the Committee's functions extend to those agencies which are governed by the uniform rules of procedures and those which fall outside its ambit. The mandate of the Committee is advisory, although any statutory agency which is legally required to hold a hearing must consult with the Committee before its rules of procedure can be approved.[35] Although the Committee has a challenging mandate, it would seem that few achievements have been actually realized. Since its inception, the Committee has published only one Annual Report.[36]

3.24 The Administrative Conference of the United States was established in the 1960s for the purpose of providing a permanent monitoring body to examine and evaluate the procedures of federal administrative agencies.[37] Although

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[33]The "hybrid approach" has also been tentatively recommended by the Law Reform Commission of Canada. In Working Paper 25, *supra* n. 17 at 185, the Commission made preliminary proposals concerning the establishment of a federal monitoring agency, *inter alia*, to advise agencies on practices and procedures they might adopt.

[34]The Committee's mandate also extends to the continuous review of the practice and procedure of coroners' inquests and investigatory agencies.

[35]*Supra* n. 1, s. 28.

[36]This is notwithstanding the fact that the *Statutory Powers Procedure Act supra* n. 1 requires that the Committee report annually to the Attorney General (s. 34). The Committee's apparent inactivity is likely due to the fact that it is poorly staffed: the Committee has only one part-time research and support person who is a Crown Law Officer with the Ministry of the Attorney General.

[37]The Conference was created pursuant to the *Administrative Conference Act* of 1964 (P.L. 88-499) and began its operation in 1968.

the House of Representatives had passed uniform rules of procedure in 1946 for those agencies which performed adjudicatory and rule-making functions,[38] a monitoring body was still perceived to be necessary. An early proponent of the establishment of a permanent federal monitoring body was President Kennedy who, in discussing the establishment of an Administrative Conference, communicated the following views to Congress:

> The process of modernizing and reforming administrative procedures is not an easy one. It requires both research and understanding. Moreover, it must be a continuing process, critical of its own achievements and striving always for improvement . . . . The results . . . of an Administrative Conference will not be immediate but properly pursued they can be enduring . . . . [I]t can bring a sense of unity of our administrative agencies and a desirable degree of uniformity in their procedures. The interchange of ideas and techniques that can ensue from working together on problems that upon analysis may prove to be common ones, the exchange of experience and the recognition of advances achieved as well as solutions found impractical, can give new life and new efficiency to the work of our administrative agencies.[39]

3.25 The role and purpose of the Administrative Conference contemplated by President Kennedy are essentially set forth in the Act itself. The Conference is authorized to:

> (a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, in connection therewith, as it deems appropriate;
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> (b) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and
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> (c) collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.[40]

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[38] *Supra* n. 5.

[39] H. Doc. 135, 87th Congress, reproduced in the Appendix to the Act, P.L. 88-499 at 3224-5.

[40] *Supra* n. 37, s. 5.

3.26 A recent American report has described the Conference's work as being "highly respected by scholars and students of the administrative process".[41] It is perhaps an indication of the recognition of the continuing need of a federal monitoring body in the United States that criticisms concerning the Conference are directed towards its limited role. For example, one American scholar has recommended that "[b]efore adopting rules of procedure each agency should consult with the Administrative Conference of the United States in an effort to achieve such degree of uniformity as is consistent with the varying nature of the work of the agencies".[42] Others have proposed that the mandate of the Conference be broadened to include a substantive as well as procedural mandate.[43] More recently, the American Bar Association has recommended that the conference be restructured and strengthened so that it can undertake an audit of the procedural efficiency of federal agencies.[44]

D. CONCLUSIONS

3.27 An assessment of the statutes which encompass uniform rules of procedure has caused us to reject this approach as a suitable model for the improvement of administrative procedure in Manitoba. We are particularly

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[41]*Report of the Commission on Law and the Economy*, printed in (1978) 103 *Reports of the American Bar Association* at 791.

[42]*Supra* n. 19, at 326. Presently, federal agencies are not required to consult with the Conference before adopting rules of procedure.

[43]Gellhorn, E., and Robinson, G.O., "Perspectives on Administrative Law" (1975) 75 Colum. L. Rev. 771 at 795.

[44](1978) 103 *Reports of the American Bar Association* at 611.

adverse to the enactment of a single code of procedure such as Ontario's and Alberta's legislation or what has been proposed for Manitoba (see Appendix A). It is our view that this model has been overtaken by history with the emergence of the fairness doctrine, as we previously elaborated. Additionally (as cited in the first chapter of this Report), we believe that procedure should be determined by balancing the values of fairness, efficiency and accuracy, after examining the functions of each agency under analysis. The uniform codes we have reviewed appear to overemphasize the fairness value relative to the values of efficiency and accuracy; this probably occurs because procedure is decided according to those agencies which, relative to the rest in the grouping, are empowered to invoke the severest sanctions. The general problem, of course, is that a monolithic code must be structured according to a single prototype, meaning that it may be inappropriate for many agencies falling within the model.

3.28 Although a pluralistic code of procedure would resolve some of these problems, it shares a similar disadvantage to the monolithic model. That is, procedure must be described in fairly general terms, meaning that instead of removing uncertainty, the legislation could increase the level. Proponents of either a single or pluralistic code might argue that the addition of separate rules of procedure for each agency (ie. "the hybrid model") would allow for greater detail in drafting. However, this begs the question of the desirability of agency procedure being established in two separate sources. For instance, the public's accessibility to the governing procedure would be hindered; it may be recalled that, in our discussion at the close of Chapter 2, we cited this factor in support of our conclusion that there be published rules of procedure. Furthermore, as the Ontario statute exemplifies, a hybrid model could cause uncertainty with respect to the interrelationship of those sources. Can one assume, for example, that a provision, stipulating 7 days notice in a local newspaper for an agency hearing, complies with a code

requirement that there be "reasonable notice" to all parties?[45]

3.29 We have concluded therefore that the most appropriate model by which to improve the administrative process in Manitoba is to enact separate rules of practice and procedure for each agency set forth in recommendation 2. Generally however, we do not favour that this procedure be established in the statutes which create and empower each agency. Not only is it inappropriate for the Legislature to occupy itself with such details, given the demands placed upon its timetable; statutory enactment would cause undue inflexibility for agencies because procedural changes could not be implemented without legislative amendment, likely several months later. Instead, procedure should, where possible, be drafted in regulations, pursuant to authority in each statute creating the agency in question to pass rules of practice and procedure.

3.30 In some cases, however, it would not be advisable to insert administrative procedure in regulations. It is a fundamental legal principle that where the Legislature delegates its authority to another body by empowering it to pass regulations, that authority "must be exercised strictly

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[45]Subsection 24(1) of the *Statutory Powers Procedure Act* partially assists in answering this question for it grants agencies the discretion to give notice by public advertisement where "the parties to any proceedings before it are so numerous or for any other reason . . . ". However, the Act provides no answer as to whether 7 days (or any other time limit, for that matter) is "reasonable notice". Nor does it make certain who is a party to the proceeding and therefore entitled to notice (s. 5). The proposed Act for Manitoba (Appendix A) is more satisfactory as paragraphs 8(b) and (c) state that the time, form and method of notice for any agency set forth in regulations shall be deemed to be reasonable notice under the Act. It also defines a "party" and, accordingly, gives agencies some direction concerning who should be notified of a hearing (s. 2(1)(c)).

in accordance with the power creating it. . . ."[46] The authority to enact "rules of practice and procedure" refers to the right to pass provisions which pertain to the form or manner or order of proceedings; matters which affect the power or jurisdiction of an agency, and rights generally, are considered substantive law and do not fall within the purview of this power.[47] Accordingly, some provisions, such as those which relate to the rules of evidence[48] and to standing[49] should be set forth in the legislation which creates and empowers each agency rather than within the regulations pursuant thereto. So too should any provision which broadens the agency's powers, such as its right either to subpoena witnesses or to enforce its orders through the court process. Otherwise, the validity of these provisions would be thrown into doubt.

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[46] *R.* v. *National Fish Co. Ltd.* [1931] Ex. Ct. 75 at 81, per Audette, J. (emphasis provided).

[47] See *MacCharles* v. *Jones* [1939] 1 W.W.R. 133 (Man. C.A.); *Montreal Trust Co.* v. *Pelkey* (1970) 11 D.L.R. (3d) 101 (Man. C.A.); *Osachuk* v. *Osachuk* (1971) 18 D.L.R. (3d) 413 (Man. C.A.) regarding the scope of the court's authority to enact rules of practice and procedure.

[48] See, for example, *Circosta* v. *Lilly* [1967] 1 O.R. 398, 61 D.L.R. (2d) 12; rev'g [1967] 1 O.R. 185, 59 D.L.R. (2d) 714; and *Schanz* v. *Richards* (1970) 72 W.W.R. 401 (Alta. S.C.).

[49] See, for example, C. Harlow, "Comment" [1978] P.L. 1; *de Smith's Judicial Review of Administrative Action* (4th ed. J.M. Evans 1980) at 568; H.W.R. Wade, "The Judicial Review Procedure Act - Comment" in *Proceedings of the Administrative Law Conference, U.B.C.* (1979) 164, regarding the power of the court to enact standing provisions in judicial review applications within its rules. But see, for example, *R.* v. *I.R.C., Ex p. Fed. of Self-Employed* [1981] 2 W.L.R. 722 at 734 (H.L.) where Lord Diplock stated, in effect, that standing was a matter "of practice rather than of jurisdiction".

3.31 We admit that the scope of the regulation-making authority could be broadened to allow agencies to pass rules affecting substantive rights. For example, the power delegated to an agency could explicitly authorize it to regulate on questions pertaining to standing and to the rules of evidence. However, the Legislative Assembly of Manitoba has incorporated within its rules the principle that "Regulations should not contain substantive legislation . . . but should be confined to administrative matters".[50] We respect and support that maxim. Accordingly, we recommend:

RECOMMENDATION 3

That, subject to recommendation 4, the rules of practice and procedure for those provincial government agencies set forth in Recommendation 2 be implemented by the passing of regulations made pursuant to the legislation which creates and empowers each agency.

RECOMMENDATION 4

That those rules of the provincial government agencies set forth in Recommendation 2 which may pertain to an agency's jurisdiction or to the substantive rights or interests of persons be implemented by statutory amendment to the legislation which creates and empowers each agency.

3.32 We stated earlier in this Report that we had identified those agencies for which there is legislative authority to make rules of practice and procedure. In particular, the statutory source and the details of that authority are set forth in Appendix C to this Report. We have identified from this research which agencies included in Recommendation 2 are not presently empowered by legislation to make such rules. We recommend that the Legislature authorize these agencies to do so. In addition, it is desirable (for reasons of accessibility) that the rules of practice and procedure for each agency listed in Recommendation 2 be published in The Manitoba Gazette.[51] Our recommendations are as follows:

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[50] *Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba*, s. 71(2)(a).

[51] See footnote 31 in Chapter 2 (para. 2.31) regarding *"The Regulations Act"* of Manitoba and the scope of the definition of regulation under that statute.

RECOMMENDATION 5

That there be legislation passed to authorize the following agencies to makes rules of practice and procedure:

DEPARTMENT OF AGRICULTURE: Agricultural Crown Land Advisory Committee; Manitoba Dairy Board; Farm Machinery Board.*

DEPARTMENT OF ATTORNEY-GENERAL: Legal Aid Services Society of Manitoba; Liquor Control Commission; Liquor Licensing Board.

DEPARTMENT OF BUSINESS DEVELOPMENT AND TOURISM: Small Business Interest Rate Relief Board.

DEPARTMENT OF COMMUNITY SERVICES AND CORRECTIONS: Day Care Staff Qualifications Review Committee; Parole Board.

*DEPARTMENT OF EDUCATION: Student Aid Appeal Board.**

DEPARTMENT OF EMPLOYMENT SERVICES AND ECONOMIC SECURITY: Social Services Advisory Committee.

DEPARTMENT OF FITNESS AND SPORT: Boxing and Wrestling Commission.

DEPARTMENT OF GOVERNMENT SERVICES: Manitoba Disaster Assistance Board.

DEPARTMENT OF HEALTH: Hearing Aid Board; Minister's Board (Mental Health Act).

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION: Medical Review Committee.

DEPARTMENT OF LABOUR: Apprenticeship and Tradesman's Qualifications Board; Power Engineers Advisory Board; Minimum Wage Board.

DEPARTMENT OF MUNICIPAL AFFAIRS: Civic Service Board.

DEPARTMENT OF NATURAL RESOURCES: Rivers and Streams Protection Authorities.

AGENCIES UNDER THE SUPERVISION OF A MINISTER: Rates Appeal Board of the Manitoba Public Insurance Corporation.

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*The Agricultural Crown Land Advisory Committee is created by order-in-council (OC. 1168/78, 222/82). It should be established instead by primary legislation. So too should the Student Aid Appeal Board.

RECOMMENDATION 6

That the rules of practice and procedure for each agency listed in Recommendation 2 which are implemented by the passing of regulations be published in The Manitoba Gazette according to the requirements of "The Regulations Act" of Manitoba.

3.33 The creation of separate rules of procedure for each agency admittedly has one potential flaw. That is, because rules are individually designed, it is possible that procedure will be devised for each agency in isolation without looking at the overall consistency of procedure among agencies performing similar functions. We previously referred to the importance of securing such uniformity (see para. 2.34). In light of this objective, we have prepared various models of procedure as examples to assist in the preparation of rules for particular powers exercised by most of the agencies listed in Recommendation 2 of our Report. These models are intended to be guidelines to assist in the preparation of separate rules for each agency. They are set forth in the succeeding chapter.

CHAPTER 4

MODELS OF ADMINISTRATIVE PROCEDURE FOR MANITOBA

A. INTRODUCTION

4.01 In devising models of administrative procedure, it is important to be cognizant of the emergence of the doctrine of fairness in the common law. As we stated in Chapter 2, with its occurrence the courts have adopted the paradigm of a progression or continuum of rights which allows for the application of various degrees of procedural requirements viewing the public administration as a whole. In particular, the pendulum may swing from formal judicial procedures for the exercise of those government powers which could seriously encroach upon a person's liberties to informal procedures, involving perhaps only notice and comment, for other kinds of concerns.

4.02 Aside from this "continuum of rights" concept, there are two additional factors to bear in mind in designing models of procedure. The first is the importance of balancing the values of fairness, accuracy and efficiency (to which we referred in Chapter 1) so that a formal, trial-type hearing is not invoked unless, under a comparative analysis, its advantages outweigh its disadvantages. One must guard against over-judicialization. It would be highly inefficient, and indeed pointless, for example, to invoke formal trial-type procedures to determine whether a person receiving social assistance was, in fact, overpaid by $10.00. An informal procedure of notice and comment in that case would surely be adequate. Examples are not usually so clear-cut, however; where the proper balancing of efficiency, on the one hand, and accuracy and fairness, on the other, is in doubt, we think that

those of accuracy and fairness should invariably predominate. It must always be assured that the procedure in question adequately protects a person's rights. This raises the third factor to consider in designing procedural models and that is the constitutional protection now afforded by the *Charter*. As we pointed out in Chapter 2, procedure which is contrary to *Charter* principles will be struck down by the courts. It is therefore imperative that architects of legislated procedure be aware of these constitutional guarantees, and their jurisprudence, so that any legislation (primary and delegated) will be likely to comply therewith.

4.03 We stated at the close of the previous chapter that one of the objectives in preparing models of procedure was to secure as much uniformity as is practicable amongst those agencies set forth in recommendation 2. We have found that there are some agencies which have insufficient characteristics in common with others to allow for their inclusion within a model framework. Those agencies which are contained within Recommendation 2 but whose powers are not sufficiently uniform with others to fall within a model are listed and described later in this Chapter. We admit that it would be preferable if we could devise separate rules of procedure for all of the agencies set forth in recommendation 2, bearing in mind, where practicable, the uniformity principle. However, the drafting of separate rules should only be undertaken after a thorough analysis of each agency, followed by close consultation with its membership. This is a mandate far beyond our present budget and resources. Although the models of procedures we have designed are not to be perceived as engravened in stone, we think that they should comprise the guidelines for preparing separate procedural rules to govern the applicable decisions of those agencies listed in recommendation 2. Later in this chapter, we discuss more specifically the mechanics for implementing separate rules of procedure for each of the agencies listed in recommendation 2. For now, we recommend:

RECOMMENDATION 7

That the model rules of procedure set forth in this Report form the basis for preparing separate rules of practice and procedure for the exercise of those powers of agencies listed in Recommendation 2 which are governed by the model rules.

4.04 Before describing the model rules and the categories upon which they are based, two further points regarding published rules of procedure should be addressed. Both broadly pertain to the risk of undue formalism in the administrative process. First, it should be ensured that published procedure will not be used as a vehicle for striking down an agency's decision where a procedural violation amounts to a mere technical irregularity or a defect in form, as opposed to substance. Earlier in this Report (para. 2.24 - 2.26), we referred to the principles which the courts have devised for ascertaining the effect of non-compliance with procedure imposed by legislation. It is doubtful that a mere technical breach would result in the nullity of a decision because, as previously stated, the courts view the relative importance of the provision breached as a critical factor in determining its effect.[1] Nevertheless, to achieve certainty on this point, we recommend in Part II of our Report on Administrative Law (to be published at a later date) that the court have the express authority to refuse relief upon an application for judicial review, where the sole ground for relief is a defect in form or a technical irregularity. The second point to be made in guarding against undue formalism is that an agency should not be required to follow its published procedure where persons affected by a decision have waived their rights to such procedure. In particular, we recommend:

RECOMMENDATION 8

That an agency not be required to follow its published rules of practice and procedure where the parties to a decision have waived compliance with those rules.

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[1]See para. 2.26 and, in particular, the authorities cited therein.

A similar provision is contained in section 4 of Ontario's *Statutory Powers Procedure Act*.[2]

B. GENERAL SUMMARY OF MODELS OF PROCEDURE

4.05 There are six categories of decision-making powers which may be exercised by provincial government agencies for which model rules of procedure have been devised. These six types of powers are:

(1) the power to impose a sanction;
(2) the power to arbitrate;
(3) the power to assess compensation;
(4) the power to issue licences;
(5) the power to determine rates;
(6) the power to award benefits.

A description of each category is contained in the specific discussion of each model which is set forth later in this chapter.

4.06 The purpose of these classifications is not to classify in any kind of scientific sense but, as previously stated, only to suggest categories of decision-making which are sufficiently uniform in function such that broad guidelines regarding appropriate procedure can be suggested. It should be noted that these categories are made with respect to the *decision-making powers* of agencies and not with respect to the agencies themselves. Although it would be far simpler to divide according to the agencies themselves, due to their multi-functional nature, this is impossible. For example, the Public Utilities Board performs functions that vary as broadly as the licensing of cemeteries to the power of rate-making for an assortment of public utilities, including telephone services supplied by the Manitoba Telephone System. That same board has appellate functions such as hearing certain decisions of the Highway Traffic Board. It would be irresponsible to suggest that each of its various functions should be governed by the same procedure, just as it would be for any other multi-functional agency.

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[2]R.S.O. 1980, c. 484.

4.07 We stated in Chapter 2 that the concept of a hearing in administrative law varies from a formal, trial-type hearing with *viva voce* ("oral") evidence to more informal representations involving perhaps only written submissions or comments (para. 2.08). One of the most important factors for determining the appropriate type of hearing for the exercise of a power by an agency is the nature of the substantive right involved. The procedural models we have suggested for each category of power reflect a gradation in the concept of a hearing according to the substantive rights involved. That is, the models range from a formal, trial-type hearing for the imposition of a sanction (category 1) to informal procedures, requiring, as a minimum, comment and reasons for the awarding of benefits (category 6). The models of procedure for those powers exercised in categories 2 to 5 fall somewhere in between these two extremes. The degree to which the procedure in each of these four remaining classifications will emulate the formal concept of a hearing suggested for category 1 will not only depend upon the power exercised by each category, but upon the character and complexity of the issues to be decided and the type of evidence and factual material involved. Further details concerning the kind of hearing which should be invoked for the exercise of these powers is contained in the specific discussion of each model.

4.08 It should be noted that every model of procedure contains a provision stating that the agencies in question should give reasons for their decisions. It may be recalled from Chapter 2 that the giving of reasons is not a requirement of the common law; nor has it yet been stipulated by the *Charter* (para. 2.35). It is our view that reasons would generally be a desirable addition to administrative procedure. We observe that reasons are required for designated agencies in Ontario, England, the United States (both at the federal and state level) and the Commonwealth of Australia. Aside from the United States (where the giving of reasons is in many cases also a due process requirement[3]), the giving of reasons has become a procedural prerequisite in

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[3]See, for example, *Goldberg* v. *Kelly* 397 U.S. 254 (1970). See also III Kenneth Culp Davis, *Administrative Law Treatise* (2d ed.) at s. 14:21, pp. 99-103 and authorities therein cited.

these jurisdictions solely by legislative enactment.[4] The value of reasons has been documented in Manitoba[5] and elsewhere.[6] Proponents of this requirement point to several factors in support of their position, some of which are as follows:

1. A reasoned opinion provides some assurance that a decision will be better as a result of its being properly thought out.

2. Reasons will enable a person who has a right of appeal to determine whether (s)he has good grounds for an appeal and will inform the person of the case (s)he will have to meet should (s)he decide to appeal.

3. Reasons will make an agency more amenable to the supervisory jurisdiction of the court and will ensure that an agency is acting within its powers.

4. Reasons act as a check on the exercise of discretion and expertise and will help to ensure that an agency has performed its functions of considering relevant factors and will prevent arbitrary action.

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[4]Ontario: *supra* n. 2, s. 17; England: *Tribunals and Inquiries Act, 1971*, s. 12(1); United States (federal level): *Administrative Procedure Act* (Public Law 404-79th Congress), s. 557(c)(A), s. 553 and s. 555(e); United States (state level): *Model State Administrative Procedure Act* (1981); Commonwealth of Australia: *Administrative Decisions (Judicial Review) Act 1977*, s. 13.

[5]See Leon Mitchell, "Should a Tribunal Disclose Reasons?" (1974) Man. Bar News (No. 3) 187. See also David Mullan, "Unfairness in Administrative Processes - the Impact of Nicholson and Charter of Rights" *Isaac Pitblado Lectures on Advocacy; Rights and Remedies - New Developments* (February, 1983) 68 at 76.

[6]See, for example, Geoffrey A. Flick, "Administrative Adjudications and the Duty to Give Reasons - A Search for Criteria" [1978] P.L. 16; Bernard Schwartz, "Memorandum to the Committee on Administrative Tribunals and Enquiries" (1957) 35 Can. B. Rev. 743 at 767. See also H.W.R. Wade, *Administrative Law* (5th ed.) at 812 where the author refers to the English statutory requirement of reasons, *supra* n. 4, as "[p]erhaps the most important of all the Franks Committee's achievements . . .".

5. Reasons help to ensure that an agency's decision rests solely on evidence adduced at a hearing so that parties have been given an opportunity to respond.[7]

A very broad basis for the giving of reasons is that "fair play requires that parties should know at the end of the day why a particular decision has been taken".[8]

4.09 The provision we have recommended for the giving of reasons in the first five categories of powers generally states that an agency should, on request, set forth in writing the findings of fact upon which an order or decision is made and the reasons for the order or decision.[9] Reasons differ from findings of fact in that reasons relate to law, policy and discretion rather than to facts.[10] With respect to the requirement of an agency to state the findings of fact upon which a decision is made, it is important to distinguish between ultimate findings and basic findings. Whereas an ultimate finding is usually expressed in the language of the statutory standard,[11] basic findings are those conclusions from which ultimate findings rationally flow. They are said to be somewhere in between ultimate findings and a summary of each bit of evidence. American case law supports the principle that decisions must include basic findings but need not annotate each finding in the evidence supporting it.[12] We view

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[7]These factors are taken mainly from Geoffrey A. Flick, *id.*, at 17-18.

[8]*Id.*, at 19.

[9]The provision for reasons in category 6 is limited to oral or written reasons, again on request.

[10]Kenneth Culp Davis, *supra* n. 3 at s. 14:22, p. 103.

[11]For example, the Licence Suspension Appeal Board would be stating an ultimate finding of fact if it said that a temporary driver's licence should be granted because exceptional hardship would result if the suspension or cancellation remained in effect and the remission of the suspension or cancellation would not be contrary to the public interest. This is the statutory standard for a temporary licence to issue under s. 253(3) of *"The Highway Traffic Act"*, C.C.S.M. c. H60.

[12]Kenneth Culp Davis, *supra* n. 3, at s. 14:27, p. 124.

this approach as reasonable. If findings of fact were limited to ultimate findings, they would be of no benefit to either the agency or the parties to the decision; conversely, to require agencies to state each bit of evidence supporting a basic finding would be unduly onerous. With respect to the effect upon agencies generally to give reasons on request, lawyers from the Ontario Ministry of the Attorney-General have informed us that a similar provision in their uniform rules of procedure has not imposed a heavy burden upon their administrative agencies.

C. THE SPECIFIC MODELS OF PROCEDURE

1. The power to impose a sanction

4.10 Agencies which impose sanctions "are concerned with punishment of past conduct and with curtailment of future activity because of prior conduct".[13] Sanctions involve the deprivation of liberty and comprise amongst the harshest action a government can take against a person through the administrative process. Agencies included in this category have similar powers to criminal courts in that both may subject a person to pain or penalty. The fact that these powers should be subject to relatively stringent procedural requirements is supported by the common law principles of natural justice and fairness.[14] Moreover, the power to exercise sanctions is generally subject to the constitutional protections afforded by the *Charter*.[15] In balancing the values of fairness, accuracy and efficiency, the fairness value unquestionably predominates.

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[13]Paul R. Verkuil, "The Emerging Concept of Administrative Procedure" (1978) 78 Columbia L. Rev. 258 at 295.

[14]See Chapter 2 of this Report for a summary of these principles.

[15]See Chapter 2 for a summary of the legal rights guaranteed by the *Charter*.

4.11 We define a sanction to include the following powers:

(1) the imposition of penalty or fine;
(2) the curtailment, revocation or suspension of a licence or the refusal to renew a licence; or
(3) the taking of other compulsory or restrictive action.

4.12 It is difficult to prepare an exhaustive inventory of those powers exercised by provincial government agencies which amount to a sanction. However, in our review of the powers of each agency, we were able to compile the following list of agencies which have authority to impose sanctions as hereinafter described:

DEPARTMENT OF AGRICULTURE

1. Manitoba Farm Lands Ownership Board: once *"The Farm Lands Ownership Act"*, S.M. 1982-83-84 c. 84, is proclaimed, this agency will succeed the Agricultural Lands Protection Board which is established pursuant to s. 15(1) of *"The Agricultural Lands Protection Act"*, C.C.S.M. c. A15. Once established, this agency will have the power to invoke sanctions because the Act empowers it to order a reduction in land holding where it "determine[s] that an interest in farm land has been or is taken, acquired, received or held in contravention of this Act" (s. 9(1) of *"The Farm Lands Ownership Act"*). Its power will therefore fall within the description of a sanction for it may take "compulsory or restrictive action".

2. Farm Machinery Board: this agency has power to suspend or cancel a licence required by a person who wishes to carry on business as a vendor or dealer of used farm machinery and equipment (s. 35.1 of *"The Farm Machinery and Equipment Act"* C.C.S.M. c. F40).

3. Veterinary Medical Board of Manitoba: this agency has power to suspend, cancel or modify the registration of a member of the Manitoba Veterinary Medical Association (s. 14(7) of *"The Veterinary Medical Act"* C.C.S.M. c. V30).

DEPARTMENT OF ATTORNEY-GENERAL

1. Manitoba Human Rights Commission: the Board of Adjudication appointed pursuant to *"The Human Rights Act"* C.C.S.M. c. H175, has power to determine whether a party is guilty of prohibited discriminatory practice and, where so found, may make an order requiring a party to do anything to comply with the Act and to order that party to pay compensation to the person(s) discriminated against.

2. Insurance Licence Advisory Board: this agency is empowered to advise the Superintendent of Insurance as to whether the licence of an insurance agent or adjuster should be cancelled (s. 389 of *"The Insurance Act"* C.C.S.M. c. I40).

3. Law Enforcement Review Board: this agency may determine whether a member of a police department has committed "a disciplinary default" and is empowered to impose a penalty, ranging from dismissal to a verbal reprimand (s. 28 of *"The Law Enforcement Review Act"* S.M. 1982-83-84, c. 2).

4. Liquor Control Commission: the Commission is empowered to cancel or suspend any licence or permit issued under *"The Liquor Control Act"* (s. 33(1) of *"The Liquor Control Act"* C.C.S.M. c. L160).

5. Manitoba Police Commission: this agency is empowered to hear appeals concerning disciplinary action taken by a chief or deputy chief of police against a member of the Manitoba Provincial Police force (s. 26(2) of *"The Provincial Police Act"* C.C.S.M. c. P150.

DEPARTMENT OF BUSINESS DEVELOPMENT AND TOURISM

Manitoba Horse Racing Commission: this agency is empowered, by regulation, to fine a licencee of a race track or a licensed concessionaire or to suspend or cancel their licences (M.R. 154/82, s. 45(a)).

DEPARTMENT OF COMMUNITY SERVICES AND CORRECTIONS

Parole Board: this Board is empowered to hear and review suspensions of parole (s. 50 of *"The Corrections Act"* C.C.S.M. c. C230). The Deputy Minister of Community Services and Corrections has informed us that this agency is presently inactive.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

1. Embalmers and Funeral Directors Board of Administration: this agency is empowered to suspend the licence, permit or certificate of qualification of a funeral director or embalmer (s. 11 and 12 of *"The Embalmers and Funeral Directors Act"* C.C.S.M. c. E70).

2. Public Utilities Board: aside from its powers of rate-making (which powers fall into category 5 of our models), this Board has authority to impose some sanctions, such as the suspension and cancellation of licences under *"The Cemeteries Act"* C.C.S.M. c. C30.

3. Manitoba Securities Commission: this agency has broad powers to issue sanctions, including the authority to suspend or cancel the registration of any person or company or affecting the right of any person or company to trade in securities (*"The Securities Act"* C.C.S.M. c. c. S50, s. 26(1)). It also is empowered to suspend or cancel the registration of real estate brokers and salesmen (*"The Real Estate Brokers Act"* C.C.S.M. c. R20, s. 11(1)).

DEPARTMENT OF EDUCATION

Certificate Review Committee: this agency hears or reviews a suspension of a teacher's certificate ("The Education Administration Act" C.C.S.M. c. E10, s. 5).

DEPARTMENT OF EMPLOYMENT SERVICES AND ECONOMIC SECURITY

Social Services Advisory Committee: this agency hears appeals regarding the cancellation or suspension of licences required to operate a foster home, a group foster home, a residential care facility, a pre-school facility, a day care centre or any other child care facility (s. 11.2(5) of *"The Social Services Administration Act"* C.C.S.M. c. S165; s. 19 of *"The Community Child Day Care Standards Act"* C.C.S.M. c. C158). It also has authority to hear appeals regarding the cancellation, suspension or reduction of a social allowance (*"The Social Allowances Act"* C.C.S.M. c. S160, s. 8(1)).

DEPARTMENT OF ENERGY AND MINES

Oil and Natural Gas Conservation Board: this agency is empowered to order that any well be shut down for being operated in contravention of the Act (s. 62(10) of *"The Mines Act"* C.C.S.M. c. M160).

DEPARTMENT OF HEALTH

1. Hearing Aid Board: this agency is empowered to suspend or cancel the certification of hearing aid dealers for breach of *"The Hearing Aid Act"* or *"The Consumer Protection Act"* (s. 7(1) of *"The Hearing Aid Act"* C.C.S.M. c. H38).

2. Manitoba Health Services Commission: this agency is empowered to suspend a licence authorizing the operation of a hospital (*"The Hospitals Act"* C.C.S.M. c. H120, s. 25).

3. Medical Review Committee: this agency has authority to review past or present patterns of medical practice so that it may determine whether a medical practitioner has departed from an acceptable standard of practice established by the Committee and, accordingly, is indebted to the Manitoba Health Services Commission (s. 104 of "The Health Services Insurance Act", C.C.S.M. c. H35).

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

1. Highway Traffic Board: this agency may cancel or suspend a permit regarding the use of land adjacent to highways (s. 22.1 of *"The Highways Protection act"* C.C.S.M. c. H50).

2. Licence Suspension Appeal Board: the board hears appeals relating to suspensions, cancellations or refusals of drivers' licences within six months after the suspension or cancellation (s. 253 of *"The Highway Traffic Act"* C.C.S.M. c. H60).

3. Medical Review Committee: this agency hears appeals from decisions of the Registrar of Motor Vehicles to suspend, cancel or place restrictions on any licence or to refuse to issue a licence to any person because it is alleged that the person is suffering from a condition that may make it dangerous for that person to operate a motor vehicle (*"The Highway Traffic Act"*, C.C.S.M. c. H60, s. 150.1(4)).

4. Motor Transport Board: this agency has broad jurisdiction to suspend or revoke licences and permits to operate public service vehicles and commercial trucks for the purpose of transporting merchandise or other goods and chattels (s. 291 of *"The Highway Traffic Act"* C.C.S.M. c. H60).

5. Taxicab Board: The Board has power to suspend or cancel any licence or permit or authority issued by it, including licences required to carry on a taxicab business, to operate a taxicab, or to operate a "drive-yourself booking office" (s. 13 of *"The Taxicab Act"* C.C.S.M. c. T10).

DEPARTMENT OF LABOUR

1. Electricians' Board of Examiners: this Board may suspend an electrician's licence or recommend to the Minister of Labour that a licence be amended, cancelled, suspended or varied (*"The Electricians' Licence Act"* C.C.S.M. c. E50, M.R. 237/80, s. 12).

2. Manitoba Labour Board: this agency has the power to issue sanctions, particularly in regard to its authority to find that a person has committed an unfair labour practice. Where so found, the board may, for example, compel the employer or union to cease any activity which constitutes the unfair labour practice and to pay damages.

3. Power Engineers Advisory Board: this agency has authority to advise the Minister of Labour as to whether a licence to operate a power plant, which has been suspended by the Minister, should continue to be suspended (s. 10 of *"The Power Engineers Act"* C.C.S.M. c. P95).

4. Projectionists Examination Board: the Board has power to revoke or suspend a licence that is required for moving picture operators (s. 17(1) of *"The Amusements Act"* C.C.S.M. c. A70).

4.13 Regarding the procedures which should be followed where an agency imposes a sanction, we think that it is desirable, for the reasons set forth in para. 4.07, that they approximate the judicial model of procedure. That is, there should be a formal, oral hearing. The following guidelines should comprise the basis for formulating rules of practice and procedure to govern those powers by which an agency may impose a sanction:

(1) Written notice to the affected party, with details concerning the time, place and name of agency. The notice should also specify the issues to be heard and the sanctions which may be imposed. The power of the agency to impose a sanction in the absence of a party's presence should be set forth. A party should be given sufficient advance notice to allow him/her to prepare for the hearing. A party should be provided with a copy of the agency's rules of practice and procedure bearing upon the hearing.

(2) Separation of powers: where prosecution and judging functions are combined within a single agency, there should be established separate autonomous units within the agency to handle the respective powers of prosecution and decision.

(3) Impartiality: members should consider whether they have any conflict of interest in hearing a case such that it amounts to a "reasonable apprehension of bias" (see para. 2.12 in this Report and authorities cited therein). The agency's procedures should deal with quorum in the event of a member's disqualification.

(4) Hearings:

(a) all hearings should be oral;

(b) all hearings should be in public except where the agency is of the opinion that intimate financial or personal matters may be disclosed at the hearing of such a nature that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that hearings be open to the public.

(5) Evidence:

(a) Powers of search and seizure: many agencies which are empowered to impose a sanction also have the concomitant authority to inspect the documents and premises of any person, including the party which may be subject to the imposition of a sanction. For example, the Manitoba Human Rights Commission is authorized to inspect the premises of

any person where "there is [sic] reasonable and probable grounds to believe that such access will assist the investigation of the complaint". Furthermore, where access is refused, the Commission may apply to a court, ex parte (without notice to a person), to obtain an order granting access.[16] *Further examples of legislation empowering agencies to inspect premises and documents may be found in "The Public Utilities Board Act"*[17] *and "The Securities Act"*[18] *to name but two.*

The authority of administrative agencies to inspect premises and documents is subject to section 8 of the Charter which establishes the right "to be secure against unreasonable search and seizure". The right to inspect is, accordingly, qualified in a substantial way. We think that where agencies are empowered to search and seize, no court application to obtain an order should be made without notice to the party who is being investigated and to the person whose premises are being inspected. Furthermore, where an agency wishes to exercise the power to search and seize, there should be the concurrent responsibility on its part to give written notice to the party or person of their right to contest in court the agency's demand to search and seize.[19]

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[16]s. 23(1) and s. 23(2) of *"The Human Rights Act"* C.C.S.M. c. H175.

[17]C.C.S.M. c. P280, s. 27.

[18]C.C.S.M. c. S50, s. 22. The power is also contained in s. 90 and 91 of *"The Manitoba Evidence Act"*, C.C.S.M. c. E150 to which reference is made in many Manitoba statutes.

[19]We endorse the recent statements of the Alberta Court of Appeal concerning investigatory powers given to a government agency:

> It troubles us that a government agency is given a statutory right to make a demand of a citizen in [an] unqualified and unreserved form . . . without being required at the same time to warn the citizen that the "right" asserted is in truth qualified in a substantial way and that there is a corresponding right on the part of the citizen to refer the matter to a judicial officer for decision. Legislation authorizing a demand of a citizen by an agent of government where the demand likely will be made in unusual and urgent circumstances should, in the name of fairness, require the demander to state clearly to the demandee what are his rights. *Alta. Human Rts. Comsn.* v. *Blue Cross* (1983), 1 D.L.R. (4th) 301 at 308-9 (Alta. C.A.).

(b) Agencies need not observe the strict rules of evidence (such as hearsay) but should admit and act upon evidence only if it is the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs. However, nothing should be admissible in evidence at a hearing

(i) that would be inadmissible in a court by reason of any privilege under the law of evidence, or
(ii) that is inadmissible by the statute under which the proceedings arise or any other statute.[20]

(c) The hearing should be recorded (preferably by a court reporter or alternatively by the use of a tape recorder) to allow for a transcript to be made of the oral evidence given at the hearing;

(d) Parties should have the right to call witnesses, introduce exhibits, cross-examine and call rebuttal evidence. The testimony of witnesses should be on oath. With respect to the right of cross-examination, we think it is very important that the person who may be affected by a sanction has the right to confront any person giving adverse evidence.

(e) Agencies may take notice of general, technical or scientific facts within their specialized knowledge, provided they first give parties an opportunities to contest such facts;

(f) Agencies should be prohibited from reliance upon material evidence unless parties are given notice and an opportunity to respond.

(6) Disclosure of information: the agency should disclose to the parties the particulars of all material evidence in their possession prior to the hearing. This requirement conforms to the practice of those charged criminally.

(7) Legal representation: parties should have the right to appear by counsel or agent.

(8) Self-incrimination: any party or witness should be deemed to have objected to answer every question put to that party or witness upon the ground that the answer may tend to incriminate that party or witness or to establish liability to a legal proceeding at the instance of the Crown or of any person.[21]

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[20]This provision is based upon s. 15(2) of the *Statutory Powers Procedure Act*, *supra* n. 2.

[21]See s. 17 of *"The Fatality Inquiries Act"* C.C.S.M. c. F52 and s. 14 of the *Statutory Powers Procedure Act*, *supra* n. 2 for statutory examples of this principle.

(9) *Subpoenas: agencies and parties before them should have the right to summon witnesses. Where a witness has been personally served with a summons and fails to attend or to remain in attendance at a hearing, the Court of Queen's Bench should be given the statutory jurisdiction to issue a bench warrant, provided it is satisfied that the witness's attendance is material to the ends of justice.*[22]

(10) *Findings and reasons: an agency should furnish a party with a written statement of its order or decision setting out the findings of fact upon which it is based and the reasons for the order or decision, where requested in writing by a party on or before the date the decision is given.*[23]

(11) *Enforcement of order or decision: an agency or party should be entitled to file a certified copy of the order or decision in the Court of Queen's Bench. Any order for the payment of money would then be enforceable in the same manner as a judgment of that court; in all other cases, enforcement may take place by an application to the court for such order as the court may consider just.*[24]

4.14 Our recommendation concerning the application of these guidelines is as follows:

RECOMMENDATION 9

That the model rules of practice and procedure for the imposition of sanctions set forth in para. 4.13 of this Report comprise the basis for preparing separate rules to govern each agency listed in recommendation 2 where each is authorized to impose a sanction.[25]

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[22]A similar provision is contained in s. 12 of the *Statutory Powers Procedure Act*, *supra* n. 2. Section 92 of *"The Manitoba Evidence Act"* C.C.S.M. c. E160, to which reference is made in many Manitoba statutes, authorizes the issuance of a warrant without a court order. We prefer that subpoenas be enforced by court order.

[23]This principle is based upon s. 6 of the proposed Administrative Procedures Act for Manitoba (Appendix A). A similar provision is contained in s. 17 of the *Statutory Powers Procedure Act supra* n. 2.

[24]See s. 19 of the *Statutory Powers Procedure Act supra* n. 2. For an example of court enforcement of an order of a Manitoba agency, see s. 22(7) of *"The Labour Relations Act"* C.C.S.M. c. L10.

[25]See para. 4.11 and 4.12 for a definition of "sanction" and a list of some of the sanction-imposing powers granted to those agencies listed in recommendation 2.

4.15 In Chapter 3 of this Report (para. 3.30), we referred to those provisions which may effect substantive rights and recommended that these be implemented by statutory amendment to the legislation which creates and empowers each agency (recommendation 4). As we pointed out, substantive provisions do not fall within the purview of an agency's authority to make "rules of practice and procedure". Moreover, the Legislative Assembly of Manitoba has expressly disapproved the presence of substantive legislation in regulations. For these reasons, the following provisions contained in the model rules of practice and procedure for the imposition of sanctions should be inserted in primary legislation:

(1) Impartiality: the provision concerning quorum in the event of a member's disqualification for "reasonable apprehension of bias", set forth in clause 3 of the model;

(2) Evidence: those provisions pertaining to evidence outlined in paragraphs 5(a) and (b) and clause 8 of the model;

(3) Subpoenas: the power to summon witnesses and to enforce that power in the Court of Queen's Bench, set forth in clause 9 of the model;

(4) Enforcement of an order or decision: set forth in clause 11 of the model.

2. The power to arbitrate

4.16 If the imposition of sanctions by an administrative agency can be compared to the role performed by criminal courts, it could also be said that arbitral powers have a role similar to those courts exercising civil jurisdiction. That is, the function of both arbitral agencies and civil courts is generally to determine disputes between two or more parties. Although fairness still predominates for arbitral-type decision-making, in terms of efficiency and accuracy, procedures should be fashioned so that parties are strongly encouraged to reduce the number of contentious facts and issues to be determined by an agency.

4.17 As with all of the models of procedure we have devised, it is difficult to compile an exhaustive list of agencies which should be included in this category. Many agencies operate intermittently when they are appointed by a minister of the Crown and, in these cases, membership of the agency generally changes with each reference. We have, however, identified the following agencies as performing arbitral functions:

DEPARTMENT OF AGRICULTURE

Farm Machinery Board: this Board is given a broad mandate to investigate and settle disputes generally between vendors and purchasers of farm machinery. For example, the agency has the authority to settle disputes between a vendor and purchaser of farm machinery where the purchaser alleges a defect or where the vendor wishes to repossess the machinery for default in payment (s. 31 and s. 25(6) of *"The Farm Machinery Act"* C.C.S.M. c. F40).

DEPARTMENT OF EDUCATION

1. Board of Arbitration: this Board is appointed by the Minister of Labour where so requested by a school board or the teacher's bargaining agent or on the Minister's own initiative in the event a conciliation officer fails to bring about an agreement between the parties (s. 115 and s. 123 ff. of *"The Public Schools Act"* C.C.S.M. c. P250).

2. Collective Agreement Board: this agency has jurisdiction to interpret the scope and effect of collective agreements between school boards and teachers and compliance therewith. It also has statutory authority to determine whether a person can be properly classified as a teacher (s. 167(1) of *"The Public Schools Act"* C.C.S.M. c. P250).

DEPARTMENT OF ENERGY AND MINES

1. Surface Rights Board: in the absence of agreement by the parties, this board has the authority to determine whether surface rights arising from the exploration for and production of oil and natural gas should be granted and, if so, the amount of compensation payable by an operator to an owner of land with respect to those surface rights. It is also authorized to resolve disputes arising from damage to the land for which the operator is liable (see Parts III and V of *"The Surface Rights Act"* S.M. 1982-83-84, c. 4).

2. Mining Board: this agency exercises a similar function to the Surface Rights Board with respect to those surface rights which do not pertain to oil and natural gas (s. 19.1 and s. 25 of *"The Mining Act"* C.C.S.M. c. M160).

DEPARTMENT OF HOUSING

Rent Appeal Panel: The Panel is empowered to hear appeals from recommendations of rent regulation officers regarding rent increases and to hear cases regarding rollbacks and refunds of excess rent (s. 9 of *"The Residential Rent Regulation Act"* C.C.S.M. c. R84).

DEPARTMENT OF LABOUR

1. Manitoba Labour Board: as indicated in our discussion of this agency under category 1 (sanctions), this agency has authority to impose sanctions primarily when it hears complaints regarding unfair labour practices. Most of its functions are, however, arbitral for they involve generally the settling of employer-employee disputes and assisting in the conclusion of collective agreements.

2. Conciliation Boards: this Board is appointed by the Minister of Labour upon the application of either employers or employees, or at the discretion of the Minister, where a conciliation officer has failed to effect an agreement, or in any case necessary in the opinion of the Minister (s. 83 of *"The Labour Relations Act"* C.C.S.M. c. L10).

3. Fire Departments Arbitration Board: at the discretion of the Minister of Labour, this Board may be appointed to deal with disputes in collective bargaining between an employing municipality and the agent of the employed firemen to formulate a collective agreement, or the renewal or revision of an existing or former collective agreement (s. 7 of *"The Fire Departments Arbitration Act"* C.C.S.M. c. F60).

4. Industrial Inquiries Commission: at the discretion of the Minister of Labour, the Commission may investigate industrial matters, including differences between employers and employees, and may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to the settlements of disputes (s. 112(2) of *"The Labour Relations Act"* C.C.S.M. c. L10).

DEPARTMENT OF MUNICIPAL AFFAIRS

Civic Service Board: this Board is appointed by the Lieutenant Governor in Council to act as a board of reference to

(1) consider complaints of either a municipal council or municipal officer respecting the position of the municipal officer or the manner in which the duties thereof are being discharged; or
(2) any dispute between a municipal council and an appointed officer thereof (s. 160(1) of *"The Municipal Act"* C.C.S.M. c. M225).

DEPARTMENT OF NATURAL RESOURCES

Arbitration Board of Forestry Branch: this Board may be appointed by the Minister of Natural Resources where Crown timber rights have been sold and a person who submitted a tender bid is dissatisfied (*"The Forests Act"* C.C.S.M. c. F150, s. 12(4).

4.18 The following procedures comprise the guidelines for preparing appropriate rules for each arbitral agency:

(1) Notice to parties with details concerning the time, place and purpose of hearing. Generally, notice need not be as detailed as that for sanctions where parties have attempted to settle their disputes before the hearing without the need for "third party intervention". In such a case, parties are already knowledgeable concerning the issues in dispute and have likely exchanged information prior to the hearing.

(2) Impartiality: members appointed to agencies which perform arbitral functions are normally appointed because of their background and special interests which are intended to bear on their deliberations (see para. 2.12). Accordingly, the nemo judex principle of natural justice will generally not operate as strictly for arbitral agencies as for agencies imposing sanctions. However, the procedure of arbitral agencies should contain a provision dealing with quorum in the event of disqualification.

(2) Hearings:

(a) pre-hearing conferences - where appropriate, the agency should consider holding a pre-hearing conference between the parties to determine which facts can be admitted without further proof and which documents can be tendered at the hearing without further proof.[26]

(b) hearings should be public;

(c) oral testimony - parties should be encouraged to reduce the need for oral testimony through the means of agreed statements of fact so that viva voce evidence is restricted to material facts in issue.

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[26]Rules of procedure regarding pre-trial conferences in the Court of Queen's Bench have recently been prepared. See Practice Direction No. 1/84 of the Queen's Bench Rules.

(4) Evidence:

(a) agencies need not observe the strict rules of evidence (such as hearsay) but should admit and act upon evidence only if it is the kind on which reasonable persons are accustomed to rely.[27]

(b) The hearing should be recorded (preferably by a court reporter or alternatively by the use of a tape recorder) to allow for a transcript to be made of the oral evidence given at the hearing.

(c) Parties should have the right to call witnesses, introduce exhibits, cross-examine and call rebuttal evidence. The testimony of witnesses should be on oath.

(d) Agencies may take notice of general, technical or scientific facts within their specialized knowledge, provided they first give parties an opportunity to contest such facts.

(5) Legal representation: parties should have the right to appear by counsel or agent.

(6) Subpoenas: agencies and parties before them should have the right to summon witnesses. Where a witness has been personally served with a summons and fails to attend or remain in attendance at a hearing, the Court of Queen's Bench should be given the statutory jurisdiction to issue a bench warrant, provided it is satisfied that the witness's attendance is material to the ends of justice.

(7) Findings and reasons: an agency should furnish a party with a written statement of its order or decision setting out the findings of fact upon which it is based and the reasons for the order or decision, where requested in writing by a party on or before the date the decision is given.

4.19 Our recommendation concerning the application of these guidelines is as follows:

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[27]See s. 11(18) of *"The Department of Labour Act"* C.C.S.M. c. L20 whereby the Manitoba Labour Board is not bound by the rules of evidence.

RECOMMENDATION 10

That the model rules of practice and procedure for arbitral functions set forth in para. 4.18 of this Report comprise the basis for preparing separate rules to govern each agency listed in recommendation 2 where each performs an arbitral function.[28]

For the reasons established in para. 3.30 and 3.31 of this Report, the following provisions set forth in the model rules for arbitral agencies should be inserted in primary legislation:

(1) Impartiality: the provision concerning quorum in the event of a member's disqualification for "reasonable apprehension of bias" contained in clause 2 of the model;

(2) Evidence: the application of the rules of evidence referred to in paragraph 4(2) of the model;

(3) Subpoena: the power to summon witnesses and to enforce that power in the Court of Queen's Bench, contained in clause 6 of the model.

3. The power to assess compensation

4.20 Agencies which are authorized to assess the amount of compensation payable to a person or group of persons upon the occurrence of a triggering event are included in this category. The function of the agencies in this category is distinguishable from the role performed by those in category 1 (sanctions) in that a person affected by a decision in this category has already sustained a loss. The role of the agency is simply to assess the amount that is due to a person for that loss pursuant to a statutory scheme of entitlement. A compensatory function is also distinguishable from the performance of an arbitral function in that the latter involves the determination of disputes between two parties. Accuracy is of major importance in exercising the power to assess compensation. As we pointed out in Chapter 1 (para. 1.08), accuracy is normally achieved when a decision is reached fairly so that those affected by it are given notice of all material facts and an opportunity to bring their case.

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[28]See para. 4.15 for the list we have compiled of agencies which perform arbitral functions.

4.21 The Commission has identified the following agencies as those which assess compensation:

DEPARTMENT OF AGRICULTURE

Crop Insurance Act Appeal Tribunal: this agency is appointed by the Lieutenant Governor in Council to hear appeals from decisions made by The Manitoba Crop Insurance Corporation regarding the amount of compensation, if any, payable to a farmer as a result of poor yield or quality of an insurable crop (s. 20(1) of *"The Crop Insurance Act"* C.C.S.M. c. C310).

DEPARTMENT OF ATTORNEY-GENERAL

Criminal Injuries Compensation Board: this agency determines the amount of compensation, if any, payable generally to victims of crime and their dependants (s. 6(1) of *"The Criminal Injuries Compensation Board"* C.C.S.M. c. C305).

DEPARTMENT OF GOVERNMENT SERVICES

Land Value Appraisal Commission: this agency has jurisdiction to certify the amount of compensation that is due in respect to land acquired by a government authority or public utility when an application is made to the agency by the owner of land or by a utility. The certificate of compensation is binding upon all parties except the owner of the land (s. 12 of *"The Land Acquisition Act"* C.C.S.M. c. L40 and see generally *"The Expropriation Act"* C.C.S.M. c. E190).

AGENCIES UNDER THE SUPERVISION OF A MINISTER

Workers Compensation Board: this agency has jurisdiction generally to determine the amount of compensation payable to designated employees for disabilities arising from employment.

4.22 The following procedures comprise the guidelines which we consider to be appropriate for compensatory agencies:

(1) *Written notice to affected party with details concerning the time, place and purpose of hearing. As in the case of arbitral agencies, notice need not be as detailed as that for sanctions; the loss here has already been sustained and, generally speaking, it is the person who has sustained the loss who initiates contact with the particular agency.*

(2) *Impartiality: members should consider whether they have any conflict of interest in hearing a case such that it amounts to a "reasonable apprehension of bias" (see para. 2.12 in this Report and authorities cited therein). The agency's procedures should deal with quorum in the event of a member's disqualification.*

(3) Hearings:

(a) all hearings should be oral;

(b) all hearings should be in public except where the agency is of the opinion that intimate financial or personal matters may be disclosed at the hearing of such a nature that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that hearings be open to the public.

(4) Evidence:

(a) expert evidence: where an agency relies upon expert evidence (such as the evidence of physicians in proceedings before the Workers' Compensation Board or the Criminal Injuries Compensation Board or that of appraisers before the Land Value Appraisal Commission), where practicable, the evidence should be in writing (affidavit of expert with any report(s) attached as exhibits) so that oral testimony at the hearing is limited to contentious issues.

(b) Agencies need not observe the strict rules of evidence (such as hearsay) but should admit and act upon evidence only if it is the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs. However, nothing should be admissible in evidence at a hearing

(i) that would be inadmissible in a court by reason of any privilege under the law of evidence, or
(ii) that is inadmissible by the statute under which the proceedings arise or any other statute.

(c) The hearing should be recorded (preferably by a court reporter or alternatively by the use of a tape recorder) to allow for a transcript to be made of the oral evidence given at the hearing.

(d) Agencies may take notice of general, technical or scientific facts within their specialized knowledge, provided they first give parties an opportunities to contest such facts;

(e) Agencies should be prohibited from reliance upon evidence unless parties are given notice and an opportunity to respond.

(5) Disclosure of information: it is important that the agency disclose to the parties the evidence in their possession prior to the hearing. This duty to disclose is particularly applicable to expert reports received by the agency.

(6) Legal representation: parties should have the right to appear by counsel or agent.[29]

(7) Subpoenas: agencies and parties before them should have the right to summon witnesses. Where a witness has been personally served with a summons and fails to attend or remain in attendance at hearing, the Court of Queen's Bench should be given the statutory jurisdiction to issue a bench warrant, provided it is satisfied that the witness's attendance is material to the ends of justice.

(8) Enforcement of order or decision: as compensation is derived from a Crown agency, no enforcement of a decision should be necessary. Unless an appeal is taken, payment in the amount determined by the agency should be promptly paid.

(9) Findings and reasons: an agency should furnish a party with a written statement of its order or decision setting out the findings of fact upon which it is based and the reasons for the order or decision, where requested in writing by a party on or before the date the decision is given.

4.23 Our recommendation concerning the application of these guidelines is as follows:

RECOMMENDATION 11

That the model rules of practice and procedure set forth in para. 4.22 of this Report comprise the basis for preparing separate rules to govern those agencies listed in recommendation 2 which assess compensation.[30]

As with the first two models we have outlined, there are certain provisions in these model rules of practice and procedure which affect substantive rights and, accordingly, should be inserted in primary legislation:

(1) Impartiality: the provision concerning quorum in the event of a member's disqualification for "reasonable apprehension of bias" contained in clause 2 of the model;

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[29]Section 9 of *"The Workers Compensation Act"* C.C.S.M. c. W200 precludes legal representation except where the Workers Compensation Board consents.

[30]See para. 4.21 for a list of the agencies which we have identified in this category.

(2) Evidence: the application of the rules of evidence referred to in paragraph 4(b) of the model;

(3) Subpoenas: the power to summon witnesses and to enforce that power in the court, contained in clause 7 of the model.

4. The power to issue licences

4.24 In our first category of decision-making (which comprised sanctions), we included those powers involving the curtailment, revocation or suspension of a licence or the refusal to renew a licence. These powers involve the deprivation of a right earlier granted and, in our view, amount to action which should be subject to relatively stringent procedural requirements. This fourth category of decision-making pertains to the *issuance* of a licence. By "licence" we refer to any permission granted by a provincial government agency to do an act or thing that, but for the permission, would be unlawful. That permission may be evidenced by a document called a "licence", "permit" or "certificate" or by any other document.[31]

4.25 Broadly speaking, all of the agencies in this category are charged with the discretion of determining whether the issuance of a licence is in the public interest. This determination, particularly in such highly regulated areas as liquor licensing and commercial transport licensing, often reflects a policy choice of the agency rather than strict fact-finding. Consequently, as a general rule, fairness is important for these licensing decisions but accuracy and efficiency should be given equal weight.

4.26 We have identified the following agencies as having the authority to issue a licence:

DEPARTMENT OF AGRICULTURE

Manitoba Dairy Board: this agency hears applications for permits for dairy plants and, in some cases, acts as an appeal agency when a permit has been denied (*"The Dairy Act"* S.M. 1982-83-84 c. 22).

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[31]This definition of licence is based upon s. 2(1) of the proposed Administrative Procedures Act (Appendix A).

DEPARTMENT OF ATTORNEY-GENERAL

1. Insurance Licence Advisory Board: this agency is empowered to advise the Superintendent of Insurance as to whether a licence should be granted to an insurance adjuster or agent.

2. Liquor Control Commission: although most liquor licensing applications are heard before the (Liquor) Licensing Board, the Commission hears special licensing applications such as those for distillers' licences and winery licences. It also hears appeals from recommendations of the (Liquor) Licensing Board (see sections 35.1(1), 151 and 152 of *"The Liquor Control Act"* C.C.S.M. c. L160).

(Liquor) Licensing Board: this agency is authorized to make recommendations to the Commission concerning those licensing applications mentioned in s. 35(1) of *"The Liquor Control Act"* C.C.S.M. c. L160).

DEPARTMENT OF BUSINESS DEVELOPMENT AND TOURISM

Manitoba Horse Racing Commission: this agency has the authority "to grant any licence, registration or approval" required by *"The Horse Racing Commission Act"* or its regulations (C.C.S.M. c. H90, s. 12).

DEPARTMENT OF COMMUNITY SERVICES AND CORRECTIONS

Day Care Staff Qualifications Review Committee: this agency hears disputes as to whether a staff person of a day care facility meets the qualifications required in the regulations (*"The Community Child Day Care Standards Act"* C.C.S.M. c. C158, s. 29(2).

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

1. Embalmers and Funeral Directors Board of Administration: this agency has the authority to issue a licence, permit or certificate of qualification to a funeral director or embalmer.

2. Public Utilities Board: this Board has authority to issue licences under *"The Cemeteries Act"* C.C.S.M. c. C30.

DEPARTMENT OF FITNESS AND SPORT

Boxing and Wrestling Commission: this agency is empowered to issue permits for boxing contests and wrestling exhibitions (s. 10 of *"The Boxing and Wrestling Commission Act"* C.C.S.M. c. B80).

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

1. Highway Traffic Board: this agency may issue permits regarding the use of land adjacent to highways.

2. Motor Transport Board: this agency is authorized to issue licences and permits to operate public service vehicles and commercial trucks for the purpose of transporting merchandise or other goods and chattels.

3. Taxicab Board: the Board has jurisdiction to issue licences and permits required to carry on a taxicab business, to operate a taxicab or to operate a "drive-yourself booking office".

AGENCIES UNDER THE SUPERVISION OF A MINISTER

Manitoba Lotteries Foundation Board: this board has jurisdiction to issue licences under *"The Manitoba Lotteries Foundation Act"* C.C.S.M. c. L210.

4.27 There are agencies which, broadly speaking, are responsible for licensing which we have not included in the foregoing list. These are agencies which, in determining eligibility for a licence, do not resort to a hearing, but instead establish examinations. The Electricians' Board of Examiners, for example, is authorized to set examinations to determine whether an electrician should be licensed. There are many other examples.[32] Examinations are often preferable to hearings in determining eligibility for licensing where the agency's role is confined to fact finding and not to policy choices. As these agencies use examinations, rather than hearings for determining whether licences should be issued, we have not included them in the inventory contained in the previous paragraph.

4.28 In deciding appropriate guidelines to govern procedure in this category, it is important to stress that oral evidence is generally inappropriate on non-factual questions. Whenever an issue is non-factual (i.e. policy), a hearing may consist wholly of written argument and need not include presentation of oral evidence subject to cross-examination. Even when

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[32]The Barbers' Board of Examiners, The Dental Mechanics Act Committee, Hairdressers' Board of Examiners, Oil Burner and Gas Licensing Board and the Projectionists' Examination Board. The authority for each of these is contained in Appendix B.

a question involves some fact-finding, so that it is "about nine-tenths policy and only about one-tenth fact, an agency may recognize that a crude finding is for practical purposes about as good as a refined one; the same might sometimes be true even when the question is half policy and half fact".[33] Particularly in decisions involving policy, therefore, it is important that an agency consider whether oral evidence is required for its decision-making where there are few, if any, contentious facts; in other words, a formal, trial-type hearing with *viva voce* ("oral") evidence should not be automatically invoked.

4.29 The following procedures comprise the guidelines which we consider to be appropriate to govern the power to issue licences:

(1) Standing: the agency should give "party-status" to any person whose rights will or may be affected by a decision. This right is particularly important in highly regulated areas of licensing, such as Motor Transport Board applications, where competitors may wish to make representations concerning licensing applications.[34]

(2) Written notice to all parties with details concerning the time, place and the issue(s) to be determined.

(3) Impartiality: members should consider whether they have any conflict of interest in hearing a case such that it amounts to a "reasonable apprehension of bias" (see para. 2.12 in this Report and authorities cited therein). The agency's procedures should deal wih quorum in the event of a member's disqualifiation.

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[33]See II Kenneth Culp Davis *Administrative Law Treatise* (2d) at s. 12:8, p. 440.

[34]The courts have given fairly liberal status to motor transport competitors in Manitoba: see *Re I. Peters Transport and Motor Transport Board* (1981) 128 D.L.R. (3d) 529 (Man. C.A.) and *Re Swan River-The Pas Transfer Ltd. and Hwy T. & M.T. Bd.* (1974) 51 D.L.R. (3d) 292 (Man. C.A.).

(4) Hearings:

(a) where hearings are presently conducted orally, agencies should consider the feasibility of written comments in lieu thereof if there are few, if any, facts in issue, so that a party would not be prejudiced.[35]

(b) where an oral hearing is required, it should be in public.

(5) Evidence:

(a) Agencies need not observe the strict rules of evidence (such as hearsay) but should admit and act upon evidence only if it is the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs. However, nothing should be admissible in evidence at a hearing

(i) that would be inadmissible in a court by reason of any privilege under the law of evidence, or
(ii) that is inadmissible by the statute under which the proceedings arise or any other statute.

(b) where an oral hearing is required, it should be recorded (preferably by a court reporter or alternatively by the use of a tape recorder) to allow for a transcript to be made of the oral evidence given at the hearing.

(c) where there are facts in issue so that an oral hearing is necessary, parties should have the right to call witnesses, introduce exhibits, cross-examine and call rebuttal evidence with respect to those facts in issue. The testimony of witnesses should be on oath.

(d) Agencies may take notice of general, technical or scientific facts within their specialized knowledge, provided they first give parties an opportunity to contest such facts.

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[35]Applications for licensing to the Canadian Transport Commission are generally conducted in writing; the Interstate Commerce Commission in the United States has established a procedure for motor carrier licensing applications that denies oral hearings unless a party can show prejudice: 49 C.F.R. s. 1100.45-.54 (1977), as reported in Verkuil, *supra* n. 13, at 314.

(6) Disclosure of information: the agency should disclose to the parties the particulars of all material evidence in their possession prior to the hearing.

(7) Legal representation: parties should have the right to appear by counsel or agent.

(8) Subpoenas: agencies and parties before them should have the right to summon witnesses. Where a witness has been personally served with a summons and fails to attend or to remain in attendance at a hearing, the Court of Queen's Bench should be given the statutory jurisdiction to issue a bench warrant, provided it is satisfied that the witness's attendance is material to the ends of justice.

(9) Findings and reasons: an agency should furnish a party with a written statement of its order or decision setting out the findings of fact upon which it is based and the reasons for the order or decision, where requested in writing by a party on or before the date the decision is given.

4.30 Our recommendation concerning the application of these guidelines is as follows:

RECOMMENDATION 12

That the model rules of practice and procedure contained in para. 4.29 of this Report form the basis for preparing separate rules to govern those agencies listed in recommendation 2 where each is authorized to issue licences.[36]

Most of the provisions contained in this model can be implemented by regulation. However, as with the other models, some affect substantive rights and should therefore be inserted in primary legislation:

(1) Standing: the provisions contained in clause 1 of the model may affect substantive rights[37] and, accordingly, should be contained in primary legislation;

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[36]See para. 4.26 for a list of the agencies which we have identified in this category.

[37]See footnote 49 in Chapter 3 and authorities therein cited.

(2) Impartiality: the provision concerning quorum in the event of a member's disqualification for "reasonable apprehension of bias" contained in clause 3;

(3) Evidence: clause 5(a) regarding the application of the rules of evidence;

(4) Subpoenas: the power to summon witnesses to enforce that right contained in clause 8 of the model.

5. The power to determine rates

4.31 Agencies in this category are charged with the responsibility of determining or recommending appropriate prices, rates and wages for individuals, particular groups in society and public utilities. We have identified the following agencies as performing a rate-making function:

DEPARTMENT OF AGRICULTURE

Milk Prices Review Commission: this agency is authorized to monitor and hear complaints relating to milk prices and to establish a cost of production formula for milk pricing (s. 3 of *"The Milk Prices Review Act"* C.C.S.M. c. M130).

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

Public Utilities Board: one of the roles of this multi-functional agency is to determine appropriate rates for public utilities.

DEPARTMENT OF LABOUR

1. Greater Winnipeg Building Construction Board; Rural Building Construction Board; Heavy Construction Wages Board: each of these agencies is required, at least once a year, to make a report to the Minister of Labour recommending minimum hourly wage rates and maximum regular working hours in each of their respective industries.

2. Minimum Wage Board: the function of this Board is, *inter alia*, to make recommendations in writing respecting the standards of minimum wages to be paid to employees where so authorized in writing by the Minister of Labour.

4.32 In determining appropriate procedural guidelines for agencies in this category, an agency should consider whether oral hearings are necessary, particularly where there are few, if any, facts in issue. As in the case of category 4 (licensing) a trial-type hearing should not be automatically invoked. A factor to consider in determining the need for oral hearings, however, should be whether the denial of an oral hearing would prejudice any person who is or may be affected by a decision and who may wish to make representations.

4.33 The procedural guidelines for agencies in this category are as follows:

(1) Standing: as with licensing applications, the agency should give "party-status" to any person who is or may be affected by an agency's decision or recommendation and who wishes to make representations.

(2) Written individual notice to known parties and collective notice by newspaper advertisement concerning time, place and issue(s) to be determined.

(3) Hearings: where an oral hearing is required, it should be in public.

(4) Evidence:

(a) Where there are facts in issue so that an oral hearing is necessary, parties should have the right to call witnesses, introduce exhibits, cross-examine and call rebuttal evidence with respect to those facts in issue. The testimony of witnesses should be on oath.

(b) Agencies may take notice of general, technical or scientific facts within their specialized knowledge, provided they first give parties an opportunity to contest such facts.

(5) Legal representation: parties should have the right to appear by counsel or agent.

(6) *Subpoenas: agencies and parties before them should have the right to summon witnesses. Where a witness has been personally served with a summons and fails to attend or to remain in attendance at a hearing, the Court of Queen's Bench should be given the statutory jurisdiction to issue a bench warrant, provided it is satisfied that the witness's attendance is material to the ends of justice.*

(7) *Findings and reasons: an agency should furnish a party with a written statement of its decision or recommendation setting out the findings of fact upon which it is based and the reasons for the decision or recommendation where requested in writing by a party on or before the date the decision or recommendation is given.*

4.34 Our recommendation concerning the procedural guidelines for agencies which perform rate-making functions is as follows:

RECOMMENDATION 13

That the model rules of practice and procedure set forth in para. 4.33 of this Report form the basis for preparing separate rules of practice and procedure to govern those agencies listed in recommendation 2 where each performs a rate-making function.[37]

The provisions contained in claues 1 and 6, which respectively pertain to standing and the power to subpoena may affect substantive rights and, accordingly, should be inserted in primary legislation (see recommendation 4 of this Report). The remaining provisions are suitable for enactment in subordinate legislation pursuant to a power delegated to each of these agencies authorizing them to make "rules of practice and procedure".

6. The power to award benefits

4.35 Certain agencies are empowered to award benefits to persons whether these benefits are loans or some other form of assistance. The agencies which we have identified as performing functions in this category are:

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[37]An inventory of the agencies we have identified in this category is found in para. 4.29.

DEPARTMENT OF ATTORNEY-GENERAL

Legal Aid Services Society of Manitoba: the Board of Directors of the Society is authorized, *inter alia*, to hear appeals with regard to decisions of the executive director including those concerning the eligibility of applicants for legal aid (*"The Legal Aid Services Society Act"* C.C.S.M. c. L105, s. 16).

DEPARTMENT OF AGRICULTURE

1. Agricultural Credit Corporation Board of Directors: this agency is authorized to make loans to a farmer to diversify, develop or improve his farming operation (*"The Agricultural Credit Corporation Act"* C.C.S.M. c. A10.

2. Agricultural Crown Land Advisory Committee: this agency receives and reviews complaints from unsuccessful applicants for Crown land leases and advises the Minister of Agriculture on its decision (O.C. 222/82).

DEPARTMENT OF BUSINESS DEVELOPMENT AND TOURISM

Small Business Interest Rate Relief Board: this agency administers an emergency interest rate relief programme for small businesses (M.R. 81/82, 88/82).

DEPARTMENT OF EDUCATION

Student Aid Appeal Board: this agency hears appeals from students with regard to the denial or partial granting of bursaries or loans by the Student Aid Branch and makes recommendations to the Minister of Education concerning the disposition of these appeals (there is no legislative authority for this board).

DEPARTMENT OF EMPLOYMENT SERVICES AND ECONOMIC SECURITY

Social Services Advisory Committee: aside from its powers to hear appeals regarding the cancellation, reduction or suspension of social allowance (which we referred to in category 1 under power to impose a sanction) this agency is authorized to hear appeals regarding applications for social allowance (*"The Social Allowances Act"* C.C.S.M. c. S160).

DEPARTMENT OF GOVERNMENT SERVICES

Manitoba Disaster Assistance Board: this agency is authorized to inquire into damage caused by flooding and to determine the degree of assistance required. It also may administer programmes of assistance to victims of designated disasters (O.C. 759/81).

4.36 The procedures presently governing the awarding of benefits vary amongst the agencies so listed. The Social Services Advisory Committee, for example, determines applications following an oral hearing where counsel may be present. A hearing before the Student Aid Appeal Board, on the other hand, normally consists of written representations, although an appellant may have an oral hearing if (s)he so requests. We think that the procedures governing these agencies should be flexible. It must be recognized that the resources available for benefit programmes are limited; it is very important that a high proportion of these resources are allocated for the applicants themselves rather than being tied up in administrative costs. Having said this, however, there must be some procedural protections given to applicants to ensure fairness and accuracy in the decision-making process. We think that, at minimum, there should be the right of comment and reasons. That is, an applicant should be allowed to make some representation (either oral or written) concerning his/her application. In addition, an agency should be required to give reasons (either oral or written) where an application has been rejected and where so requested by an applicant.

4.37 We recommend:

RECOMMENDATION 14

That the model rules of practice and procedure for those agencies which award benefits[37] *include the right of the applicant to make some comment (either oral or written) concerning the application and, where so requested by the applicant on or before the date the decision is made, the giving of reasons (either oral or written) by an agency where an application has been denied.*

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[37]A list of those agencies which award benefits is found in para. 4.35.

These provisions do not affect substantive rights and, accordingly, may be implemented by the passing of regulations, pursuant to recommendation 3.

C. POWERS OUTSIDE THE MODELS OF PROCEDURE

4.38 In formulating models of procedure, we have attempted to give some guidance for designing appropriate rules to govern the exercise of certain common powers delegated to agencies set forth in recommendation 2. The six powers we have listed are by no means inclusive of all of those exercised by these agencies. To take just one example, the model rules do not purport to give direction concerning the procedures which should govern an agency's power to discipline their own employees.[38] Short of preparing separate rules for each agency (which, as stated in para. 4.03, should only be undertaken after a thorough analysis of each, followed by consultation with the agency's membership - a mandate far beyond our present budget and resources), we can do no more than refer to the three factors we set forth at the beginning of this chapter which we viewed as pertinent in designing model rules (para. 4.01 and 4.02). These involve the balancing of the values of fairness, efficiency and accuracy as well as an understanding of the fairness doctrine and the constitutional guarantees afforded by the *Charter*. Pin-pointing the procedural protections for decision-making powers should only be arrived at following due consideration of these factors and their specific application to each agency. As to the basic issue of whether some kind of hearing should be required for the exercise of a power, we think that generally a "hearing requirement" should attach to the exercise of any decision which affects the rights or interests

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[38] "*The Civil Services Act*" C.C.S.M. c. C110, will apply to govern the rights of employees and members of government agencies only in the event the Lieutenant-Governor-in-Council so orders. See s. 2(3) of that Act. Even in the absence of legislative or contractual protection, the law may still impose procedures for disciplinary proceedings. See *Re Nicholson and Haldimand-Norfold Regional Bd. of Comsners of Police* (1978) 88 D.L.R. (3d) 671 (S.C.C.).

of a person or group of persons. By the term "hearing requirement" we mean that, at minimum, the agency's procedure should be designed to allow a person who is affected by a decision to make some representation concerning its outcome. There will, however, be exceptions to the hearing requirement; these mainly comprise instances where some urgency requires an agency to take temporary action pending a hearing or those types of decisions where inspection or testing is deemed a better method for finding disputed fact.[39]

4.39 Not only are there powers exercised by those agencies listed in recommendation 2 which fall outside the six models of procedure; there are also certain agencies in recommendation 2 which were not included within any of the six classifications of powers, or within any other model, because their functions and powers were not sufficiently uniform with others to allow for the formulation of standardized guidelines. As in the case of other agencies, we have not designed separate rules of procedure for these bodies. A description of each follows:

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[39]See II Kenneth Culp Davis, *Administrative Law Treatise* (2d ed.) at s. 12:1, p. 406. See also *Royal Commission Inquiry into Civil Rights* (1968) (the "McRuer Commission Report"), vol. I, p. 213 where the Commission recommended that the minimum rules of procedure apply to the exercise of all administrative and judicial powers, "unless the power is exercised for emergency purposes, the scientific determination of standards, or in circumstances in which the rules would frustrate the object of the statute conferring a power". Those decisions for which inspection or testing is deemed a better method of finding disputed fact normally involve the licensing of vocations or professions (see para. 4.25) and those decisions in the environmental, health and transportation fields which, broadly speaking, involve safety.

DEPARTMENT OF ENVIRONMENT AND WORKPLACE SAFETY AND HEALTH

Clean Environment Commission: this agency, which investigates and reports on matters relating to the state of the environment, is empowered to make various decisions, the procedures for which require separate analysis.

DEPARTMENT OF HEALTH

Minister's Board (Mental Health Act): this agency is authorized, *inter alia*, to hear appeals from decisions of the Director of Psychiatric Services on applications by the parents of mental retardates for discharge of their child (s. 28 of *"The Mental Health Act"* C.C.S.M. c. M110).

DEPARTMENT OF MUNICIPAL AFFAIRS

Municipal Board: this agency is empowered to make a broad variety of decisions, including the determination of appeals of municipalities from equalized assessment made by the Provincial Municipal Assessor; the making of orders as to assets and liabilities of municipalities; the approval of municipal by-laws after hearing objections from individuals, their counsel, or the municipality; when ordered by the Lieutenant-Governor-in-Council, the supervision of municipalities believed to be in financial trouble; and the approval of borrowing by municipalities for local improvements (*"The Municipal Act"* C.C.S.M. c. M240). It also appeals from the decisions of certain administrative agencies, including the Clean Environment Commission (*"The Clean Environment Act"* C.C.S.M. c. C130, s. 17).

DEPARTMENT OF NATURAL RESOURCES

Rivers and Streams Protection Authorities: this agency is authorized to issue permits which are required for: (1) the deposit of any material in designated areas adjacent to rivers and streams which might restrict or impede the flow of water or endanger the stability of a bank; and (2) the construction of structures that might affect the stability of a bank (*"The Rivers and Streams Act"* C.C.S.M. c. R160).

AGENCIES UNDER THE SUPERVISION OF A MINISTER

Civil Service Commission: this agency has the power, *inter alia*, to make decisions concerning the selection, promotion and discipline of members of the civil service ("The Civil Service Act" *C.C.S.M. c. C110, and, in particular, sections 5, 25 and 26).*

Rates Appeal Board of M.P.I.C.: this agency has exclusive jurisdiction to hear and determine all appeals respecting additional premiums and surcharge disputes (s. 60 and 61 of *"The Manitoba Public Insurance Corporation Act"* C.C.S.M. c. A180).

D. IMPLEMENTATION OF RULES OF PROCEDURE

4.40 In this Chapter, we have given attention to the various types of administrative decision-making which are sufficiently uniform such that some guidelines concerning their procedures have been suggested. We have also generally considered the issue of designing appropriate procedure for those powers exercised by agencies listed in recommendation 2 which are outside the model rules and which affect the rights or interests of a person or group of persons. There is, however, a fundamental unresolved question that remains. It pertains to the implementation of separate procedural rules. How can it best be ensured that the agencies set forth in recommendation 2 will not only prepare rules of practice and procedure, but also design rules which are in accordance with the models of procedure and, more generally, the three factors for designing rules which we listed at the beginning of this Chapter?

4.41 We have identified two areas regarding implementation which will require attention. First, many of these agencies will need expert assistance in preparing rules of procedure. Not only are there few legally-trained chairpersons appointed to these agencies; some are also without legal counsel. It is essential therefore that there be a person or group of persons who can assist agencies in the drafting of their rules. Second, in order to encourage agencies to publish rules and to ensure that those rules properly balance "the conflict between administrative convenience and personalized justice",[40] there is a need for a person or group of persons to fulfil a watchdog or monitoring role. What type of monitoring body is the most suitable to carry out these tasks?

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[40]Louis L. Jaffe, "The American Administrative Procedure Act" [1956] P.L. 218 at 244.

4.42 An analysis of the institutional reforms which improved administrative procedure in other jurisdictions leads to the conclusion that there are essentially two possibilities to the placement of a monitoring body. The first follows the pattern developed in many jurisdictions, such as the United Kingdom, Australia and the United States at the federal level, and would involve generally the placement of a monitoring body within the executive branch of government with an appointed membership. It would be created by statute, as is the Ombudsman in Manitoba or the Council on Tribunals in the United Kingdom. The second approach consists of the placement of a monitoring body within the Legislative branch. This would involve the creation of a bi-partisan standing committee of the Legislature, similar to the composition of Law Amendments Committee or the Standing Committee on Rules and Regulations of the Manitoba Legislature. Although there appears to be no precedent for such a committee in Canada, legislative bodies with a similar mandate exist in many American states, such as Iowa, Montana, Michigan, South Dakota and Minnesota.

4.43 Given the enormous demands placed upon Members of the Legislative Assembly, and the broad mandate of a monitoring body which we foresee as being necessary, we believe that the monitoring body should be placed within the executive branch of government. We therefore recommend:

RECOMMENDATION 15

That a body be established in the executive branch of government to assist agencies in the drafting of separate rules of practice and procedure and to monitor compliance therewith.

As to whether the body should be patterned after the Ombudsman with chiefly one person fulfilling the monitoring function on a full-time basis or, as in the case of many jurisdictions, with an agency composed of several part-time appointees, we prefer the former. Not only, in our view, would this be a more cost-efficient structure; it would also mean that the agencies could draw upon

the resources of the monitoring body during regular office hours. As in the example of the Ombudsman for Manitoba, the responsible person should be an officer of the Legislature and report to it on an annual basis. In regard to requisite skills, (s)he should be legally-trained and, preferably, have some experience both in legal drafting and in public administration. We recommend:

RECOMMENDATION 16

That this monitoring body consist chiefly of one person and, as in the case of the Ombudsman for Manitoba, (s)he should be a full-time officer of the Legislature and report to it on an annual basis concerning the performance of his/her functions and duties.

4.44 Regarding the jurisdiction of the appointed officer, we think that (s)he should be primarily concerned with the rules of those agencies listed in recommendation 2 of this Report. These are the agencies which principally make decisions affecting the rights and interests of a person or group of persons and for which it is imperative that the rules of fairness apply. Other agencies, however, may require the expertise of the appointed officer and, accordingly, the officer's mandate should extend to all provincial government agencies.

4.45 We earlier recommended that the function of this officer should not only be one of providing expertise, but also of monitoring the progress of agencies in preparing appropriate rules of practice and procedure. In order for this monitoring role to be performed properly, we think that generally agencies should be required, by legislation, to submit their proposed rules to the officer prior to their adoption. As stated in Chapter 3 of this Report, mandatory consultation with the applicable monitoring body is established in the United Kingdom,[41] Ontario,[42] and has been recommended at the federal

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[41] s. 10(1) of the *Tribunals and Inquiries Act 1971*, c. 62.

[42] *Supra* n. 2, s. 28. It is only those agencies in Ontario which are subject to the uniform minimum rules of procedure which are required to submit their rules of procedure to the Statutory Powers Procedure Rules Committee.

level in the United States.[43] Not all agencies should be required to submit their proposed rules to the appointed officer prior to their adoption, however. Mandatory consultation should be confined to those agencies listed in recommendation 2 and to those provincial government agencies created in the future. We recommend:

RECOMMENDATION 17

That it be the duty of this monitoring body to maintain under continuous review the practice and procedure in proceedings of all provincial government agencies.

RECOMMENDATION 18

That no rules of practice and procedure to govern the proceedings of an agency listed in recommendation 2 or any provincial government agency created in the future be made or approved except after consultation with the monitoring body.

4.46 Having considered the desirability of improving administrative procedures in Manitoba and the most appropriate manner and means by which to implement published rules of procedure, we now propose to consider the subject of appeals from decisions of provincial government agencies. Our general comments concerning this topic are set forth in the succeeding chapter.

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[43] *Supra* n. 13, at 326.

CHAPTER 5

APPEALS FROM DECISIONS OF PROVINCIAL GOVERNMENT AGENCIES

5.01 The Commission's research concerning provincial government agencies has not been confined to the procedure governing the decisions of agencies. We have also reviewed the extent and nature of the rights of a person to appeal a decision of a provincial government agency. Our findings concerning the extent of appeals presently afforded to parties and general guidelines for determining whether change in this area is desirable are set forth in this chapter.

5.02 In studying the present extent of appeal rights, it is important to be mindful of the basic legal principle that, unlike the right to challenge an administrative decision on an application for judicial review, the right to appeal a decision of an administrative agency exists only where legislation so provides. Accordingly, if legislation is silent on the subject, there is no appeal right. As to the present right to appeal a decision of a provincial government agency, the final column of Appendix D to this Report sets forth whether legislation provides for an appeal from the decisions of each agency and, if so, the specific body to which the Legislature has given jurisdiction. Details concerning the statutory source of each right of appeal, the time frame for bringing that appeal and the jurisdiction of each appeal body are summarized in Appendix E to this Report.

5.03 Our observations concerning the extent to which the legislation provides for a right of appeal from decisions of provincial government agencies, and the type of body (court, agency, Minister or Lieutenant Governor in Council) clothed with jurisdiction where an appeal is provided, are summarized below in accordance with the four groupings of interests we devised in Appendix D:

1. Individual interests

Of the 60 agencies which were classified as affecting individual interests, almost one-half have a right of appeal (28 out of 60 or 46.6%). Of the 28 agencies where a right of appeal is provided, the appeal body designated by the legislation is as follows:

(1) A court has complete or shared jurisdiction[1] in almost two-thirds of all cases (18 out of 28 or 64.2%);

(2) The Minister responsible for the agency or the Lieutenant Governor in Council has complete or shared jurisdiction in less than one third of all cases (8 out of 28 or 28.5%);

(3) An agency has complete or shared jurisdiction in less than one-third of all cases (8 out of 28 or 28.5%).[2]

2. Collective interests

Of the 26 agencies which were classified as affecting collective interests, about one-quarter have a right of appeal (7 out of 26 or 26.9%). Of the 7 agencies where a right of appeal exists, the appeal body designated is as follows:

(1) A court has complete jurisdiction in almost three-quarters of all cases (5 out of 7 or 71.4%);[3]

(2) An agency has complete jurisdiction in just over one-quarter of all cases (2 out of 7 or 28.6%).[4]

3. Administrative

Of the 31 agencies which were classified as administrative, just over one-half have a right of appeal (16 out of 31 or 51.6%). Of those agencies where a right of appeal exists, the appeal body designated is as follows:

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[1]By "shared jurisdiction" we mean that the rights of appeal from the decisions of an agency are shared between courts and either (1) an agency; or (2) a Minister or the Lieutenant Governor in Council.

[2]The total of the percentages exceeds 100% because the summary of the appeal jurisdiction takes into account not only those decision for which the appeal body has exclusive jurisdiction but also those in which it shares jurisdiction with a court, Minister or Lieutenant Governor in Council, or an agency, as the case may be. See n. 1.

[3]There is no shared jurisdiction.

[4]There is no shared jurisdiction.

(1) The court has complete or shared jurisdiction in almost no cases (1 out of 16 or 6.3%).

(2) The Minister responsible for the agency or the Lieutenant Governor in Council has complete or shared jurisdiction in one-half of all cases (8 out of 16 or 50%);

(3) An agency has complete or shared jurisdiction in almost all cases (14 out of 16 or 87.5%).[5]

4. Agencies not affecting interests

There is only a right of appeal from decisions of government agencies in three cases: decisions of the Credit Union Stabilization Fund Board, le Fond de Securite des Caisses Populaires and the Building Standards Board. In each case, the appeal body is the Court of Queen's Bench. The statutory source of these appeals is contained in Appendix E.

5.04 Having observed the extent to which appeals are presently provided for and the type of body authorized to hear these appeals, two fundamental questions need to be addressed:

(1) Should the right to appeal decisions of provincial government agencies be changed or enlarged?

(2) If so, which body (or bodies) would be the appropriate forum to hear appeals?

As we shall see, neither of these questions can be easily resolved.

5.05 There are several factors to consider in determining whether there should be a right of appeal from a decision of an administrative agency. These involve an appreciation of the relative advantages and disadvantages of providing for an appeal. An appeal, if appropriately framed, may bring several benefits to the administrative process. First, it can ensure a measure of consistency in decisions of a similar nature. It may also promote a sense of fairness to the person affected and thereby improve the image of government

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[5]*Supra* n. 2.

administration among the general public. The facts and issues to be resolved may be more clearly defined and better articulated at an appellate level, promoting a more focused decision. The availability of an appeal may also encourage a better quality of initial decision-making. These benefits of an appeal must, however, be balanced with its potential disadvantages. That is, an appeal will inevitably increase costs. It will also result in delay. Delay may frustrate the purpose of the legislative scheme as well as adversely affect not only some of the parties to the decision but also other persons whose claims may get backlogged. Finally, if an appeal is improperly framed, it may remove the final decision-making authority from a specialist body to one less qualified. Each of these factors deserves some consideration in determining whether a right of appeal should be provided.

5.06 The question concerning the desirability of providing for a right of appeal from an administrative agency not only requires a balancing of the pros and cons we have just listed. It also demands an appreciation of the variety of functions performed by administrative agencies and the expertise of the personnel who is involved in the initial decision-making process. Accordingly, we think it is neither appropriate nor desirable to make any general recommendations concerning whether the right of appeal should be changed or enlarged. The answer to the first question we have raised can only be resolved after applying the general factors we have listed to the circumstances of each government agency.

5.07 The fact that the agencies we have classified as affecting individual and collective interests only allow for a right of appeal in respectively about one-half and one-quarter of all cases, however, strongly suggests that a study needs to be undertaken to determine whether a right of appeal should be provided in each case where legislation is now silent. We think the most appropriate agency to study this issue is the monitoring body we recommended be established in Chapter 4 to maintain under continuous review the practice and procedure in proceedings of all provincial government agencies (see recommendations 15-18, *supra*). We recommend:

RECOMMENDATION 19

That it also be the duty of this monitoring body to review the present rights of appeal from decisions of each provincial government agency and to determine the desirability of reform in this area on an agency-by-agency basis.

5.08 We have established a number of questions which we think are pertinent in determining the desirability of an appeal on an agency-by-agency basis. We state these here for the purpose of assisting the monitoring body in this study:

(1) Are the rights or interests which are affected by the decision of such significance as to justify the expense and delay of an appeal? Generally, a decision of serious consequence or one involving an invasion of fundamental liberties will justify a second consideration.

(2) Is there an overriding need to expedite the matter? Would the delay of appeal frustrate the purpose of the statute establishing the tribunal? Is the authority exercising emergency powers? Would delay prejudice third parties?

(3) Does the body assigned as final arbiter of a particular decision have sufficient status and esteem in the eyes of the public to ensure a public sense of fairness and justice?

(4) Is an appeal required to promote consistency amongst various persons or agencies exercising the same functions?

5.09 In addition to examining the extent of appeal rights among provincial government agencies, there is the second principal question which pertains to the appropriate body to hear appeals from decisions of each agency. That is, should the appellate structure be a court or another agency? Related to this issue is deciding the proper scope of each appeal. That is, should the right of appeal extend to the *merits* of a decision so that the role of the appellate body is similar to the agency at first instance? Or would it be preferable to limit the grounds of appeal to questions of law or simply to questions of jurisdiction?

5.10 The responses of those bodies which have examined both of these questions elsewhere have been mixed. The Clement Committee of Alberta, for example, recommended that the Supreme Court of Alberta (as it was then called) be vested with the statutory authority to hear appeals at least on questions of law and jurisdiction.[6] The Committee could come to no generalizations concerning the desirability of a broad right of appeal on the merits.[7] The Commonwealth of Australia, on the other hand, chose to establish a general appellate body outside the court system to hear designated decisions of many of its federal agencies. Known as the Administrative Appeals Tribunal, this appellate body reviews these decisions on the merits and exercises all powers of the original decision-maker.[8] In Ontario, the McRuer Commission took what might be described as a moderate approach when it recommended generally that judicial decisions be appealed to the ordinary courts or, in "exceptional circumstances" to an independent judicial tribunal.[9] The Commission also proposed that administrative decisions (ie. those considering policy) be appealed to the responsible Minister or other senior authority within the executive branch.[10]

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[6]*The Report of the Special Committee on Boards and Tribunals to the Legislative Assembly of Alberta* (1965) at 42.

[7]*Id.* at 43-44. The Committee stated that the desirability of a full appeal on the merits should be determined on an agency-by-agency basis having regard to, *inter alia*, the jurisdiction exercised by the agency and the need to balance efficiency with individual rights.

[8]See *Administrative Appeals Tribunal Act 1975* (Act. No. 91, 1975).

[9]*Royal Commission Inquiry into Civil Rights.* Honourable J.C. McRuer, Commissioner (1968) vol. I at 234. The Commission in a later Report recommended the creation of an intermediate appellate court to hear judicial review applications and most of the appeals from tribunals. See vol. II at pp. 654 ff. This recommendation resulted in the creation of the Ontario Divisional Court: *Judicature Amendments Act (No. 4)* S.O. 1970, c. 97.

[10]*Ibid.*

5.11 We do not think it appropriate to make general recommendations concerning the appropriate forum(s) to hear appeals from agency decisions or the extent of its appeal jurisdiction. As with the question of whether the rights of appeal should be enlarged, the answers will depend upon the circumstances of each agency, including its powers of decision-making and the degree of expertise of its membership. We think the following three principles are relevant, however, in determining appropriate answers to these questions on an agency-by-agency basis:

1. Members of the judiciary have the attributes of impartiality, a sense of relevancy, familiarity with legal terms in statutes and documents, a knowledge of the general law and a good grasp of procedural fairness. They also possess an overall sense of general values, particularly those involving fundamental civil liberties of individuals. These strengths suggest that the court should be the appeal forum to hear agency decisions which affect individual or collective rights and decisions which raise questions of law.

2. Members of agencies, and those in the executive branch generally, have the reputation for bringing specialization and expertise in their area. They possess a familiarity with the policy of their programmes and with the relevant legislation. Broadly speaking, they are concerned with the advancement of their programmes and policy and with an economical, flexible and informal mode of procedure. These considerations suggest that an administrative appeal forum should be chosen where (1) technical or specialized information must be assessed; (2) wide issues of government policy are involved; (3) decisions involve the regulation of an industry rather than individual claims; (4) a particular area generates a large volume of appeals which require speedy resolution; and (5) there are questions of law which involve the interpretation of an agency's governing statute.

3. A consideration as to the appropriate appeal forum also involves an understanding of section 96 of the *Constitution Act, 1867*. As we stated in Chapter 1 of this Report, this section empowers the Governor General to appoint judges of the superior, district or county courts (para. 1.05). This federal appointment power accordingly places restrictions on the extent to which functions

> can be validly assigned by a province to one of its government agencies. A general administrative appeal body, similar to the Administrative Appeals Tribunal of Australia, would likely be invalid unless its members were appointed by the federal government.[11] In determining the validity of provincial appeal agencies with a specialized jurisdiction, it is necessary to return to the general principle that a province can only create agencies with judicial powers analogous to those of a s. 96 court where those powers are merely ancillary to its general administrative function or necessarily incidental to the achievement of a policy goal or regulatory scheme.[12] To ascertain whether a judicial power is also "a s. 96 power", one must ask whether the power in question broadly conforms to the power or jurisdiction exercised by section 96 courts at the time of Confederation.[13] One should be mindful of these principles in determining what particular functions can be assigned to an appeal agency with specialized, as opposed to general, jurisdiction.

5.12 We think that it should be the duty of the monitoring body to examine the appropriate forum to hear appeals on an agency-by-agency basis in accordance with the three principles set forth. Aside from this fundamental issue, the body should also examine the extent of the appeal jurisdiction (merits, law or jurisdiction) and other ancillary questions, such as the procedure to be adopted on appeals. We finally recommend:

RECOMMENDATION 20

That the review proposed in recommendation 19 include a study of the appropriate body to hear appeals in each case, having regard to the principles established in para. 5.11, and further include an examination of other ancillary issues such as the extent of jurisdiction for each right of appeal and the appropriate procedures to be adopted.

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[11]See *Crevier* v. *A.G. Quebec* (1981) 127 (D.L.R. (3d) 1 (S.C.C.) and *Reference Re Residential Tenancies Act* (1981) 123 D.L.R. 554 (S.C.C.).

[12]*Reference Re Residential Tenancies Act*, *ibid.*

[13]*Ibid.*

CHAPTER 6

LIST OF RECOMMENDATIONS

The Commission's recommendations in this Report are as follows:

1. That provincial government agencies which principally make decisions directly affecting the rights or interests of a person or group of persons have published rules of practice and procedure to govern those decisions.

2. That, in particular, the following provincial government agencies should have published rules of practice and procedure:

   DEPARTMENT OF AGRICULTURE: Agricultural Credit Corporation Board of Director; Agricultural Crown Land Advisory Committee; Manitoba Farm Lands Ownership Board; Crop Insurance Act Appeal Tribunal; Manitoba Dairy Board; Farm Machinery Board; Veterinary Medical Board of Manitoba; Milk Prices Review Commission.

   DEPARTMENT OF ATTORNEY-GENERAL: Criminal Injuries Compensation Board; Manitoba Human Rights Commission; Insurance Licence Advisory Board; Law Enforcement Review Board; Legal Aid Services Society of Manitoba; Liquor Control Commission; (Liquor) Licensing Board; Manitoba Police Commission.

   DEPARTMENT OF BUSINESS DEVELOPMENT AND TOURISM: Manitoba Horse Racing Commission; Small Business Interest Rate Relief Board.

   DEPARTMENT OF COMMUNITY SERVICES AND CORRECTIONS: Day Care Staff Qualifications Review Committee; Parole Board.

   DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS: Embalmers and Funeral Directors' Board of Administration; Manitoba Securities Commission; Public Utilities Board.

   DEPARTMENT OF CO-OPERATIVE DEVELOPMENT: no applicable agencies.

   DEPARTMENT OF CROWN INVESTMENTS: no applicable agencies.

   DEPARTMENT OF CULTURE, HERITAGE AND RECREATION: no applicable agencies.

   DEPARTMENT OF EDUCATION: Certificate Review Committee; Collective Agreement Board; Student Aid Appeal Board; Board of Arbitration.

   DEPARTMENT OF EMPLOYMENT SERVICES AND ECONOMIC SECURITY: Social Services Advisory Committee.

   DEPARTMENT OF ENERGY AND MINES: Mining Board; Oil and Natural Gas Conservation Board; Surface Rights Board.

DEPARTMENT OF ENVIRONMENT AND WORKPLACE SAFETY AND HEALTH: Clean Environment Commission.

DEPARTMENT OF FINANCE: no applicable agencies.

DEPARTMENT OF FITNESS AND SPORT: Boxing and Wrestling Commission.

DEPARTMENT OF GOVERNMENT SERVICES: Manitoba Disaster Assistance Board; Land Value Appraisal Commission.

DEPARTMENT OF HEALTH: Hearing Aid Board; Medical Review Committee; Minister's Board (Mental Health Act).

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION: Highway Traffic Board; Licence Suspension Appeal Board; Medical Review Committee; Motor Transport Board; Taxicab Board.

DEPARTMENT OF HOUSING: Rent Appeal Panel.

DEPARTMENT OF INDUSTRY, TRADE AND TECHNOLOGY: no applicable agencies.

DEPARTMENT OF LABOUR: Apprenticeship and Tradesman's Qualifications Board; Manitoba Labour Board; Power Engineers Advisory Board; Conciliation Boards; Fire Department's Arbitration Board; Greater Winnipeg Building Construction Wages Board; Heavy Construction Wages Board; Rural Building Construction Wages Board; Industrial Inquiries Commission; Minimum Wage Board.

DEPARTMENT OF MUNICIPAL AFFAIRS: Civic Service Board; Municipal Board.

DEPARTMENT OF NATURAL RESOURCES: Arbitration Board of Forestry Branch; Rivers and Streams Protection Authorities; Boards of Conservation Districts.

DEPARTMENT OF NORTHERN AFFAIRS: No applicable agencies.

AGENCIES UNDER THE SUPERVISION OF A MINISTER: Civil Service Commission; Manitoba Lotteries Foundation Board; Rates Appeal Board of the Manitoba Public Insurance Corporation; Workers' Compensation Board.

3. That, subject to recommendation 4, the rules of practice and procedure for those provincial government agencies set forth in Recommendation 2 be implemented by the passing of regulations made pursuant to the legislation which creates and empowers each agency.

4. That those rules of the provincial government agencies set forth in Recommendation 2 which may pertain to an agency's jurisdiction or to the substantive rights or interests of persons be implemented by statutory amendment to the legislation which creates and empowers each agency.

5. That there be legislation passed to authorize the following agencies to makes rules of practice and procedure:

   DEPARTMENT OF AGRICULTURE: Agricultural Crown Land Advisory Committee; Manitoba Dairy Board; Farm Machinery Board.

   DEPARTMENT OF ATTORNEY-GENERAL: Legal Aid Services Society of Manitoba; Liquor Control Commission; Liquor Licensing Board.

   DEPARTMENT OF BUSINESS DEVELOPMENT AND TOURISM: Small Business Interest Rate Relief Board.

   DEPARTMENT OF COMMUNITY SERVICES AND CORRECTIONS: Day Care Staff Qualifications Review Committee; Parole Board.

   DEPARTMENT OF EDUCATION: Student Aid Appeal Board.

   DEPARTMENT OF EMPLOYMENT SERVICES AND ECONOMIC SECURITY: Social Services Advisory Committee.

   DEPARTMENT OF FITNESS AND SPORT: Boxing and Wrestling Commission.

   DEPARTMENT OF GOVERNMENT SERVICES: Manitoba Disaster Assistance Board.

   DEPARTMENT OF HEALTH: Hearing Aid Board; Minister's Board (Mental Health Act).

   DEPARTMENT OF HIGHWAYS AND TRANSPORTATION: Medical Review Committee.

   DEPARTMENT OF LABOUR: Apprenticeship and Tradesman's Qualifications Board; Power Engineers Advisory Board; Minimum Wage Board.

   DEPARTMENT OF MUNICIPAL AFFAIRS: Civic Service Board.

   DEPARTMENT OF NATURAL RESOURCES: Rivers and Streams Protection Authorities.

   AGENCIES UNDER THE SUPERVISION OF A MINISTER: Rates Appeal Board of the Manitoba Public Insurance Corporation.

6. That the rules of practice and procedure for each agency listed in Recommendation 2 which are implemented by the passing of regulations be published in The Manitoba Gazette according to the requirements of "The Regulations Act" of Manitoba.

7. That the model rules of procedure set forth in this Report form the basis for preparing separate rules of practice and procedure for the exercise of those powers of agencies listed in Recommendation 2 which are governed by the model rules.

8. That an agency not be required to follow its published rules of practice and procedure where the parties to a decision have waived compliance with those rules.

9. That the model rules of practice and procedure for the imposition of sanctions set forth in para. 4.13 of this Report comprise the basis for preparing separate rules to govern each agency listed in recommendation 2 where each is authorized to impose a sanction.

10. That the model rules of practice and procedure for arbitral functions set forth in para. 4.18 of this Report comprise the basis for preparing separate rules to govern each agency listed in recommendation 2 where each performs an arbitral function.

11. That the model rules of practice and procedure set forth in para. 4.22 of this Report comprise the basis for preparing separate rules to govern those agencies listed in recommendation 2 which assess compensation.

12. That the model rules of practice and procedure contained in para. 4.29 of this Report form the basis for preparing separate rules to govern those agencies listed in recommendation 2 where each is authorized to issue licences.

13. That the model rules of practice and procedure set forth in para. 4.33 of this Report form the basis for preparing separate rules of practice and procedure to govern those agencies listed in recommendation 2 where each performs a rate-making function.

14. That the model rules of practice and procedure for those agencies which award benefits include the right of the applicant to make some comment (either oral or written) concerning the application and, where so requested by the applicant on or before the date the decision is made, the giving of reasons (either oral or written) by an agency where an application has been denied.

15. That a body be established in the executive branch of government to assist agencies in the drafting of separate rules of practice and procedure and to monitor compliance therewith.

16. That this monitoring body consist chiefly of one person and, as in the case of the Ombudsman for Manitoba, (s)he should be a full-time officer of the Legislature and report to it on an annual basis concerning the performance of his/her functions and duties.

17. That it be the duty of this monitoring body to maintain under continuous review the practice and procedure in proceedings of all provincial government agencies.

18. That no rules of practice and procedure to govern the proceedings of an agency listed in recommendation 2 or any provincial government agency created in the future be made or approved except after consultation with the monitoring body.

19. That it also be the duty of this monitoring body to review the present rights of appeal from decisions of each provincial government agency and to determine the desirability of reform in this area on an agency-by-agency basis.

20. That the review proposed in recommendation 19 include a study of the appropriate body to hear appeals in each case, having regard to the principles established in para. 5.11, and further include an examination of other ancillary issues such as the extent of jurisdiction for each right of appeal and the appropriate procedures to be adopted.

This is a Report pursuant to section 5(3) of *"The Law Reform Commission Act"*, signed this 29th day of June 1984.

Clifford H.C. Edwards, Chairman

D. Trevor Anderson, Commissioner

Knox B. Foster, Commissioner

George H. Lockwood, Commissioner

Lee Gibson, Commissioner

APPENDIX A

An Act respecting Administrative Procedures (Draft)

Short title

1. This Act may be cited as: "The Administrative Procedures Act".

Definitions:

2.(1) In this Act

"authority",

(a) "authority" means one or more persons authorized to exercise a statutory power;

"licence",

(b) "licence" includes any permission granted under or pursuant to an Act of the Legislature to do an act or thing that, but for the permission, would be unlawful whether the permission is evidenced by a document called a "licence", "permit" or "certificate" or by any other document;

"party",

(c) "party" means

(i) a person who has applied for or requested the exercise of a statutory power or the doing of any act or thing in connection with the exercise of a statutory power;

(ii) a person who has made known to the authority his intention to oppose or object to the exercise of a statutory power or the doing of any act or thing in connection with the exercise of a statutory power;

(iii) a person who has made known to the authority his intention to support an application or request for the exercise of a statutory power or the doing of any act or thing in connection with the exercise of a statutory power; and

(iv) a person whose rights will or may be affected by the exercise of a statutory power or by the doing of any act or thing in connection with the exercise of a statutory power;

"regulations", (d) "regulations" means regulations made under this Act;

"statutory power", (e) "statutory power" means administrative, quasi-judicial or judicial power conferred by an Act of the Legislature, and without limiting the generality of the foregoing, includes

(i) the power to grant, suspend, revoke or vary a licence, charter or letters patent;

(ii) the power to declare or establish a status for which provision is made under an Act of the Legislature for a person or organization, or to suspend or revoke that status;

(iii) the power to approve or authorize the doing or omission by a person of an act or thing that, but for the approval or authorization, would be unlawful or unauthorized;

(iv) the power to declare or establish a right or duty of a person under an Act of the Legislature, whether in a dispute with another person or otherwise;

(v) the power to make an order, decision, direction, or finding, prohibiting a person from doing an act or thing that, but for the order, decision, direction, or finding would be lawful for him to do; and

(vi) the power to make an order, decision, direction, or finding, requiring a person to do any act or thing that, but for the order, decision, direction, or finding he would not be legally required to do;

but does not include a power conferred on a court of civil or criminal jurisdiction, or a power to make regulations.

Expiry of licence

(2) Where an authority refuses to renew a licence that has been granted to a person and that expires by effluxion of time, for the purposes of this Act, the refusal to renew the licence shall be deemed to be a revocation thereof.

Application.

3.(1) No provision of this Act applies to an authority or to the exercise of a statutory power by an authority unless the Lieutenant-Governor-in-Council so provides by regulation.

Effect on statutory rights

(2) Nothing in this Act diminishes any right that a person has by law or deprives a person of any such right.

Notice.

4.(1) Where an application is made to an authority, or where an authority on its own initiative proposes to exercise a statutory power, the authority shall give adequate notice to all parties to the application or affected by the proposed exercise of the statutory power, indicating when and where evidence and submissions relative to the application or the proposed exercise of the statutory power may be submitted.

Refusal or adverse decision.

(2) Before an authority refuses an application of a party or exercises a statutory power in a manner that adversely affects a party

(a) it shall give the party a reasonable opportunity of submitting evidence or submissions relative to the application or the exercise of the statutory power and of cross-examining any witness whose evidence has been submitted by any other party;

(b) where the authority has received any evidence, submission or allegation relative to the application or the exercise of the statutory power and contrary to the interest of the party, other than at a hearing of which the party had notice and at which the party was entitled to attend, it shall, subject to the regulations, inform the party of that evidence, submission or allegation in sufficient detail to permit him to understand it and afford him a reasonable opportunity of contradicting, answering or explaining it; and

(c) it shall give the party an adequate opportunity of making representations by way of argument to the authority.

Cross-examination.

(3) Where, under clause (b) of subsection (2), an authority has informed a party of evidence, submisions or allegations and the party is entitled under that clause to contradict, answer or explain them and will not have a fair opportunity of doing so without cross-examining the person who gave the evidence or made the submission or allegation, the authority shall give the party an opportunity to cross-examine that person in the presence of the authority or of a person authorized to hear or take evidence for the authority.

Representation by counsel

5. A party to any proceeding before an authority may be represented by counsel at that proceeding; and the counsel has the same rights to submit evidence and submissions and to cross-examine witnesses as the party he represents.

Written reasons.

6.(1) Where an authority exercises a statutory power so as to affect a party adversely, that party may

(a) within two weeks of the date of the publication of the order or decision by which the statutory power was exercised; or

(b) within two weeks of the date on which the party was notified of the order or decision by which the statutory power was exercised;

whichever date is the earlier, request the authority in writing to furnish him with a written statement of its order or decision setting out the finding of fact upon which it based its order or decision and the reasons for the order or decision.

Furnishing of written reasons.

(2) Where an authority receives a request under subsection (1), it shall furnish the party with the written statement requested within four weeks of the date on which it receives the request.

Extension of appeal time

(3) Where, within the time for appeal, a request is made under subsection (1), the time for the appeal is extended by a period equal in length to the period commencing on the date on which the authority receiving the request and ending on the date the statement is furnished to the party making the request.

Issue of subpoena for purposes of cross-examination.

7(1) Where a person has submitted evidence or a submission in any proceeding before an authority, any party to the proceeding may request the right to cross-examine that person; and, for that purpose, the authority may issue a subpoena requiring the person who submitted the evidence or submission to attend at a time and place set forth in the subpoena and, in the subpoena, may require that person to bring certain documents with him.

Offence.

(2) A person who fails to comply with the subpoena issued under subsection (1) and served upon him is guilty of an offence and liable, on summary conviction, to a fine of not more than fifty dollars or to imprisonment for a term of not more than one month.

Evidence may be ignored

(3) Where a person has been served with a subpoena under subsection (1) and fails to comply with the subpoena, the authority may ignore any evidence or submission submitted by him in the matter in respect of which the subpoena was issued.

Regulations.

8. For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant-Governor-in-Council may make such regulations as are ancillary thereto and are not inconsistent therewith; and every regulation made under and in accordance with the authority granted by this section has the force of law; and without limiting the generality of the foregoing, the Lieutenant-Governor-in-Council may make such regulations not inconsistent with any other provision of this Act

(a) providing that this Act, or any provision of this Act applies to an authority or to the exercise of certain statutory powers by an authority or to the exercise of a statutory power under a specified provision of an Act of the Legislature;

(b) prescribing the period of time that shall be deemed to be reasonable for the giving of notice in accordance with this Act with respect to authorities generally or with respect to a certain authority or with respect to the exercise of a certain statutory power by an authority;

(c) prescribing forms of notice and methods of giving notice which shall be conclusively deemed to be adequate notice by any specified authority in respect of an exercise of any specified statutory power for the purposes of subsection (1) of section 4;

(d) prescribing classes of evidence received by any specified authority to which clause (b) of subsection (2) of section 4 does not apply.

Commencement of Act.

9. This Act comes into force on the day it receives the royal assent.

APPENDIX B

AGENCIES OF THE GOVERNMENT ESTABLISHED BY THE PROVINCE OF MANITOBA, INDICATING SOURCE OF AUTHORITY (STATUTE, ORDER-IN-COUNCIL, MINISTERIAL AUTHORITY)

Department of Agriculture

Agricultural Credit Corporation Board of Directors (C.C.S.M. c. A10, s. 2).

Agricultural Crown Land Advisory Committee (O.C. 1168/78, 222/82).

Agricultural Employment Development Committee (Federal-Provincial Agricultural Employment Development Agreement, April, 1979).

Agricultural Productivity Council (C.C.S.M. c. A20, s. 3(1)).

Agricultural Societies Advisory Board (C.C.S.M. c. A30, s. 26(1)).

Artificial Insemination Advisory Board (C.C.S.M. c. A90, s. 126(1)).

Manitoba Beef Commission (C.C.S.M. c. N20, s. 32(b), M.R. 186/82, 215/82 as amended, 217/82).

Cattle Producers Association (C.C.S.M. c. C25, s. 3(1)).

Century Family Farms in Manitoba Selection Committee.

Crop Insurance Act Appeal Tribunal (C.C.S.M. C. C310, s. 20(1)).

Crop Insurance Corporation Board (C.C.S.M. c. C310, s. 11(1)).

Manitoba Dairy Board (S.M. 1982-83-84 c. 24, s. 6(1)).

Farm Financial Review Panel (C.C.S.M. c. A40, s. 5(2)).

*Manitoba Farm Lands Ownership Board (S.M. 1982-83-84 c. 22, s. 6(1)).

Farm Machinery Board (C.C.S.M. c. F40, s. 28(1)).

Manitoba Hog Income Insurance Plan Committee (C.C.S.M. c. F30, s. 2)).

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*Note: This agency has not yet been established as *"The Farm Lands Ownership Act"* (S.M. 1982-83-84 c. 24), which is responsible for its creation, has not been proclaimed. Until its proclamation, the Manitoba Agricultural Lands Protection Board continues to function pursuant to s. 15(1) of *"The Agricultural Lands Protection Act"* C.C.S.M. c. A15.

Horticultural Societies Advisory Board (C.C.S.M. c. H110, s. 36).

Market Sharing Quota Advisory Committee (M.R. 241/74, s. 4(1)(2)).

Milk Prices Review Commission (C.C.S.M. c. M130, s. 2(1)).

Manitoba Natural Products Marketing Council (C.C.S.M. c. N20, s. 3(1)).

Pesticides and Fertilizers Advisory Committee (C.C.S.M. c. P40, s. 6(1)).

Committee on Pesticides Residue Testing (Ministerial order, mid-1960s).

ROP Swine Committee.

Advisory Committee on Tree Protection (C.C.S.M. c. P90, R1, s. 2(1)).

Veterinary Medical Board of Manitoba (C.C.S.M. c. V30, s. 9(1)).

Veterinary Services Commission (C.C.S.M. c. V50, s. 14).

Manitoba Water Services Board (C.C.S.M. c. W90, s. 3).

Weed Control Advisory Board (C.C.S.M. c. N110, s. 39(1)).

Women's Institute Provincial Board (C.C.S.M. c. W180, s. 30(1)).

Producer Boards (C.C.S.M. c. N20, s. 13(1)).

Chicken Broiler Producers' Marketing Board (C.C.S.M. c. N20 - R7, MR 92/73, 106/73, 115/73, 91/75, 104/75).

Egg Producers' Marketing Board (C.C.S.M. c. N20 - R9, MR 214/72).

Hog Producers' Marketing Board (C.C.S.M. c. N20 - R4, MR 65/73, 330/74).

Honey Producers' Marketing Board (C.C.S.M. c. N20 - R6, MR 66/74, 247/75 2/76).

Milk Producers' Marketing Board (MR 72/74, 242/74, 311/74, 208/75, 17/76).

Turkey Producers' Marketing Board (C.C.S.M. c. N20 - R8, 91/73, 114/73, 17/74, 67/75).

Vegetable Producers' Marketing Board (MR 130/72, 170/72, 188/72, 94/75).

Department of the Attorney-General

*Board of Review (Criminal Code s. 547, O.C. 1275/69 and 224/82).

*Canteen Funds Board of Trustees (S.C. 1925, c. 34, s. 4, O.C. 386/81).

Criminal Injuries Compensation Board (C.C.S.M. c. C305, s. 2(1)).

Manitoba Human Rights Commission (C.C.S.M. c. H175, s. 10(1)).

Insurance Society Readjustment Committee (C.C.S.M. c. I40, s. 317(1)).

Insurance Licence Advisory Board (C.C.S.M. c. I40, c. 389(1)).

Law Enforcement Review Board, (S.M. 1982-83-84 c. 21, s. 5(1)).

Law Reform Commission (C.C.S.M. c. L95, s. 2(1)).

Special Committee on Law Revision (C.C.S.M. c. A170, s. 7(1)).

Legal Aid Services Society of Manitoba(C.C.S.M. c. L105, s. 2).

Liquor Control Commission (C.C.S.M. c. L160, s. 3).

(Liquor) Licensing Board (C.C.S.M. c. L160, s. 34(1)).

Committee to Administer Police Benefit Fund (C.C.S.M. c. P150, s. 13(3).

Manitoba Police Commission (C.C.S.M. c. P150, s. 22(1)).

Commissioners of the Uniform Law Conference of Canada (C.C.S.M. c. U30, s. 1(1)).

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*Note: The authority for the Board of Review and the Canteen Funds Board of Trustees in Manitoba is contained in the federal legislation cited. The appointing authority of each board is provincial and each agency is included in this Appendix for that reason. As to the constitutionality of creating a board of review under provincial legislation, see Re Abel and Advisory Review Board (1981) 56 C.C.C. (2d) 153 (Ont. C.A.). In Saskatchewan, it has been tentatively recommended that the legislative authority for their board of review be transferred to the province for the purpose, inter alia, of providing greater procedural protections. See Law Reform Commission of Saskatchewan, Tentative Proposals for a Lieutenant Governor's Review Board in Saskatchewan (1984).

Department of Business Development and Tourism

Destination Manitoba Program Review Committees (O.C. 1163/78).

Manitoba Horse Racing Commission (C.C.S.M. c. H90, s. 3(1)).

Licensing Advisory Committee (O.C. 650/83).

Small Business Interest Rate Relief Board (M.R. 81/82, 88/82).

Tourism Agreement Advisory Board (O.C. 1163/78).

Venture Capital Program Advisory Board (O.C. 560/83).

Department of Community Services and Corrections

Child Welfare Review Board (C.C.S.M. c. C80, s. 9(1)).

Child Welfare Treatment Panel (C.C.S.M. c. C80, s. 47(1)).

Day Care Staff Qualifications Review Committee (C.C.S.M. c. C158, s. 27(1)).

Parole Board (C.C.S.M. c. C230, s. 47(1)).

Department of Consumer and Corporate Affairs

Embalmers and Funeral Directors' Board of Administration (C.C.S.M. c. E70, s. 3(1)).

Public Utilities Board (C.C.S.M. c. P280, s. 3).

Manitoba Securities Commission (C.C.S.M. c. S50, s. 2(1)).

Department of Co-operative Development

Cooperative Loans and Loans Guarantee Board (C.C.S.M. c. C220, s. 2(1)).

Cooperative Promotion Board (C.C.S.M. c. W120, s. 7).

Credit Union Stabilization Fund Board (C.C.S.M. c. C300, s. 140).

Fond de Securite des Caisses Populaires (C.C.S.M. c. C300, s. 141).

Department of Crown Investments

Department of Culture, Heritage and Recreation

Manitoba Arts Council (C.C.S.M. c. A140, s. 3).

Manitoba Centennial Centre Corporation (C.C.S.M. c. C40, s. 2).

Centre Culturel Franco-Manitobain (C.C.S.M. c. C45, s. 2).

Documents Committee (C.C.S.M. c. L120, s. 12(1)).

Film Classification Appeal Board (C.C.S.M. c. A70, s. 22(5)(a)).

Film Classification Board (C.C.S.M. c. A70, s. 22(1)).

Joint Film Classification Appeal Board (C.C.S.M. c. A70, s. 22(5)(b).

Joint Film Classification Board (A70, s. 22(4)).

Heritage Manitoba Board (C.C.S.M. c. H39, s. 2).

Historic Sites Advisory Board (C.C.S.M. c. H70, s. 16(1)).

Manitoba Intercultural Council (S.M. 1982-83-84 c. 13 s. 2).

Local Government Districts Library Boards (C.C.S.M. c. P220, s. 16(1)).

Library Federation Board (C.C.S.M. c. P220, s. 36(1)).

Advisory Committee on Multiculturalism (C.C.S.M. c. T100, s. 13).

Manitoba Museum of Man and Nature Board (C.C.S.M. c. M280, s. 15(1)).

Public Library Advisory Board (C.C.S.M. c. P220, s. 3(1)).

Department of Education

Advisory Board (C.C.S.M. c. E10, s. 10).

Board of Arbitration (C.C.S.M. c. P250, s. 123).

Board of Reference (C.C.S.M. c. P250, s. 8(1)).

Certificate Review Committee (C.C.S.M. c. E10, s. 5(1)).

Collective Agreement Board (C.C.S.M. c. P250, s. 150).

Comite consultatif en francais langue premiere (C.C.S.M. c. E10, s. 4(1)).

Comite consultatif en immersion francaise (C.C.S.M. c. E10, s. 4(1)).

Comite consultatif des programmes d'etude (C.C.S.M. c. E10, s. 4(1)).

Commission of Inquiry (C.C.S.M. c. P250, s. 243(1)).

Curriculum Policy Review Committee (C.C.S.M. c. E10, s. 4(1)).

Languages of Instruction Advisory Committee (C.C.S.M. c. P250, s. 79(8)).

Provincial Evaluations Committee (C.C.S.M. c. E10, s. 4(1)).

Public Schools Finance Board (C.C.S.M. c. P260, s. 2(1)).

School Building Projects Committee (C.C.S.M. c. E10, s. 4(1)).

Advisory Committee on Schools for the Deaf (C.C.S.M. c. E10, s. 4(1)).

Minister's Advisory Committee on Special Education (C.C.S.M. c. E10, s. 4(1)).

Student Aid Appeal Board (Ministerial directive).

Board of Teachers' Education and Certification (C.C.S.M. c. E10, s. 4(1)) (Ministerial order).

Teachers Retirement Allowances Fund Board (C.C.S.M. c. T20, s. 36(1).

Teachers Retirement Allowances Fund Investment Committee (C.C.S.M. c. T20, s. 37(1).

Universities Grants Commission (C.C.S.M. c. U50, s. 2(1)).

Department of Employment Services and Economic Security

Canada/Manitoba Labour Market Needs Committee (Adult Canada-Manitoba Training Agreement s. 8).

Social Services Advisory Committee (C.C.S.M. c. S165, s. 3(1)).

Department of Energy and Mines

Manitoba Energy Authority (C.C.S.M. c. E112, s. 2).

-Board of Directors (s. 14)
-Electric Energy Marketing Committee (s. 28(4))
-Energy Allocation Committee (s. 28(5))

Manitoba Energy Council (C.C.S.M. c. E113, s. 2).

Mining Board (C.C.S.M. c. M160, s. 30(1)).

Manitoba Oil and Gas Corporation Board (S.M. 1982-83-84 c. 3, s. 8(1)).

Oil and Natural Gas Conservation Board (C.C.S.M. c. M160, s. 62(1)).

Surface Rights Board (S.M. 1982-83-84 c. 4, s. 6(1)).

Department of Environment and Workplace Safety and Health

Clean Environment Commission (C.C.S.M. c. C130, s. 2(2)).

Manitoba Environmental Council (Ministerial order 28/1/74).

Workplace Safety and Health Advisory Council (C.C.S.M. c. W210, s. 15(1).

Department of Finance

Finance Authority (C.C.S.M. c. H125, s. 2(1)).

Department of Fitness and Sport

Boxing and Wrestling Commission (C.C.S.M. c. B80, s. 3).

Manitoba Advisory Council on Fitness and Amateur Sport (C.C.S.M. c. F120, s. 6(1)).

Department of Government Services

Manitoba Disaster Assistance Board (O.C. 759/81).

Land Value Appraisal Commission (C.C.S.M. c. L40, s. 11(1)).

Department of Health

Alcoholism Foundation of Manitoba (C.C.S.M. c. A60, s. 3(1)).

Manitoba Council on Aging (Ministerial order).

*Dental Health Workers Board (C.C.S.M. c. D31, s. 3(4)).

Dental Mechanics Act Committee (C.C.S.M. c. D35, s. 14(e)).

Manitoba Drug Standards and Therapeutic Committee (C.C.S.M. c. P60, s. 46).

Health Districts Board (C.C.S.M. c. H26, s. 6).

Manitoba Health Research Council (C.C.S.M. c. H28, s. 2).

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*It is intended that the name of the Dental Mechanics Act Committee will change to the Denturists Act Committee when Bill 17, "An Act to Amend The Dental Mechanics Act", 32nd Leg., 3rd Sess., comes into place.

Manitoba Health Services Commission (C.C.S.M. c. H35, s. 3).

- -Dental Review Committee
- -Pharmacare Committee'
- -Medical Appointsment Review Committee
- -Access and Confidentiality Committee

Hearing Aid Board (C.C.S.M. c. H38, s. 2(1)).

Hospital Standards Committee (C.C.S.M. c. H120, s. 26(1)).

Advisory Boards of Local Health Units (C.C.S.M. c. H30, s. 9(1)).

Advisory Committee on Maternal and Child Health Care (Ministerial order)

Advisory Medical Board of Manitoba Cancer Treatment Foundation (C.C.S.M. c. C20, s. 6).

Medical Review Committee (C.C.S.M. c. H35, s. 101).

Medical Review Arbitration Board (C.C.S.M. c. H35, s. 108).

Standing Committee on Medical Manpower

Mental Health Planning Committee (Ministerial order).

Minister's Board (Mental Health Act) (C.C.S.M. c. M110, s. 28(1)).

Manitoba Nursing Review Committee (Ministerial order).

Provincial Board of Health (C.C.S.M. c. P210, s. 5(1)).

Department of Highways and Transportation

Highway Traffic Board (C.C.S.M. c. H50, s. 3.1(1)).

Licence Suspension Appeal Board (C.C.S.M. c. H60, s. 252(1)).

Medical Review Committee (C.C.S.M. c. H60, s. 150.1(4)).

Motor Transport Board (C.C.S.M. c. H60, s. 298(1)).

Taxicab Board (C.C.S.M. c. T10, s. 3(1)).

Department of Housing

Manitoba Housing and Renewal Corporation (C.C.S.M. c. H160, s. 3(1)).

Rent Appeal Panel (C.C.S.M. c. R84, s. 8).

Department of Industry, Trade and Technology

Manitoba Data Services (C.C.S.M. c. D15, s. 2).

Manitoba Development Corporation (except McKenzie Seeds) (C.C.S.M. c. D60, s. 2).

Manitoba Research Council (C.C.S.M. c. R110, s. 3).

-Industrial Technology Board
-Canadian Food Products Centre Board

Manitoba Trading Corporation (C.C.S.M. c. T125, s. 5(1)).

Department of Labour

Apprenticeship and Tradesman's Qualifications Board (C.C.S.M. c. A110, s. 3(1)).

Barbers Board of Examiners (C.C.S.M. C. B20, s. 4(1)).

Building Standards Board (C.C.S.M. c. B93, s. 11(1).

Conciliation Boards (C.C.S.M. c. L10, s. 83(1)).

Greater Winnipeg Building Construction Wages Board (C.C.S.M. c. C190, s. 4(1)).

Heavy Construction Wages Board (C.C.S.M. c. C190, s. 6(1)).

Rural Building Construction Wages Board (C.C.S.M. c. C190, s. 5(1)).

Electricians' Board of Examiners (C.C.S.M. c. E50, s. 6(1)).

Elevator Board (C.C.S.M. c. E60, s. 4(1)).

Fire Advisory Committee (O.C. 45/80).

Fire Department's Arbitration Board (C.C.S.M. c. F60, s. 7).

Gas/Propane Gas Advisory Boards.

Oil Burner and Gas Licensing Board (C.C.S.M. c. G30, s. 5(2)).

Hairdressers' Board of Examiners (H10, s. 6(1)).

Industrial Inquiries Commission (C.C.S.M. c. L10, s. 112(1)).

Manitoba Labour Board (C.C.S.M. c. L20, s. 11).

Labour Management Review Committee (Resolution 11/5/65).

Minimum Wage Board (C.C.S.M. c. E110, s. 24(1)).

Pension Commission (C.C.S.M. c. P32, s. 4(1)).

Power Engineers Advisory Board (C.C.S.M. c. P95, s. 15).

Projectionists Examination Board (C.C.S.M. c. A70, s. 16(1)).

Manitoba Advisory Council on the Status of Women (O.C. 939/80).

Trade Advisory Committees (C.C.S.M. c. A110, s. 6(1)).

Department of Municipal Affairs

Civic Service Board (C.C.S.M. c. M225, s. 159(1)).

Interdepartmental Planning Board (C.C.S.M. c. P80, s. 9).

Municipal Advisory Committees (C.C.S.M. c. M230, s. 3).

Municipal Assessment Court of Revision (C.C.S.M. c. M226, s. 35).

Municipal Audit Advisory Committee (C.C.S.M. c. M230, s. 3).

Municipal Board (C.C.S.M. c. M240, s. 3).

Municipal Employees' Benefits Board (C.C.S.M. c. M225, s. 179.12).

Department of Natural Resources

Board of Conservation District (C.C.S.M. c. C175, s. 8).

Conservation Districts Commission (C.C.S.M. c. C175, s. 3(1)).

Boards for Control of Interprovincial Boundary Waters (C.C.S.M. c. W70, s. 15(1)).

Greater Winnipeg Dyking Board (S.M. 1950 (2nd Sess.) c. 1; O.C. 992/50; see also C.C.S.M. c. D110, s. 2(h)(i); S.M. 1971, c. 105, s. 421(2)).

Ecological Reserves Advisory Committee (C.C.S.M. c. E5, s. 9(1)).

Flood Forecasting Committee (by order of Premier, 1954).

Arbitration Board of Forestry Branch (C.C.S.M. c. F150, s. 12(4)).

Canadian Permanent Committee on Geographical Names (Federal O.C. P.C. 1458 and Ministerial delegation, November 22, 1983).

Lake of the Woods Control Board (C.C.S.M. c. L30, s. 2(1)).

Rivers and Streams Protection Authorities (C.C.S.M. c. R160, s. 28(1)).

Saskeram Wildlife Management Area Advisory Committee (O.C. 619/81).

Manitoba Water Commission (C.C.S.M. c. W50, s. 3(1)).

Municipality Water Commission (C.C.S.M. c. W100, s. 4(2)).

- -Prairie Provinces Water Board
- -Lower Red River Valley Water Commission
- -Souris River Water Commission
- -Manitoba-Ontario Boundary Commission
- -Manitoba-Saskatchewan Boundary Commission
- -Manitoba-N.W.T. Boundary Commission

Department of Northern Affairs

Communities Economic Development Fund Board (C.C.S.M. c. C155, s. 2).

Federal-Provincial Special ARDA Committee (C.C.S.M. c. E170, s. 16 and O.C. 740/82).

Native Land Claims Working Group (Ministerial order).

Agencies under the Supervision of a Minister

Civil Service Commission

- -Charitable Donations Committee (Resolution).
- -Civil Service Commission (C.C.S.M. c. C110, s. 4(1)).
- -Civil Service Superannuation Board (C.C.S.M. c. C120, s. 5(1)).
- -Civil Service Superannuation Fund Investment Committee (C.C.S.M. c. C120, s. 210(1)).
- -The Joint Council, C.C.S.M. c. C110, s. 46(1).

Manitoba Lotteries Foundation Board (C.C.S.M. c. L210).

Public Advisory Council (ARC Agreement, Treasury Board 25/81 s. 20(a)).

Manitoba Public Insurance Corporation (C.C.S.M. c. A180, s. 2(2)).

- -Rates Appeal Board (C.C.S.M. c. A180, s. 62(1)).

Board of the Manitoba Telephone System (C.C.S.M. c. T40, s. 12(1).

Workers' Compensation Board (C.C.S.M. c. W200, s. 40(1)).

Other Bodies

Elections Commission (C.C.S.M. c. E32, s. 3(1)).

Board of the Manitoba Hydro (C.C.S.M. c. H190, s. 5(1)).

Treasury Board (O.C. 993/78).

APPENDIX C

LEGISLATIVE AUTHORITY TO ENACT RULES OF PRACTICE AND PROCEDURE FOR PROVINCIAL GOVERNMENT AGENCIES

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Individual Interests			
Department of Agriculture			
Agricultural Credit Corporation Board of Directors	x	C.C.S.M. c. A10, s. 11	-the Directors may adopt rules governing their procedure
Agricultural Crown Land Advisory Committee	-	-	-
Manitoba Farm Lands Ownership Board	x	C.C.S.M. c. F35, s. 7	-all hearings conducted by the board shall be governed by rules adopted by the board (broad regulatory power also given to LGC in s. 17)
Crop Insurance Act Appeal Tribunal	x	C.C.S.M. c.C310, s. 20(4)	-an appeal tribunal may determine its own procedure
Manitoba Dairy Board	-	-	-
Farm Machinery Board	-	-	-
Pesticides and Fertilizers Advisory Committee	-	-	-
Veterinary Medical Board of Manitoba	x	C.C.S.M. c. V30, s. 9(3)(a)	-the board has power to establish rules of procedure for the performance of its duties
Department of Attorney-General			
Board of Review	-	-	-

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Criminal Injuries Compensation Board	x	C.C.S.M. c.C305, s. 4(1)	-except as otherwise provided by the Act or the regulations, the Board may determine its own procedure. Broad regulatory power to LGC in s. 23(1)
Manitoba Human Rights Commission	x	C.C.S.M. c. H175, s. 22	-the Commission or any board of adjudication appointed under the Act may determine their procedure
Insurance Licence Advisory Board	x	C.C.S.M. c. I40, s.389(6)(d)	-the LGC may make regulations as to the procedure of the advisory board
Law Enforcement Review Board	x	C.C.S.M. c. L75, s. 40(b)	-regulatory power granted to LGC, inter alia, "prescribing rules of procedure to be followed by the board in conducting any hearing before it"
Legal Aid Services Board of Directors	-	-	-
Liquor Control Commission	-	-	-
(Liquor) Licensing Board	-	-	-
Manitoba Police Commission	x	C.C.S.M. c.P150, s.29(1)(a)	-regulatory power granted to LGC "prescribing rules, practices and procedures to be followed by the Manitoba Police Commission in conducting its affairs"
Department of Business Development			
Manitoba Horse Racing Commission	x	C.C.S.M. c. H90, s. 16	-regulatory power granted to Commission "respecting the conduct of its affairs and the control and duration of its work and functions" and "prescribing rules for the conduct of race meetings" (s. 16(a)and (i))

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Small Business Interest Rate Relief Board	-	-	-
Department of Community Services and Corrections			
Day Care Staff Qualifications Review Committee	-	-	-
Parole Board	-	-	-
Department of Consumer and Corporate Affairs			
Embalmers and Funeral Directors' Board of Administration	x	C.C.S.M. c. E70, s. 17(1)(m)	-subject to the approval of the LGC, the board may make regulations governing the revocation, suspension or cancellation of certificates and prescribing the causes and procedures therefor
Manitoba Securities Commission	x	C.C.S.M. c. S50, s. 144	-broad regulatory power granted to LGC
Department of Education			
Certificate Review Committee	x	C.C.S.M. c. E10, s. 4(1)(i)	-minister may make regulations respecting the rules of procedure of the committee
Collective Agreement Board	x	C.C.S.M. c. P250, s. 157	-subject to approval of LGC, the board may make by-laws and rules for the conduct of its proceedings, affairs and business
Student Aid Appeal Board	-	-	-

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Department of Employment Services and Economic Security			
Social Services Advisory Committee	-	-	-
Department of Energy and Mines			
Mining Board	x	C.C.S.M. c. M160, s.31(1)	-the LGC may make rules and regulations prescribing the practice and procedure before the board
Oil and Natural Gas Conservation Board	x	C.C.S.M. c. M160, s.63(1)(b)	-the LGC may make rules and regulations prescribing the practice and procedure before the board
Surface Rights Board	x	C.C.S.M. c. S45, s. 7(1)	-subject to Act and regulations, the board may make rules governing the practice and procedure of board
Department of Environment and Workplace Safety and Health			
Clean Environment Commission	x	C.C.S.M. c. C130, s. 9(9)	-the Commission may make rules governing its procedure
Department of Fitness and Sport			
Boxing and Wrestling Commission	-	-	-
Department of Government Services			
Manitoba Disaster Assistance Board	-	-	-
Land Value Appraisal Commission	x	C.C.S.M. c. L40, s. 11(11)	-the Commission may make rules governing its procedure
Department of Health			
Dental Health Workers Board	x	C.C.S.M. c. D31, s. 5	-broad power to enact regulations given to LGC

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Dental Mechanics Act Committee	x	C.C.S.M. c. D35, s. 14	-broad power to enact regulations given to LGC
Hearing Aid Board	-	-	-
Advisory Boards of Local Health Units	x	C.C.S.M. c. H30, s. 18(6)(b)	-a board may adopt by-laws for the governance of its proceedings and the conduct of its affairs and business
Medical Review Committee	x	C.C.S.M. c. H35, s. 103.1	-the committee may establish rules of procedure including rules regarding evidence
Minister's Board (Mental Health Act)	-	-	-
Department of Highways and Transportation			
Highway Traffic Board	x	C.C.S.M. c. H50, s. 3.1(9)	-the board may make rules for its own procedure
Licence Suspension Appeal Board	x	C.C.S.M. c. H60, s. 252(6)	-the appeal board may make rules not inconsistent with any Act or law to regulate its procedure
Medical Review Committee	-	-	-
Motor Transport Board	x	C.C.S.M. c. H60, s. 298(15)	-the transport board may make rules not inconsistent with any Act or law to regulate its procedure
Taxicab Board	x	C.C.S.M. c. T10, s. 18(1)	-board may make rules governing its procedure
Department of Housing			
Rent Appeal Panel	x	C.C.S.M. c. R84, s. 12(2)	-subject to Act, the panel may determine the procedure to be followed in performing his or its functions

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Department of Labour			
Apprenticeship and Trademan's Qualifications Board	-	-	-
Electricians' Board of Examiners	-	-	-
Manitoba Labour Board	x	C.C.S.M. c. L20, s. 11(14)	-the board may make by-laws and rules for the governance of its proceedings and the conduct of its affairs and business; effective only with approval of LGC
Oil Burner and Gas Licensing Board	x	C.C.S.M. c. G30, s. 6(1)	-broad regulatory power to LGC
Power Engineers Advisory Board	-	-	-
Projectionists Examination Board	-	-	-
Department of Municipal Affairs			
Civic Service Board	-	-	-
Municipal Assessment Court of Revision	-	-	-
Department of Natural Resources			
Arbitration Board of Forestry Branch	x	C.C.S.M. c. A120, s. 41	-rules for regulating the practice under *"The Arbitration Act"* may be made in the same manner as the rules of the Court of Queen's Bench
Rivers and Streams Protection Authorities	-		-
Agencies under the supervision of a Minister			
Civil Service Commission	x	C.C.S.M. c. C110, s. 57(1)	-broad regulatory power given to Commission, subject to approval of LGC

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Manitoba Lotteries Foundation Board	x	C.C.S.M. c. L210, s. 16(b)	-the board may make rules of procedure for the conduct of the affairs of the foundation
Rates Appeal Board of the Manitoba Public Insurance Corporation	-	-	-
Workers' Compensation Board	x	C.C.S.M. c. W200, s. 49(1) and s. 55(1)	-board given authority to conduct its proceedings "in such manner as it may deem most convenient for the proper discharge or speedy dispatch of business" (s. 49(1); -board given broad power to pass regulations, subject to veto of LGC (s. 55(1))
Collective Interests			
Department of Agriculture			
Agricultural Societies Advisory Board	-	-	-
Manitoba Hog Income Insurance Plan Committee	-	-	-
Milk Prices Review Commission	x	C.C.S.M. c. M130, s. 3(12)	-the commission may prescribe its own rules of procedure
Veterinary Services Commission	-	-	-
Department of Attorney-General			
Insurance Society Readjustment Committee	-	-	-
Department of Consumer and Corporate Affairs			
Public Utilities Board	x	C.C.S.M. c. P280, s. 24(3)	-the board may make rules of practice regulating its procedure to become effective only upon publication in the Gazette

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Department of Education			
Board of Arbitration	x	C.C.S.M. c. P250, s. 127(2)	-the board may determine its own procedure
Board of Reference	x	C.C.S.M. c. P250, s. 9(1)	-the board may make rules to govern its own procedure
Teachers Retirement Allowances Fund Board	x	C.C.S.M. c. T20, s. 36(8)	-board may make regulations providing for the conduct of its meetings and proceedings, subject to LGC approval
Department of Energy and Mines			
Manitoba Energy Council	x	C.C.S.M. c. E113, s. 7	-the council may make rules for its own procedure
Department of Health			
Manitoba Health Services Commission	-	-	-
Department of Labour			
Barbers Board of Examiners	-	-	-
Conciliation Boards	x	C.C.S.M. c. L10, s. 89(2)	-a conciliation board or mediator may determine the procedure to be followed in performing his or its functions
Greater Winnipeg Building Construction Wages Board	x	C.C.S.M. c. C190, s. 7(5)	-a board shall govern its own procedure, and may make rules relating to its procedure
Fire Department's Arbitration Board	x	C.C.S.M. c. A120, s. 41	-rules for regulating practice under *"The Arbitration Act"* may be made in the same manner as the rules of the Court of Queen's Bench

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Hairdressers' Board of Examiners	-		-
Heavy Construction Wages Board	x	C.C.S.M. c. C190, s. 7(5)	-a board shall govern its own procedure, and shall make rules relating to its procedure
Rural Building Construction Wages Board	x	C.C.S.M. c. C190, s. 7(5)	-a board shall govern its own procedure and shall make rules relating to its procedure
Industrial Inquiries Commission	x	C.C.S.M. c. L10, s. 113(1)	-the commission may determine its own procedure
Minimum Wage Board	-		-
Pension Commission	-		-
Department of Municipal Affairs			
Municipal Board	x	C.C.S.M. c. M240, s. 24(1)	-the board may make rules of practice regulating its procedure to become effective only upon publication in the Gazette
Municipal Employees' Benefits Board	x	C.C.S.M. c.M225, s.179.21(c)	-the board may make regulations respecting procedure at its meetings
Department of Natural Resources			
Boards of Conservation Districts	x	C.C.S.M. c. C175, s. 45	-broad regulatory power given to LGC
Municipality Water Commission	x	C.C.S.M. c. W100, s. 31	-the boards may enact by-laws for governing the proceedings of the board

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Agencies under the supervision of a Minister			
Civil Service Commission -Charitable Donations Committee	x	C.C.S.M. c. C110, s. 57(1)	-broad regulatory power given to Civil Service Commission, subject to approval of LGC
Administrative			
Department of Agriculture			
Crop Insurance Corporation Board	x	C.C.S.M. c. C310, s. 11(7)	-the directors may adopt rules governing their own procedure
Natural Products Marketing Council	x	C.C.S.M. c. N20, s. 11	-the council may make rules governing its procedure
Manitoba Beef Commission	x	C.C.S.M. c. N20, s. 28	-may make rules governing its procedure
Chicken Broiler Producers' Marketing Board	x	C.C.S.M. c. N20, s. 19	-a producer board may make rules governing its procedure
Egg Producers' Marketing Board	x	C.C.S.M. c. N20, s. 19	-a producer board may make rules governing its procedure
Hog Producers' Marketing Board	x	C.C.S.M. c. N20, s. 19	-a producer board may make rules governing its procedure
Honey Producers' Marketing Board	x	C.C.S.M. c. N20, s. 19	-a producer board may make rules governing its procedure
Turkey Producers' Marketing Board	x	C.C.S.M. c. N20, s. 19	-a producer board may make rules governing its procedure
Vegetable Producers' Marketing Board	x	C.C.S.M. c. N20, s. 19	-a producer board may make rules governing its procedure

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Advisory Committee on Tree Protection	-	-	-
Manitoba Water Services Board	x	C.C.S.M. c. W90, s. 32(1)	-the board may make by-laws regarding procedure
Department of Attorney-General			
Committee to Administer Police Benefit Fund	-	-	-
Department of Community Services and Corrections			
Child Welfare Treatment Panel	x	C.C.S.M. c. C80, s. 53	-panel may make rules governing its own procedure
Department of Culture, Heritage and Recreation			
Film Classification Appeal Board	-	-	-
Film Classification Board	-	-	-
Joint Film Classification Appeal Board	-	-	-
Joint Film Classification Board	-	-	-
Library Federation Board	x	C.C.S.M. c. P220, s. 39(b)	-board may make rules and regulations to govern its own procedure
Local Government Districts Library Boards	x	C.C.S.M. c.P220, s.32(1)(b)	-board may make rules and regulations to govern its own procedure
Public Library Advisory Board	x	C.C.S.M. c. P220, s. 5(j)	-LGC may make rules, regulations and orders governing the organization and procedure of the advisory board

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Department of Education			
Public Schools Finance Board	x	C.C.S.M. c. P260, s. 5	-the board may make rules governing its own procedure
Department of Health			
Hospital Standards Committee	-	-	-
Department of Housing			
Manitoba Housing and Renewal Corporation	-	-	-
Department of Industry, Trade and Technology			
Manitoba Development Corporation	-	-	-
Department of Labour			
Elevator Board	x	C.C.S.M. c. E60, s. 5(2)	-board may adopt rules of procedure
Department of Northern Affairs			
Communities Economic Development Fund Board	x	C.C.S.M. c.C155, s.17(1)(e)	-may pass by-laws to regulate its own procedure
Agencies under the supervision of a Minister			
Civil Service Commission -Civil Service Superannuation Board	x	C.C.S.M. c. C210, s. 5(5)	-board, with approval of LGC, may make regulations as to procedure
Manitoba Public Insurance Corporation	x	C.C.S.M. c. A180, s.6(2)(l)	-may pass by-laws concerning procedure to be followed at meetings

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Board of the Manitoba Telephone System	x	C.C.S.M. c. T40, s. 21(j)	-may make by-laws concerning procedure to be followed at meetings
Board of the Manitoba Hydro	x	C.C.S.M. c.H190, s.15(1)(a)	-may make by-laws concerning procedure to be followed at meetings
Other			
Elections Commission	x	C.C.S.M. c. E32, s. 54	-broad regulatory power granted to Commission
Agencies not affecting interests			
Department of Agriculture			
Agricultural Productivity Council	x	C.C.S.M. c. A20, s. 10	-council may make rules for the regulation of its proceedings
Artificial Insemination Advisory Board	-	-	-
Cattle Producers Association	x	C.C.S.M. c. C25, s. 4(3)	-board may make rules governing its own procedure
Horticultural Societies Advisory Board	-	-	-
Farm Financial Review Panel	-	-	-
Market Sharing Quota Advisory Committee	-	-	-
Weed Control Advisory Board	-	-	-
Women's Institute Provincial Board	-	-	-
Department of Attorney-General			
Canteen Funds Board of Trustees	-	-	-
Manitoba Law Reform Commission	x	C.C.S.M. c. L95, s.6(3)	-commission may make by-laws respecting its procedure

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Special Committee on Law Revision	-	-	-
Commissioners of the Uniform Law Confernece of Canada	-	-	-
Department of Business Development and Tourism			
Destination Manitoba Program Review Committee	-	-	-
Licensing Advisory Committee	-	-	-
Manitoba Research Council	x	C.C.S.M. c. R110, s. 6(4)	-may make rules of procedure subject to approval of LGC
Tourism Agreement Advisory Board	-	-	-
Venture Capital Program Advisory Board	-	-	-
Department of Community Services and Corrections			
Child Welfare Review Board	x	C.C.S.M. c. C80, s. 9(7)	-board may make rules governing its procedure
Department of Co-operative Development			
Cooperative Loans and Loans Guarantee Board	-	-	-
Cooperative Promotion Board	-	-	-
Credit Union Stabilization Fund Board	-	-	-
Fond de Securite des Caisses Populaires	-	-	-
Department of Culture, Heritage and Recreation			
Advisory Committee on Multiculturalism	-	-	-
Manitoba Arts Council	x	C.C.S.M. C. A140, s. 9	-council may pass by-laws regulating its proceedings

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Manitoba Centennial Centre Corporation	x	C.C.S.M. c. C40, s. 5(2)	-board may make rules governing its own procedure subject to approval of LGC
Centre Culturel Franco-Manitobain	x	C.C.S.M. c. C45, s. 5(2)	-board may make rules governings its own procedure subject to approval of LGC
Documents Committee	-	-	-
Heritage Manitoba Board	-	-	-
Historic Sites Advisory Board	x	C.C.S.M. c. H70, s. 17(2)	-the board may make rules governing its own procedure
Manitoba Intercultural Council	-	-	-
Manitoba Museum of Man and Nature	-	-	-
Department of Education			
Advisory Board	x	C.C.S.M. c. E10, s. 17(1)	-the board may make rules respecting its own procedure
Comite consultatif en francais langue premiere	-	-	-
Comite consultatif en immersion francaise	-	-	-
Comite des programmes d'etudes	-	-	-
Commission of Inquiry	-	-	-
Curriculum Policy Review Committee	-	-	-
Languages of Instruction Advisory Committee	-	-	-
Provincial Evaluations Committee	-	-	-

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
School Building Projects Committee	-	-	-
Advisory Committee on Schools for the Deaf	-	-	-
Minister's Advisory Committee on Special Education	-	-	-
Board of Teachers' Education and Certification	-	-	-
Teachers Retirement Allowances Fund Investment Committee	-	-	-
Universities Grants Commission	x	C.C.S.M. c. U50, s. 5(4)	-the commission may make rules governing its own procedure
Department of Energy and Mines			
Manitoba Energy Authority Board of Directors	x	C.C.S.M. c. E112, s. 24(b)	-the board may make rules respecting its procedure
Manitoba Oil and Gas Corporation Board	-	-	-
Department of Environment and Workplace Safety and Health			
Workplace Safety and Health Advisory Council	-	-	-
Department of Finance			
Finance Authority	-	-	-
Department of Fitness and Sport			
Manitoba Advisory Council on Fitness and Amateur Sport	x	C.C.S.M. c. F120, s. 6(7)	-subject to approval of LGC, the council may make rules governing its proceedings

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Department of Health			
Alcoholism Foundation of Mantoba	x	C.C.S.M. c. A60, s. 5(8)	-board may adopt rules governing its own procedure
Advisory Medical Board of Manitoba Cancer Treatment Foundation	-	-	-
Manitoba Drug Standards and Therapeutic Committee	-	-	-
Health District Boards	-	-	-
Manitoba Health Research Council	x	C.C.S.M. c. H28, s. 8	-the council may make by-laws for the regulation of its proceedings
Advisory Committee on Maternal and Child Health Care	-	-	-
Mental Health Planning Committee	-	-	-
Manitoba Nursing Review Committee	-	-	-
Provincial Board of Health	x	C.C.S.M. c. P210, s. 8	-the board may make rules regulating its procedure
Department of Industry, Trade and Technology			
Manitoba Data Services	-	-	-
Manitoba Research Council	x	C.C.S.M. c. R110, s. 6(4)	-subject to approval of LGC, may adopt rules governing its own procedure

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Manitoba Trading Corporation	x	C.C.S.M. c. T125, s. 7(7)	-subject to approval of Minister, may adopt rules governings its own procedure
Department of Labour			
Building Standards Board	x	C.C.S.M. c. B93, s. 11(2)	-board may make rules for its own procedure
Fire Advisory Committee	-	-	-
Labour Management Review Committee	-	-	-
Trade Advisory Commitees	-	-	-
Advisory Council on the Status of Women	-	-	-
Department of Municipal Affairs			
Interdepartmental Planning Board	x	C.C.S.M. c. P80, s. 10(2)	-board may make rules to govern its own procedure
Municipal Advisory Committees	-	-	-
Municipal Audit Advisory Committee	-	-	-
Department of Natural Resources			
Conservation Districts Commission	x	C.C.S.M. c. C175, s. 4(1)	-the commission may make rules governing its own procedure

PROVINCIAL GOVERNMENT AGENCY	POWER	STATUTORY SOURCE	AUTHORITY
Boards for Control of Interprovincial Boundary Waters	-	-	-
Ecological Reserves Advisory Committee	x	C.C.S.M. c. E5, s. 9(6)	-the committee may make rules for its own procedure
Flood Forecasting Committee	-	-	-
Greater Winnipeg Dyking Board	-		-
Lake of the Woods Control Board	x	C.C.S.M. c. L30, s. 10	-the LGC may make regulations governing procedure of the board
Saskeram Wildlife Management Area Advisory Committee	-	-	-
Manitoba Water Commission	x	C.C.S.M. c. W50, s. 3(10)	-the commission may make rules governing its procedure
Department of Northern Affairs			
Indian Land Claims Working Group	-	-	-
Agencies under the supervision of a Minister			
Civil Service Commission -Civil Service Superannuation Fund -Joint Council	x	C.C.S.M. c. C110, s. 57(1)	-broad regulatory power given to Civil Service Commission, subject to approval of LGC
Public Advisory Council (pursuant to ARC Authority Agreement)	-	-	-
Other			
Treasury Board	-	-	-

APPENDIX D

CERTAIN PROCEDURES ESTABLISHED BY LEGISLATION OR REGULATIONS
FOR PROVINCIAL GOVERNMENT AGENCIES

KEY TO APPENDIX D

Appendix D contains six columns following the listing of each provincial government agency. The column headings are:

Notice
Disclosure
Hearing
Reasons
Legal Representation
Appeal

Unless otherwise noted in this key to Appendix D, a dash ("-") indicates that the statute, regulations or Order-in-Council makes no provision for that procedural safeguard.

Notice

If provision is made for notice to be given of hearings, an "x" appears in this column. If the provision specifies the period of time in advance of the hearing that notice must be served, then that period, in days, appears in the column. If the provision is for public, as opposed to individual notice, a "p" appears in this column.

Disclosure

If provision is made expressly allowing parties or potential parties full access to the information in the possession of the board or tribunal, an "x" appears.

Hearing

If provision is made for a hearing or for a party to make representations to the board or tribunal or to introduce evidence on his own behalf, an "x" will appear. If the legislation or regulations expressly state that such a hearing is to be open to the public, a "p" appears. "IC" appears in the case of an in camera hearing, and a "P?" indicates that the hearing is to be public but that, in certain circumstances, all or part of the hearing can be closed. A "D" in this column indicates that the body has discretion whether or not to hold a hearing.

Legal Representation

Where the legislation and regulations are silent regarding the right of counsel, or sanctions that right only with respect to the representation of a government official or agency (as opposed to the representation of a citizen appearing before the agency), then a dash "-" appears. If express provision is made for the right of parties to be represented by legal or other counsel at a hearing, then an "x" appears. Although neither the Municipal Board nor the Public Utilities Board have governing legislation which expressly grants the right generally for parties to be legally represented, each is governed by a special provision allowing the board's appointment of counsel for a class of persons who wish to challenge certain matters under each Board's jurisdiction, provided the appointment has been sanctioned by the Attorney-General. In each of these two cases an "S" appears, denoting a special, albeit limited provision for legal representation. A "D" denotes that the legislation expressly denies the right of legal representation unless the agency otherwise consents.

Reasons

If provision is made for the body to issue reasons for its decisions, an "x" appears in this column. If those reasons are only available to a party who wishes to appeal the decision, "OA" appears. "OR" indicates that reasons for a decision are to be available on request.

Appeal

Where express provision is made for appeal to a court, then, "CC" (The County Courts of Manitoba),* "QB" (Her Majesty's Court of Queen's Bench), or "CA" (The Court of Appeal) appears in this column. If the appeal is to be limited to questions of jurisdiction, then "J" appears. Appeals limited to questions of law are denoted by "L". "Min." indicates that an appeal lies to the Minister and "Arb." that an appeal lies to an arbitration board. "PUB" denotes the Public Utilities Board, "Mun. Bd." denotes the Municipal Board, "LCC" means the Liquor Control Commission, "LGC" denotes the Lieutenant Governor in Council and "LSAB" means the Licence Suspension Appeal Board. "R" in this column indicates that appeal of a decision lies back to the same body or to an affiliated appeal tribunal. Where the appeal is to be de novo, a "dn" will also appear in this column. Finally, where the legislation expressly states that there is no appeal to any other body, that decisions of the tribunal are final and binding or outlines some such privative clause, then "none" appears in this column. Where there is an appeal, but that appellate body's decision is not appealable, "NFA" appears. It denotes "no further appeal".

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* An Act to Amend the Queen's Bench Act and To Repeal The County Courts Act, The Surrogate Courts Act and the County Courts Judges' Criminal Courts Act and to amend the Municipal Boundaries Act, S.M. 1982-83-84, c. 82, s. 111(1) provides that "[w]here in any Act or regulation there is a reference to a county court . . . it shall be conclusively deemed to be a reference to the Court of Queen's Bench". The intended proclamation date of this Act is July 1, 1984.

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Individual Interests						
Department of Agriculture						
Agricultural Credit Corporation Board of Directors	-	-	-	-	-	-
Agricultural Crown Land Advisory Committee	-	-	-	-	-	-
Manitoba Farm Lands Ownership Board	x	-	x	-	-	QB/none
Crop Insurance Act Appeal Tribunal	x	-	x	-	-	none
Manitoba Dairy Board	-	-	x	-	-	-
Farm Machinery Board	20	-	x	-	x	QB/cc dn
Pesticides and Fertilizers Advisory Committee	-	-	x	x	-	-
Veterinary Medical Board of Manitoba	14	-	x	x	-	QB dn
Department of Attorney-General						
Board of Review	-	-	-	-	-	-
Criminal Injuries Compensation Board	x	-	P?	x	OA	QBLJ/none
Manitoba Human Rights Commission	10	-	P	x	-	QB
Insurance Licence Advisory Board	-	-	x	-	-	-
Law Enforcement Review Board	x	x	P	x	x	QBJ
Legal Aid Services Board of Directors	-	-	-	-	-	none

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Liquor Control Commission	x	-	x	-	-	R
(Liquor) Licensing Board	-	-	P	x	-	R/LCC
Manitoba Police Commission	-	-	P?	-	-	none
Department of Business Development						
Manitoba Horse Racing Commission	x	-	D	x	-	
Small Business Interest Rate Relief Board	-	-	-	-	-	-
Department of Community Services and Corrections						
Day Care Staff Qualifications Review Committee	-	-	-	-	-	none
Parole Board	-	-	-	-	-	-
Department of Consumer and Corporate Affairs						
Embalmers and Funeral Directors' Board of Administration	-	-	x	-	-	QB (NFA)
Manitoba Securities Commission	x	-	P?	x	OR	R/QB
Department of Education						
Certificate Review Committee	14-28	-	x	-	-	
Collective Agreement Board	x	-	x	-	-	none
Student Aid Appeal Board	-	-	-	-	-	-
Department of Employment Services and Economic Security						
Social Services Advisory Committee (appeals re suspension of day care licences)	-	-	P?	-	-	CC dn (NFA)

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Social Services Advisory Committee (re social allowances)	3	-	P?	x	-	CALJ
Department of Energy and Mines						
Mining Board	15	-	x	-	-	QB
Oil and Natural Gas Conservation Board	x	-	x	-	-	R/QB
Surface Rights Board	x	-	x	-	-	CALJ
Department of Environment and Workplace Safety and Health						
Clean Environment Commission	P	-	x	-	-	R/QB/Min(NFA)
Department of Fitness and Sport						
Boxing and Wrestling Commission	-	-	-	-	-	Min (NFA)
Department of Government Services						
Manitoba Disaster Assistance Board	-	-	-	-	-	-
Land Value Appraisal Commission	-	-	P	x	-	QB
Department of Health						
Dental Health Workers Board	-	-	-	-	-	Min/CC
Dental Mechanics Act Committee	-	-	-	-	-	-
Hearing Aid Board	-	-	x	-	x	QB dn
Advisory Boards of Local Health Units	-	-	-	-	-	-
Medical Review Committee	-	-	-	-	-	Arb.
Minister's Board (Mental Health Act)	-	-	-	-	-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Department of Highways and Transportation						
Highway Traffic Board	30P	-	P	-	-	PUBdn(NFA)
Licence Suspension Appeal Board	-	-	x	x	-	CCdn(NFA)
Medical Review Committee	-	-	-	-	-	-
Motor Transport Board	10	-	x	-	-	CA JL
Taxicab Board	-	-	x	-	-	-
Department of Housing						
Rent Appeal Panel	x	-	IC	-	-	none
Department of Labour						
Apprenticeship and Trademan's Qualifications Board	x	-	XD	x	-	none
Electricians' Board of Examiners	-	-	x	x	-	Min.
Manitoba Labour Board	10 XP	-	x	x	-	none
Oil Burner and Gas Licensing Board	x	-	x	-	-	Min. (NFA)
Power Engineers Advisory Board	-	-	x	x	-	none
Projectionists Examination Board	-	-	-	-	-	-
Department of Municipal Affairs						
Civic Service Board	-	-	x	-	-	-
Municipal Assessment Court of Revision	30P	x	-	-	-	Mun.Bd./QB (NFA)

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Department of Natural Resources						
Arbitration Board of Forestry Branch	-	-		-	-	none
Rivers and Streams Protection Authorities	-	-	-		-	Min. (NFA)
Agencies under the supervision of a Minister						
Civil Service Commission	10P	-	PD	-	-	LGC (NFA)
Manitoba Lotteries Foundation Board	-	-	-		-	-
Rates Appeal Board of the Manitoba Public Insurance Corporation	10-20	-	-		-	none
Workers' Compensation Board	-	-	-	D	-	none
Collective Interests						
Department of Agriculture						
Agricultural Societies Advisory Board	-	-	-		-	-
Manitoba Hog Income Insurance Plan Committee	-	-	-		-	-
Milk Prices Review Commission	-	-	-	-	-	R (NFA)
Veterinary Services Commission	x	-	x	-	x	-
Department of Attorney-General						
Insurance Society Readjustment Committee	-	-	-	-	-	-
Department of Consumer and Corporate Affairs						
Public Utilities Board	x	-	P	S	x	CA

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Department of Education						
Board of Arbitration	-	-	IC	x	-	none
Board of Reference	XP	-	x	-	-	CC dn
Teachers Retirement Allowances Fund Board	-	-	-	-	-	none
Department of Energy and Mines						
Manitoba Energy Council	-	-	-	-	-	-
Department of Health						
Manitoba Health Services Commission	30	-	x	-	-	-
Department of Labour						
Barbers Board of Examiners	-	-	-	-	-	-
Conciliation Boards	x	-	IC	-	-	none
Greater Winnipeg Building Construction Wages Board	-	-	-	-	-	-
Fire Department's Arbitration Board	x	-	IC	-	-	CA
Hairdressers' Board of Examiners	-	-	-	-	-	-
Heavy Construction Wages Board	-	-	-	-	-	-
Rural Building Construction Wages Board	-	-	-		-	-
Industrial Inquiries Commission	x	-	x	-	-	-
Minimum Wage Board	-	-	D	-	-	-
Pension Commission	-	-	-	-	-	CA

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Department of Municipal Affairs						
Municipal Board	x	-	P	S	x	CA LJ
Municipal Employees' Benefits Board	-	-	-		-	-
Department of Natural Resources						
Boards of Conservation Districts	-	-	x	-	-	Mun.Bd. (NFA)
Municipality Water Commission	-	-	-	-	-	-
Agencies under the supervision of a Minister						
Civil Service Commission -Charitable Donations Committee	-	-	x	-	-	-
Administrative						
Department of Agriculture						
Crop Insurance Corporation Board	-	-	-	-	-	R
Natural Products Marketing Council	14	-	-	x	-	LGC
Manitoba Beef Commission	14	-	x	-	-	R/LGC
Chicken Broiler Producers' Marketing Board	-	-	-	-	-	R/LGC
Egg Producers' Marketing Board	-	-	-	-	-	R/LGC
Hog Producers' Marketing Board	-	-	-		-	R/LGC

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Honey Producers' Marketing Board	-	-		-	-	R/LGC
Turkey Producers' Marketing Board	-	-		-	-	R/LGC
Vegetable Producers' Marketing Board	-	-			-	R/LGC
Advisory Committee on Tree Protection	-	-			-	-
Manitoba Water Services Board	-	-		-	-	PUB(NFA)
Department of Attorney-General						
Committee to Administer Police Benefit Fund	-	-				
Department of Community Services and Corrections						
Child Welfare Treatment Panel	-	-		-	-	-
Department of Culture, Heritage and Recreation						
Film Classification Appeal Board	-	-	-	-	-	R
Film Classification Board	-	-	-	-	-	R
Joint Film Classification Appeal Board	-	-		-	-	R
Joint Film Classification Board	-	-	-	-	-	R
Library Federation Board	-	-	-		-	-
Local Government Districts Library Boards	-		-		-	-
Public Library Advisory Board	-	-	-		-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Department of Education						
Public Schools Finance Board	-	-	-	-	-	-
Department of Health						
Hospital Standards Committee	-	-	-	-	-	-
Department of Housing						
Manitoba Housing and Renewal Corporation	-	-	-	-	-	-
Department of Industry, Trade and Technology						
Manitoba Development Corporation	-	-	-	-	-	-
Department of Labour						
Elevator Board	P	-	P	x	-	-
Department of Northern Affairs						
Communities Economic Development Fund Board	-	-	-	-	-	-
Agencies under the supervision of a Minister						
Civil Service Commission - Civil Service Superannuation Board	-	-	-	-	-	-
Manitoba Public Insurance Corporation	-	-	-	-	-	R (NFA)
Board of the Manitoba Telephone System	-	-	-	-	-	-
Board of the Manitoba Hydro	-	-	-	-	-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Other						
Elections Commission	-	x	-		-	QB
Agencies not affecting interests						
Department of Agriculture						
Agricultural Productivity Council	-	-	-	-	-	-
Artificial Insemination Advisory Board	-	-	-	-	-	-
Cattle Producers Association	-	-	-	-	-	-
Horticultural Societies Advisory Board	-	-	-	-	-	-
Farm Financial Review Panel	-	-	-		-	-
Market Sharing Quota Advisory Committee	-	-	-	-	-	-
Weed Control Advisory Board	-	-	-	-	-	-
Women's Institute Provincial Board	-	-	-	-	-	-
Department of Attorney-General						
Canteen Funds Board of Trustees	-	-	-	-	-	-
Manitoba Law Reform Commission	-	-	-	-	-	-
Special Committee on Law Revision	-	-	-	-	-	-
Commissioners of the Uniform Law Confernece of Canada	-	-	-	-	-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Department of Business Development and Tourism						
Destination Manitoba Program Review Committee	-	-	-		-	-
Licensing Advisory Committee	-	-	-	-	-	-
Manitoba Research Council	-	-	-	-	-	-
Tourism Agreement Advisory Board	-	-	-	-	-	-
Venture Capital Program Advisory Board	-	-	-	-	-	-
Department of Community Services and Corrections						
Child Welfare Review Board	-	-	x	-	-	-
Department of Co-operative Development						
Cooperative Loans and Loans Guarantee Board	-	-	-	-	-	-
Cooperative Promotion Board	-	-	-	-	-	-
Credit Union Stabilization Fund Board	-	-	-	-	-	QB
Fond de Securite des Caisses Populaires	-	-	-	-	-	QB
Department of Culture, Heritage and Recreation						
Advisory Committee on Multiculturalism	-	-	-	-	-	-
Manitoba Arts Council	-	-	-	-	-	-
Manitoba Centennial Centre Corporation	-	-	-	-	-	-
Centre Culturel Franco-Manitobain	-	-	-		-	-
Documents Committee	-	-	-		-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Heritage Manitoba Board	-	-	-	-	-	-
Historic Sites Advisory Board	-	-	-	-	-	-
Manitoba Intercultural Council	-	-	-	-	-	-
Manitoba Museum of Man and Nature	-	-	-	-	-	-
Department of Education						
Advisory Board	-	-	-	-	-	-
Comite consultatif en francais langue premiere	-	-	-	-	-	-
Comite consultatif en immersion francaise	-	-	-	-	-	-
Comite des programmes d'etudes	-	-	-	-	-	-
Commission of Inquiry	-	-	-	-	-	-
Curriculum Policy Review Committee	-	-	-	-	-	-
Languages of Instruction Advisory Committee	-	-	-	-	-	-
Provincial Evaluations Committee	-	-	-	-	-	-
School Building Projects Committee	-	-	-	-	-	-
Advisory Committee on Schools for the Deaf	-	-	-	-	-	-
Minister's Advisory Committee on Special Education	-	-	-	-	-	-
Board of Teachers' Education and Certification	-	-	-	-	-	-
Teachers Retirement Allowances Fund Investment Committee	-	-	-	-	-	-
Universities Grants Commission		-	-		-	

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Department of Energy and Mines						
Manitoba Energy Authority Board of Directors	x	-	P	-	-	
Manitoba Oil and Gas Corporation Board	-	-	-	-	-	-
Department of Environment and Workplace Safety and Health						
Workplace Safety and Health Advisory Council	-	-	-	-	-	-
Department of Finance						
Finance Authority	-	-	-		-	-
Department of Fitness and Sport						
Manitoba Advisory Council on Fitness and Amateur Sport	-	-	-	-	-	-
Department of Health						
Alcoholism Foundation of Mantoba	-	-	-	-	-	-
Advisory Medical Board of Manitoba Cancer Treatment Foundation	-	-	-	-	-	-
Manitoba Drug Standards and Therapeutic Committee	-	-	-	-	-	-
Health District Boards	-	-	-	-	-	-
Manitoba Health Research Council	-	-	-	-	-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Advisory Committee on Maternal and Child Health Care	-	-	-	-	-	-
Mental Health Planning Committee	-	-	-	-	-	-
Manitoba Nursing Review Committee	-	-	-	-	-	-
Provincial Board of Health	-	-	-	-	-	-
Department of Industry, Trade and Technology						
Manitoba Data Services	-	-	-	-	-	-
Manitoba Research Council	-	-	-	-	-	-
Manitoba Trading Corporation	-	-	-	-	-	-
Department of Labour						
Building Standards Board	-	-	-	-	-	QB
Fire Advisory Committee	-	-	-	-	-	-
Labour Management Review Committee	-	-	-	-	-	-
Trade Advisory Commitees	-	-	-	-	-	-
Advisory Council on the Status of Women	-		-		-	-
Department of Municipal Affairs						
Interdepartmental Planning Board	x	-	P	-	-	-
Municipal Advisory Committees	-	-	-	-	-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Municipal Audit Advisory Committee	-	-	-	-	-	-
Department of Natural Resources						
Conservation Districts Commission	-	-	-	-	-	-
Boards for Control of Interprovincial Boundary Waters	-	-	-	-	-	-
Ecological Reserves Advisory Committee	-	-	P	-	-	-
Flood Forecasting Committee	-	-	-	-	-	-
Greater Winnipeg Dyking Board	-	-	-	-	-	-
Lake of the Woods Control Board	-	-	-	-	-	-
Saskeram Wildlife Management Area Advisory Committee	-	-	-	-	-	-
Manitoba Water Commission	-	-	P	-	-	-
Department of Northern Affairs						
Indian Land Claims Working Group	-	-	-	-	-	-
Agencies under the supervision of a Minister						
Civil Service Commission						
-Civil Service Superannuation Fund Investment Committee	-	-	-	-	-	-
-Joint Council	-	-	-	-	-	-

PROVINCIAL GOVERNMENT AGENCY	NOTICE	DISCLOSURE	HEARING	LEGAL REP.	REASONS	APPEAL
Public Advisory Council (pursuant to ARC Authority Agreement)	-	-	P	-	-	-
Other						
Treasury Board	-	-	-	-	-	-

APPENDIX E

STATUTORY RIGHTS OF APPEAL FROM PROVINCIAL GOVERNMENT AGENCIES

KEY TO APPENDIX E

Appendix E contains a listing of all of the appeals created by legislation from decisions of provincial government agencies. An explanation of the subject matter of each of the six columns contained in this Appendix and of any abbreviations follows.

Statutory Source of Appeal

This column indicates the legislative source for each appeal. In most instances, the source is found in primary legislation. Occasionally, however, the right of appeal is contained in delegated legislation and in these instances reference is made to the Manitoba regulation ("Man. Reg.") in which the right of appeal is contained. Where the legislation establishes different appeal mechanisms from the same government agency, depending upon the subject matter of the decision in question, a description of the subject matter of the decision also appears in this column.

Appeal Period

Where the legislation establishes a limitation period for bringing an appeal from an agency decision, that time period, in days, appears in this column along with the triggering event for the commencement of that period, where specified (i.e. the date the decision is made or the date of service of the order).

Appellate Body

The name of the body which is given the legislative jurisdiction to hear the appeal is found in this column. The abbreviations may be explained as follows:

"CA": The Court of Appeal
"QB": Her Majesty's Court of Queen's Bench for Manitoba;
* "CC": The County Courts of Manitoba;
"CDC": the Conservation Districts Commission";
"FCAB/JFCAB": the Film Classification Appeal Board/Joint Film Classification Appeal Board;
"LGC": the Lieutenant Governor in Council

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* An Act to Amend the Queen's Bench Act and To Repeal The County Courts Act, The Surrogate Courts Act and the County Courts Judges' Criminal Courts Act and to amend the Municipal Boundaries Act, S.M. 1982-83-84, c. 82, s. 111(1) provides that "[w]here in any Act or regulation there is a reference to a county court . . . it shall be conclusively deemed to be a reference to the Court of Queen's Bench". The intended proclamation date of this Act is July 1, 1984.

"Min.": the Minister, being the member of the Executive Council charged by the Lieutenant Governor in Council with the responsibility for the government agency in question;
"NPMC": the Manitoba Natural Products Marketing Council;
"MB": the Municipal Board; and
"PUB": the Public Utilities Board

Stay provision

Where the legislation specifies the interim effect of the order which is being appealed, this is set forth in this column. Occasionally the legislation empowers the appeal body to order the stay or suspension of the execution of the decision or order of the government agency, in which case this statutory authority is briefly described here.

Jurisdiction of appellate body

Any description concerning the authority of the appellate body on the appeal is set forth here. Where the legislation precludes or empowers a further appeal or other review on the decision, that is also summarized.

A DESCRIPTION OF THE STATUTORY RIGHTS OF APPEAL FROM DECISIONS OF PROVINCIAL GOVERNMENT AGENCIES

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Manitoba Beef Commission	C.C.S.M. c. N20 Man. Reg. 217/82, s. 13(1)(5)	-	NPMC	-	NPMC may confirm the cancellation or suspension of the licence or reinstate same - further appeal to the LGC which may amend or revoke any order made by the NPMC (see C.C.S.M. c. N20, s. 33.1)
Board of Reference	C.C.S.M. c. P250 s. 5(4) and ss. 251-257	within 21 days after date on which board forwards copies of award	CC	-	quash, revise, dismiss, make such other order as he considers proper -further appeal to C.A. -no further appeal for 2 years
Boxing and Wrestling Commission - refusal to grant permit	C.C.S.M. c. B80	-	Min.	-	-
Building Standards Board	C.C.S.M. c. B93	within 30 days	QB	-	
Chicken Broiler Producers'	C.C.S.M. c. N20 s. 10(1)	within 30 days from date notice of decision is received	NPMC	-	NPMC may hear any decision, directive or order of the Board and may dismiss the appeal, confirming the decision or may, by order, strike out the decision to the extent necessary -further appeal to LGC (see C.C.S.M. c. N20, s. 33.1)

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Civil Services Commission -disability retirement	C.C.S.M. c. C110	within time allowed in regulations	LGC	-	decision is final
Clean Environment Commission -any person affected by an order of the Commission	C.C.S.M. c. C130 s. 17	within 30 days from date of the order	- Min. (who may refer any matter or question to MB for advice and recommend'n)	Min. may stay	-may cancel, direct Comm. to vary or issue an order, dismiss appeal, refer matter back for new hearing -final and not subject to further appeal
-where Min. orders closure of a facility on the report of an environment officer	s. 16.1(2)	-	QB	-	QB may quash order, confirm it or confirm it with variations
Boards of Conservations Districts -appeal of board's levy by 20% of ratepayers	C.C.S.M. c. C175	-	MB	-	-confirm determination or make new one
-general appeal provision (10 or more ratepayers)	s. 34(1)	within 30 days of decision	CDC	-	-confirm decision, deny appeal or make such determination as it considers just -final unless appealed under s. 35 (appeal to MB)
Credit Union Stabilization Fund Board	C.C.S.M. c. C300	within 30 days from the making of the decision	QB	-	on a question of law or fact or both -QB may affirm or reverse the decision, direct registrar to make another decision, substitute its own decision -further appeal to CA

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Criminal Injuries Compensation Bd.	C.C.S.M. c. C305 s. 21	-	QB	-	-upon a question of jurisdiction or law only -(Bd. also empowered to vary own decision) -any other review expressly prohibited
Crop Insurance Corporation Board	C.C.S.M. c. C310 s. 20	-one type of appeal: within 7 days of notice	to an appeal tribunal set up for the purpose (the Crop Insce. Act Appeal Tribunal)	-	-
Dental Health Workers Board	C.C.S.M. c. D31 Man. Reg. 122/76, s. 10	-	CC	-	-any decision of Board concerning deregistration, suspension or reprimand of person may be appealed
	Man. Reg. 122/76, s. 11		Min.		-Minister may request Board to reconsider its decision where the Minister is of the view that a removal of name from register is unjust or contrary to the public interest

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Egg Producers' Marketing Board	C.C.S.M. c. N20 s. 10(1)	within 30 days from the date notice of decision is received	NPMC	-	NPMC may hear any decision, directive or order of the Board and may dismiss the appeal, confirming the decision or may, by order, strike out the decision to the extent necessary -further appeal to LGC (see C.C.S.M. c. N20, s. 33.1)
Elections Commission	C.C.S.M. c. E32 s. 53	within 30 days after the date decision was made	QB	-	Court may confirm, quash or vary decision -may award costs
Electricians' Board of Examiners	C.C.S.M. c. E50 s. 11	-	Min.	-	-
Embalmers and Funeral Directors Board of Administration -revocation of certification, suspension, cancellation, refusal to grant certificate	C.C.S.M. c. E70 s. 12(5), s. 13	within 30 days after receipt of notice in writing of Board's decision	QB	-	judge may review decision and make such orders and give such directions as he deems proper -judge's decision is final
Manitoba Farm Lands Ownership Board	S.M. 1982-83-84 c. 22, s. 16(1)	within 30 days of the date of order	QB	appeal does not stay operation of order subject to authority of QB judge to order otherwise	may make such order as seems just

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Farm Machinery Board - late delivery, proportionment of fault determination by board	C.C.S.M. C. F40 s. 14(5)	within 10 days of making of determination	CC	-	may confirm, vary, dismiss, make such other determination as he considers just
- appeal of board's decision re repossession	s. 24(12)	within 10 clear days of date of decision	QB	-	order revoking leave to repossess -order granting leave to repossess
- damage to equip by lienholder	s. 25(8)	see procedure under s. 14(5)			
- cancellation of vendor's or dealer's licence	s. 35.1(1)	within 30 days of date of notification of result of hearing	CC	-	may dismiss appeal, quash cancellation or make such other order as it considers just
- forfeiture of dealer bond ordered by Board	s. 35.2(5)	within 30 days after decision of Board	QB	-	-may make such order as may seem fit
Film Classification Board/ Joint Film Classification Board	C.C.S.M. c. A70	-	FCAB/JFCAB	-	
Fire Department's Arbitration Broad	C.C.S.M. c. F60, s. 9(1)(b);	within 14 days from date award is delivered (see s. 15(1) of the CA Rules)	CA	-	Court may reverse, alter or vary the award or remit the award to the arbitrators for reconsideration

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Le Fond de securite des Caisses Populaires	C.C.S.M. c. C300 s. 141	within 30 days of the making of the decision	QB	-	-on a question of law or fact or both -QB may affirm or reverse the decision, direct registrar to make another decision, substitute its own decision further appeal to CA
Hearing Aid Board	C.C.S.M. c. H38 s. 10	within 14 days from date of service of decision, notice must be filed in court. Served on Board within 7 days of filing	QB	-	any decision or order of the board or director may be appealed
Highway Traffic Board -appeal from designations	C.C.S.M. c. H50 s. 21(1)	within 30 days of the date on which the regulation came into force	PUB	-	)
-appeal to issue of permit	s. 21(2)	within 30 days of the date upon which the permit was issued	PUB	-	)-hearing de novo))-appeal to PUB is final and binding
-appeal on refusal of board to act	s. 21(3)	within 30 days of date upon which applicant receives notice by reg'd mail	PUB		)

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Hog Producers Marketing Board	C.C.S.M. c. N20 s. 10(1)	within 30 days from the date notice of decision is received	NPMC	-	NPMC may hear any decision, directive or order of the Board and may dismiss the appeal, confirming the decision or may, by order, strike out the decision to the extent necessary -further appeal to LGC (see C.C.S.M. c. N20, s. 33.1)
Honey Producers' Marketing Board	C.C.S.M. c. N20 s. 10(1)	within 30 days from the date notice of decision is received	NPMC	-	NPMC may hear any decision, directive or order of the Board and may dismiss the appeal, confirming the decision or may, by order, strike out the decision to the extent necessary -further appeal to LGC (see C.C.S.M. c. N20, s. 33.1)
Manitoba Human Rights Commission	C.C.S.M. H175 s.30	within 30 days from the making of decision	QB	-	-appeal on questions of law or fact or both -affirm, reverse, direct another decision, substitute its decision

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Land Value Appraisal Commission	C.C.S.M. c. L40	(if owner is dissatisfied with compensation determined by Commission, may still take proceedings in QB under the Expropriation Act)			
Law Enforcement Review Board	S.M. 1982-83-84	within 30 days from the making of the decision	QB	-	appeal on any question involving the jurisdiction of the Board
Licence Suspension Appeal Board	C.C.S.M. c. H60 s. 253(6)	within 30 days from the date of the notice embodying the decision -may extend time	CC	-	no appeal in certain circumstances, see s. 253(7) -trial de novo -judge may dismiss, order restoration of licence, order issue of licence. May make conditions -decision is final and not subject to appeal
Liquor Control Commission	C.C.S.M. c. L160 s. 33(6)	within 14 days after cancellation or suspension by LCC	LCC	-	-may reinstate licence
(Liquor) Licensing Board -refusal of licence	C.C.S.M. c. L160 s. 35.1	-		-	-Board may reconsider decision; further appeal to LCC
Manitoba Public Insurance Corporation -re additional premiums	C.C.S.M. c. A180 s. 60	-	Rates Appeal Board	-	-may confirm, vary or rescind the additional premium -decision binding no appeal

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Medical Review Committee	C.C.S.M. c. H35 s. 105	within one month after date on which order is served on practitioner	Board of Arbitration	-	-decision of board of arbitration binding on practitioner and commission
Milk Prices Review Commission	C.C.S.M. c. M130 s. 4	within 30 days from date of order must serve council	NPMC	-	-dismiss or grant appeal -final and binding
Milk Producers' Marketing Board -re licence suspension	C.C.S.M. c. N20 Man. Reg. 242/74	-	NPMC	-	-confirm or cancel suspension -further appeal to LGC
Mining Board	C.C.S.M. c. M160 s. 34 and s. 40(1)	within 15 or 30 days or as the court may allow	QB	-	-may make such order as it deems just
Motor Transport Board	C.C.S.M. c. H60 s. 257	-	CA		-upon any question involving the jurisdiction of the board or upon any point of law
Municipal Assessment Court of Revision	C.C.S.M. c. M226 s. 58 and s. 59		-	-	
-appeal re amount at which property assessed or classification or property	s. 59(1)(a)	within 21 days from date of decision serve written notice	MB		
-appeal re liability of property to taxation	s. 59(1)(b)	within 21 days from date of mailing of decision, submit ONM to court	QB	-	-decision of the court is final and binding

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Municipal Board	C.C.S.M. c. M240 s. 60	within one month after the making of the order or decision, or such further time	CA	-	questions of jurisdicton or law -court may draw inferences not inconsistent with the facts found by the board -certifies opinion to board
Natural Products Marketing Council	C.C.S.M. c. N20	-	LGC	-	-
Oil Burner and Gas Licensing Board	C.C.S.M. c. G30 Man. Rev. Reg. 1971 Rev. G30-R1, s.4(3)	within 7 days after the report of the Board is received	Min.	-	-Minister's decision is final and not subject to further appeal
Oil and Natural Gas Conservation Board	C.C.S.M. c. M160 s. 62(20)	within 10 days after becoming aware of brd's order through Manitoba Gazette	O. and N.G. Conservation Board	-	-apply to vary, amend or rescind order
	s. 64(1)	within 15 or 30 days or as the court may allow	QB	-	-make such orders as it deems just
Pension Commission	C.C.S.M. c. P32 s. 31	within 90 days or between 90 and 180 days depending on Commission's notice to employer	CA	-	CA may dismiss, allow or refer matters back to Commission

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Public Utilities Board	C.C.S.M. c. P280 s. 58	within one month after making of order or such further time	CA	-s. 50(1) operation of board's orders not suspended by appeal unless otherwise ordered	-appeal on jurisdiction, law or fact -court may draw inferences not inconsistent with the fact as found by the Board -court gives opinion to Board
Rivers and Streams Protections	C.C.S.M. c. R160 s. 26	-	Min.	-	-Minister's decision is final and conclusive
Manitoba Securities Commission	C.C.S.M. c. S50 s. 29	within 30 days after the mailing of the ruling -copy of the N/M to be sent to the Director in that time	QB	-order not suspended unless the Commission or judge suspends	-court may direct the Commission to do what it deems proper
Social Services Advisory Committee (re day care licences)	C.C.S.M. c. S165 s. 11.2(7)	within 10 days from the date of the determination	CC	-	-not subject to any further appeal
Social Services Advisory Committee (re social allowances)	C.C.S.M. c. S160 s. 9(7)	within one month from the making of the order or decision or such further time as CA may allow	CA	-	-any question of jurisdiction or of law

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Surface Rights Board	S.M. 1981-82-83 c. 4, s. 48	application for leave to appeal must be brought to ct. within 30 days from the date of the order of Board or such further time, not exceeding 30 days, as court may allow	CA except orders regarding rights of entry or compensation for which QB has jursidiction	-automatic stay of proceedings upon filing of application for leave to appeal until the appeal is disposed of	-appeal on question of law or the jurisdiction of the Board
Turkey Producers' Marketing Board	C.C.S.M. c. N20 s. 10(1)	within 30 days from the date notice of decision is received	NPMC	-	NPMC may hear any decision, directive or order of the Board and may dismiss the appeal, confirming the decision or may, by order, strike out the decision to the extent necessary -further appeal to LGC (see C.C.S.M. c. N20, s. 33.1)
Vegetable Producers' Marketing Board	C.C.S.M. c. N20 s. 10(1)	within 30 days from the date notice of decision is received	NPMC	-	NPMC may hear any decision, directive or order of the Board and may dismiss the appeal, confirming the decision or may, by order, strike out the decision to the extent necessary -further appeal to LGC (see C.C.S.M. c. N20, s. 33.1)

PROVINCIAL GOVERNMENT AGENCY	STATUTORY SOURCE	APPEAL PERIOD	APPELLATE BODY	STAY PROVISIONS	JURISDICTION OF APPELLATE BODY
Veterinary Medical Board of Manitoba	C.C.S.M. c. V30 s. 15(1)	within 16 days from the date notice of order of Board is received	QB	-	
Manitoba Water Services Board -re payment by municipality of expenses	C.C.S.M. c. W90 s. 8(2)	-	PUB	-	-
-re prices fixed by board for water	s. 17(1)	-	PUB	-	-affirm prices or vary -decision of PUB final