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277 Definitions

In this Part:

"chair" means the chair of the appeal tribunal appointed under section 278(2)(a);

"extraordinary member" means a member of the appeal tribunal appointed under section 278(2)(c);

"health professional" means a medical practitioner, a person entitled to practise medicine under the laws of another jurisdiction or any other person with prescribed qualifications;

"members of the appeal tribunal" means the chair, vice chairs and extraordinary members appointed under section 278(2) and temporary substitute members appointed under section 278(9);

"presiding member" means the member of the appeal tribunal chairing a panel of the tribunal;

"vice chair" means a vice chair of the appeal tribunal appointed under section 278(2)(b).

278 Appeal tribunal and membership

(1) The Workers' Compensation Appeal Tribunal is continued.

(2) The appeal tribunal consists of the following members appointed after a merit-based process:

(a) the chair appointed by the Lieutenant Governor in Council;

(b) one or more vice chairs appointed by the chair, after consultation with the minister;

(c) any extraordinary members appointed by the chair, after consultation with the minister, with representation from individuals with experience in employers' interests and from individuals with experience in workers' interests.

(3) The chair holds office for an initial term of 3 to 5 years and may be reappointed, after a merit-based process, for one or more successive terms of up to 5 years each.

(4) The vice chairs hold office for an initial term of 2 to 4 years and may be reappointed, after a merit-based process, for additional terms of up to 5 years.

(5) An extraordinary member holds office for the period required to discharge the person's duties as a member of a panel appointed by the chair under section 285(5)(b) or (6)(b) *[appointment of extraordinary members]*.

(6) Individuals are not eligible for appointment as vice chairs unless they have successfully completed a merit-based process established or approved by the chair.

(7) Before beginning their duties, members of the appeal tribunal must take an oath of office in the form and manner prescribed by the Lieutenant Governor in Council.

(8) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to members or officers of the appeal tribunal.

(9) Despite subsections (3) to (5), if a member of the appeal tribunal is absent or incapacitated for an extended period or expects to be absent for an extended period,

(a) the Lieutenant Governor in Council, if the member is the chair, or

(b) the chair, if the member is a vice chair or extraordinary member,

may appoint another person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to full duty or the member's term expires, whichever comes first.

(10) The appointment of a person to replace a member under subsection (9) is not affected by the member returning to less than full duty.

279 End of appointment to appeal tribunal

(1) A member of the appeal tribunal may resign at any time by giving written notice to the chair or, in the case of the chair, to the minister.

(2) If a member resigns or the member's appointment expires, the chair may authorize that person to continue to exercise powers as a member of the appeal tribunal in any appeal in which that individual had jurisdiction immediately before the end of the person's term.

(3) The Lieutenant Governor in Council may terminate the appointment of the chair for cause.

(4) The chair may, after consultation with the minister, terminate the appointment of a member of the appeal tribunal for cause.

280 Role of appeal tribunal chair

(1) The chair is responsible for the general operation of the appeal tribunal.

(2) Without restricting subsection (1), the chair is responsible for the following:

(a) appointing vice chairs and extraordinary members in accordance with any procedures or requirements prescribed by the Lieutenant Governor in Council;

(b) establishing quality adjudication, performance and productivity standards for members of the appeal tribunal and regularly evaluating the members according to those standards;

(c) developing a 3-year strategic plan and an annual operations plan for the appeal tribunal;

(d) establishing any forms, practices and procedures required for the efficient and cost-effective conduct of appeals to the appeal tribunal, including

(i) the time periods within which steps must be taken,

(ii) requiring pre-hearing conferences, and

(iii) employing voluntary alternate dispute resolution processes;

(e) making any forms, practices and procedures established under paragraph (d) accessible to the public;

(f) establishing administrative practices and procedures for the effective operation of the appeal tribunal;

(g) providing for public access to decisions of the appeal tribunal in a manner that protects the privacy of the parties to the proceedings;

(h) establishing a list of health professionals for the purposes of section 301 *[health professional assistance to appeal tribunal]*;

(i) presiding over meetings of the appeal tribunal;

(j) establishing panels;

(k) ordering the consideration of related matters in one hearing before the appeal tribunal;

(l) establishing a code of conduct, including conflict of interest provisions, that governs the conduct of the members, officers, employees and contractors of the appeal tribunal;

(m) preparing the annual report of the appeal tribunal;

(n) appointing officers of the appeal tribunal;

(o) for the purpose of judicial proceedings, preparing a certificate attaching the record of the appeal tribunal in the matter of a particular appeal or decision of the tribunal, including any practices and procedures applied by the tribunal.

(3) The chair may exercise any power and perform any duty or function of the appeal tribunal or of a member of the appeal tribunal.

(4) The chair may designate another member of the appeal tribunal to act in the chair's place during the chair's temporary absence, and while acting in the chair's place the designated member has the power and authority of the chair.

(5) The chair must attend not fewer than 4 meetings of the board of directors each calendar year to exchange information on matters of common interest and importance to the workers' compensation system.

281 Delegation of chair's powers and duties

(1) Subject to section 304(9) *[chair authority in relation to policies of the board of directors]*, the chair may delegate in writing to another member of the appeal tribunal, or to an officer of the appeal tribunal, a power or duty of the chair and may impose limitations or conditions on the exercise of that power or performance of that duty.

(2) If the chair has delegated a power or duty of the chair and subsequently ceases to hold office, the delegation continues in effect

(a) so long as the delegate continues in office, or

(b) until the delegation is revoked by a new chair.

282 Appeal tribunal staff

(1) Employees necessary to exercise the powers and perform the duties of the appeal tribunal may be appointed under the *Public Service Act*.

(2) The *Public Sector Pension Plans Act* and the *Public Service Benefit Plan Act* apply to the employees of the appeal tribunal.

(3) Despite the *Public Service Act*, the appeal tribunal may engage or retain consultants and contractors that the appeal tribunal considers necessary to exercise the tribunal's powers and perform its duties, and may determine the functions and remuneration of those consultants and contractors.

283 Compensation and expenses of appeal tribunal members

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

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

(3) For the purposes of subsection (2), the Treasury Board may specify different rates of remuneration for different classes of members.

(4) The chair of the appeal tribunal must determine the class to which a member is assigned for the purposes of remuneration.

(5) The *Public Sector Pension Plans Act* and the *Public Service Benefit Plan Act* apply to the members of the appeal tribunal.

284 Finances for appeal tribunal administration and operation

(1) All money required for the administration and operation of the appeal tribunal must be paid by the government, but on request of the minister the Board must reimburse the government for all amounts so paid.

(2) On receiving a request under subsection (1), the Board must pay the amount requested to the Minister of Finance out of the accident fund.

285 Appeal panels

(1) All appeals to the appeal tribunal must be heard by panels appointed under this section.

(2) The chair must establish the panels of the appeal tribunal.

(3) The chair may

(a) terminate an appointment to a panel,

(b) fill a vacancy on a panel, and

(c) refer an appeal that is before one panel to another panel.

(4) Subject to subsections (5) and (6), panels must consist of the chair sitting alone or a vice chair sitting alone.

(5) If the chair determines that a matter under appeal requires consideration by a 3-member panel, the chair may appoint a panel with either of the following memberships:

(a) the chair or a vice chair, acting as presiding member, plus 2 additional vice chairs;

(b) the chair or a vice chair, acting as presiding member, plus one extraordinary member with experience in employers' interests and one extraordinary member with experience in workers' interests.

(6) If the chair determines that the matters in an appeal are of special interest or significance to the workers' compensation system as a whole, the chair may appoint a panel of up to 7 members with either of the following memberships:

(a) the chair or a vice chair, acting as presiding member, plus additional vice chairs;

(b) the chair or a vice chair, acting as presiding member, plus additional vice chairs and extraordinary members.

(7) If a panel is constituted under subsection (6)(b),

(a) there must be an equal number of extraordinary members appointed who have experience in employers' interests and who have experience in workers' interests, and

(b) the extraordinary members must not constitute a majority of the membership of the panel.

(8) A panel has the power and authority of the appeal tribunal in an appeal assigned to the panel under this section.

(9) If a panel consists of more than one member, the decision of the majority is the appeal tribunal's decision but, if there is no majority, the decision of the presiding member is the appeal tribunal's decision.

(10) Despite subsections (6) and (7), if a member of a panel constituted under subsection (6) is unable to complete an appeal, the chair may direct the remaining members of the panel to complete the appeal and make the decision of the appeal tribunal.

(11) If a panel is composed of one member and that member is unable for any reason to complete the member's duties, the chair of the appeal tribunal may appoint a new panel to continue to hear and determine the appeal on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

286 Annual report to minister

(1) On or before March 25 of each year, the chair must make a report to the minister respecting the appeal tribunal's operations for the preceding calendar year.

(2) The minister may require the annual report referred to in subsection (1) to address specified matters and to be in a specified form.

287 Definitions in relation to appeals

For the purposes of this Part:

"review decision" means a decision of a review officer that may be appealed under section 288 *[review decisions that may be appealed]*;

"worker" means the following:

(a) a worker as defined in section 1;

(b) a person who is deemed to be a worker under the compensation provisions or the regulations under those provisions;

(c) a person to whom compensation provisions apply as if the person were a worker.

288 Review decisions that may be appealed

(1) Subject to subsection (2), a final decision made by a review officer in a review under Part 6 *[Review of Board Decisions]*, including a decision declining to conduct a review under that Part, may be appealed to the appeal tribunal.

(2) The following decisions made by a review officer may not be appealed to the appeal tribunal:

(a) a decision in a prescribed class of decisions respecting the conduct of a review;

(b) a decision respecting an order under Part 2 *[Occupational Health and Safety]*, other than any of the following orders:

(i) an order relied on to impose an administrative penalty under section 95(1) *[administrative penalties - higher maximum amount]*;

(ii) an order imposing an administrative penalty under section 95(1);

(iii) an order under section 96 *[certificates issued under OHS provisions]* to cancel or suspend a certificate;

(b.1) a decision respecting a licence under Division 8.1 *[Licensing in Relation to Asbestos Abatement]* of Part 2;

(c) a decision respecting matters referred to in section 155 *[vocational rehabilitation]*;

(d) a decision respecting the application under section 195(1) *[compensation for permanent partial disability]* of rating schedules compiled under subsection (3) of that section if the specified percentage of impairment has no range or has a range that is not greater than 5%;

(e) a decision respecting commutations under section 230 *[commutation of lump sum payment]*.

289 Other Board decisions that may be appealed

(1) The following may be appealed to the appeal tribunal:

(a) a determination or order under section 50 *[response to worker complaint respecting prohibited action]*;

(b) a refusal to make an order under that section;

(c) a cancellation of an order under that section.

(2) A decision to reopen or not to reopen a matter on an application under section 125 *[recurrence of injury or significant change in medical condition]* may be appealed to the appeal tribunal.

290 Who may appeal: matters related to OHS provisions

(1) In relation to a review officer decision respecting a matter referred to in section 268(1)(a) *[reviews in relation to OHS provisions]*, any of the following who is directly affected by the decision may appeal that decision:

(a) a worker;

(b) a family member of a deceased worker;

(c) an employer as defined in section 13 *[definitions in relation to OHS provisions]*;

(d) an owner as defined in section 13;

(e) a supplier as defined in section 13;

(f) a union as defined in section 13.

(2) In relation to a decision or order referred to in section 289(1) *[response to worker complaint respecting prohibited action]*, any of the following who is directly affected by the decision or order may appeal that decision or order:

(a) a worker;

(b) an employer as defined in section 13;

(c) a union as defined in section 13.

291 Who may appeal: matters related to compensation provisions

(1) In relation to a review decision respecting a matter referred to in section 268(1)(b) *[compensation or rehabilitation matters]*, any of the following who is directly affected by the decision may appeal that decision:

(a) a worker;

(b) a dependant of a deceased worker;

(c) an employer.

(2) In relation to a review decision respecting a matter referred to in section 268(1)(c) *[employer assessment, classification, payments and penalties]*, an employer or independent operator who is directly affected by the decision may appeal that decision.

(3) In relation to a decision referred to in section 289(2) *[decision in relation to an application under section 125]*, a worker or employer who is directly affected by the decision may appeal that decision.

(4) In this section, **"employer"** means the following:

(a) an employer as defined in section 1;

(b) a person who is deemed to be an employer under the compensation provisions or the regulations under those provisions;

(c) the owner and the master of a fishing vessel for which there is crew to whom the compensation provisions apply as if the crew were workers.

292 How to appeal

(1) A person authorized under section 290 or 291 to appeal a particular decision or order may appeal the decision or order by filing a notice of appeal with the appeal tribunal.

(2) A notice of appeal must

(a) be made in writing or in another form authorized by the appeal tribunal's rules,

(b) identify the decision or order that is being appealed,

(c) state why the decision or order is incorrect or why it should be changed,

(d) state the outcome requested,

(e) include the name, address and telephone number of the appellant,

(f) if the appellant has an agent to act on the appellant's behalf in respect of the appeal, include the name of the agent and a telephone number at which the agent may be contacted during regular business hours,

(g) include an address for delivery of any notices in respect of the appeal, and

(h) be signed by the appellant or the appellant's agent.

(3) If a notice of appeal is deficient, the appeal tribunal may allow a reasonable period within which the notice may be corrected.

293 Time limit for appeal

(1) A notice of appeal respecting a decision referred to in section 288 *[review decisions that may be appealed]* must be filed within 30 days after the decision being appealed was made.

(2) A notice of appeal respecting a decision referred to in section 289 *[other Board decisions that may be appealed]* must be filed within 90 days after the decision or order being appealed was made.

(3) The chair may extend the time to file a notice of appeal under this section, including making an extension after the time to file has expired, if this is done on application and the chair is satisfied that

(a) special circumstances existed that preclude or precluded the filing of a notice of appeal within the applicable time period required by subsection (1) or (2), and

(b) an injustice would otherwise result.

294 General rule: appeal does not stay decision

Unless the appeal tribunal orders otherwise, the filing of a notice of appeal under section 292 does not operate as a stay or affect the operation of the decision or order under appeal.

295 Board provision of policies and records

(1) The Board must provide the appeal tribunal with copies of all current policies of the board of directors.

(2) As soon as practicable, the appeal tribunal must notify the Board of an appeal filed under this Part.

(3) As soon as practicable after being given notice under subsection (2), the Board must provide the appeal tribunal and the parties to the appeal with a copy of the Board's records respecting the matter under appeal.

(4) On request of the appeal tribunal and as soon as practicable, the Board must advise the appeal tribunal of any policy of the board of directors that is applicable to the matter under appeal.

(5) As soon as practicable after receiving advice under subsection (4), the appeal tribunal must advise the parties to the appeal of any policy of the board of directors that the Board has advised the appeal tribunal is applicable to the matter under appeal.

296 Application of* Administrative Tribunals Act *to appeal tribunal

The following provisions of the *Administrative Tribunals Act* apply to the appeal tribunal:

(a) Part 1 *[Interpretation and Application]*;

(b) section 7.1 *[validity of tribunal acts]*;

(c) Part 3 *[Clustering]*;

(d) the following provisions of Part 4 *[Practice and Procedure]*:

(i) section 11 *[general power to make practice and procedure rules]*;

(ii) section 13 *[practice directives tribunal may make]*;

(iii) section 14 *[general power to make orders]*;

(iv) section 15 *[interim orders]*;

(v) section 28 *[facilitated settlement]*;

(vi) section 29 *[disclosure protection]*;

(vii) section 30 *[tribunal duties]*;

(viii) section 31 *[summary dismissal]*;

(ix) section 32 *[representation of parties to an application]*;

(x) section 35(1) to (3) *[recording tribunal proceedings]*;

(xi) section 37 *[applications involving similar questions]*;

(xii) section 38 *[examination of witnesses]*;

(xiii) section 42 *[discretion to receive evidence in confidence]*;

(e) [repealed]

(f) the following provisions of Part 6 *[Costs and Sanctions]*:

(i) section 48 *[maintenance of order at hearings]*;

(ii) section 49 *[contempt proceeding for uncooperative witness or other person]*;

(g) section 52 *[notice of decision]*;

(h) Part 8 *[Immunities]*;

(i) Part 9 *[Accountability and Judicial Review]*, other than section 59 *[standard of review without privative clause]*;

(j) the following provisions of Part 10 *[Miscellaneous]*:

(i) section 60(1)(a), (b) and (g) to (i) and (2) *[power to make regulations]*;

(ii) section 61 *[application of Freedom of Information and Protection of Privacy Act]*.

297 Appeal tribunal proceedings

(1) Subject to any rules, practices or procedures established by the chair, the appeal tribunal may conduct an appeal in the manner it considers necessary, including conducting hearings in writing or orally with the parties present in person, by teleconference or videoconference facilities or by other electronic means.

(2) Without restricting subsection (1), the appeal tribunal may do one or more of the following:

(a) inquire into the matter under appeal and consider all information obtained;

(b) request the Board to investigate further into a matter relating to a specific appeal and report in writing to the appeal tribunal;

(c) require the parties to the appeal to attend a pre-hearing conference to discuss procedural and substantive issues relating to the conduct of the appeal;

(d) require the parties to the appeal to make a pre-hearing disclosure of their evidence, including requiring the pre-hearing examination of a party on oath or by affidavit;

(e) recommend to the parties to the appeal that an alternate dispute resolution process be used to assist in the resolution of a matter under appeal;

(f) require an employer who is a party to an appeal respecting a matter referred to in section 268(1)(a) *[reviews in relation to OHS provisions]* to post a notice in the specified form and manner bringing the appeal to the attention of the employees of the employer;

(g) request any person or representative group to participate in an appeal if the tribunal considers that this participation will assist the tribunal to fully consider the merits of the appeal.

(3) If, in an appeal, the appeal tribunal considers there to be a matter that should have been determined but that was not determined by the Board, the appeal tribunal may refer that matter back to the Board for determination and suspend the appeal proceedings until the Board provides the appeal tribunal with that determination.

(4) If the appeal tribunal refers a matter back to the Board for determination under subsection (3), the appeal tribunal must consider the Board's determination in the context of the appeal and no review of that determination may be requested under section 268 *[requests for review]*.

(5) If a party fails to comply with an order of the appeal tribunal or with the rules of practice and procedure of the appeal tribunal, including any time limits specified for taking any actions, the appeal tribunal may, after giving notice to that party, do one or more of the following:

(a) schedule a written, electronic or oral hearing;

(b) continue with the appeal and make a decision based on the evidence before the appeal tribunal, with or without providing an opportunity for submissions;

(c) dismiss the application.

298 Evidence admissible in appeal tribunal proceedings

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

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

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

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

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

299 Witnesses and production of information

(1) At any time before or during a hearing, but before the appeal tribunal's decision, the appeal tribunal may make an order requiring a person

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

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

(2) The appeal tribunal may apply to the Supreme Court for an order

(a) directing a person to comply with an order made by the appeal tribunal under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the appeal tribunal under subsection (1).

(3) On an appeal, the appeal tribunal may cause depositions of witnesses residing in or out of British Columbia to be taken before a person appointed by the appeal tribunal in a similar manner to that prescribed by the Supreme Court Civil Rules for the taking of like depositions in the Supreme Court before a commissioner.

(4) Despite subsections (1) to (3), an officer, employee or contractor of the Board may only be compelled to give evidence or produce records and things that

(a) relate to the issues in a specific appeal, and

(b) are necessary for the appeal tribunal to address those issues and to make a decision in the appeal.

(5) Despite subsections (1) to (3), a member of the board of directors or an officer, employee or contractor of the Board may not be compelled to give evidence or produce records and things respecting the development or adoption of the policies of the board of directors.

300 Deemed employer

(1) Subject to subsections (2) and (3), for the purposes of a specific appeal, if the employer has ceased to be an employer within the meaning of the compensation provisions, the appeal tribunal may deem an employers' adviser or an organized group of employers to be the employer.

(2) An organized group of employers may be recognized by the appeal tribunal for the purposes of subsection (1) only if the organized group includes among its members employers in the subclass of industry to which the employer who has ceased to be an employer belonged.

(3) If, for the purposes of the review under Part 6 *[Review of Board Decisions]* of a decision respecting a specific matter, an employers' adviser or organized group of employers was deemed to be the employer, the employers' adviser or group, as applicable, is deemed to be the employer for the purposes of appealing the review officer's decision in that matter and participating in the appeal.

301 Health professional assistance to appeal tribunal

(1) The chair must establish a list of health professionals who may be retained to provide independent assistance or advice in an appeal.

(2) The list established by the chair under subsection (1) must not include a person who is employed by the Board.

(3) After taking into account any fee schedule established by the Board for services provided by health professionals, the chair may determine the terms and conditions, including remuneration and reimbursement of expenses, under which a health professional may be retained by the appeal tribunal under section 302.

302 Health professional assistance in specific cases

(1) Subject to subsection (8), if, on its own initiative, the appeal tribunal determines that independent assistance or advice from a health professional would assist in reaching a decision on an appeal, the presiding member may retain a health professional to provide such assistance or advice.

(1.1) Subject to subsection (8), the presiding member must retain a health professional to provide independent assistance or advice in an appeal if all of the following apply:

(a) the appeal tribunal receives a request under subsection (1.2) from an employer, a worker or a dependant of a deceased worker;

(b) the medical condition of the worker is at issue in the appeal;

(c) the appeal tribunal determines that the independent assistance or advice would assist in reaching a decision on the appeal.

(1.2) If an employer, a worker or a dependant of a deceased worker is a party to an appeal, the employer, worker or dependant may request that the appeal tribunal retain a health professional to provide independent assistance or advice in the appeal.

(1.3) A request under subsection (1.2) must be made in writing or in another form authorized by the appeal tribunal's rules.

(1.4) A health professional may be retained from the list established under section 301.

(2) When a health professional is retained under this section, the presiding member must set the terms of reference for the advice, including requiring a written report, setting any time periods for providing the report and specifying any questions to be answered in the report.

(3) If a health professional retained under this section considers it necessary to examine a worker in order to provide the independent assistance or advice set out in the terms of reference under subsection (2), the health professional may require the worker to attend for an examination by giving the worker written notice.

(4) If the worker fails to attend the examination required under subsection (3) or obstructs that examination without reasonable cause, the appeal tribunal may, after giving notice to the worker, do one or more of the following:

(a) direct the health professional to reschedule the examination of the worker and give the worker notice of the rescheduled examination;

(b) direct the health professional to provide a report without examining the worker;

(c) make a determination that the worker has abandoned the appeal.

(5) The appeal tribunal must give a copy of the health professional's written report to the parties to the appeal.

(6) The parties to an appeal may make submissions to the appeal tribunal in respect of the report provided to them under subsection (5).

(7) The appeal tribunal may suspend an appeal until a health professional's report to be provided under this section in respect of that appeal is received by the appeal tribunal.

(8) Except with the written consent of the parties to the appeal, the appeal tribunal must not retain a health professional to provide independent assistance or advice in respect of a specific appeal if the health professional

(a) has previously examined the worker whose claim is the subject of the appeal,

(b) is treating or has previously treated the worker,

(c) has been consulted in the treatment of the worker,

(d) has acted as a consultant to the employer,

(e) is a partner of or practises with a health professional described in this subsection, or

(f) is otherwise in circumstances that could result in a reasonable apprehension of bias.

(9) Subsection (8) does not prohibit the appeal tribunal in an appeal

(a) from requesting a health professional to provide the appeal tribunal with medical evidence or to clarify or interpret medical evidence previously provided by the health professional, or

(b) from compensating the health professional for the services described in paragraph (a) of this subsection.

(10) Evidence or advice given under subsection (9) is not independent assistance or advice within the meaning of this section.

303 Appeal tribunal decision making

(1) The appeal tribunal may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent.

(2) The appeal tribunal must make its decision based on the merits and justice of the case, but in doing this the appeal tribunal must apply any policies of the board of directors that are applicable in that case.

(3) Despite subsection (1), the appeal tribunal is bound by a prior decision of a panel appointed under section 285(6) *[matters of importance to the workers' compensation system as a whole]* unless

(a) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the prior decision,

(b) after the prior decision, a policy of the board of directors that the panel relied on in the prior decision was repealed, replaced or revised, or

(c) the prior decision has been overruled under subsection (4) of this section.

(4) Despite subsection (3), a panel appointed under section 285(6) may overrule a prior decision of another panel appointed under that section.

(5) If the appeal tribunal is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker.

304 Application of policies of the board of directors

(1) The appeal tribunal may refuse to apply a policy of the board of directors only if the policy is so patently unreasonable that it is not capable of being supported by this Act and the regulations under this Act.

(2) If, in an appeal, the appeal tribunal considers that a policy of the board of directors should not be applied, that issue must be referred to the chair and the appeal proceedings must be suspended until the chair makes a determination under subsection (4) or the board of directors makes a determination under subsection (6), as the case may be.

(3) As soon as practicable after an issue is referred under subsection (2), the chair must determine whether the policy should be applied.

(4) If the chair determines under subsection (3) that the policy should be applied, the chair must refer the matter back to the appeal tribunal and the tribunal is bound by that determination.

(5) If the chair determines under subsection (3) that the policy should not be applied, the chair must

(a) send a notice of this determination, including the chair's written reasons, to the board of directors, and

(b) suspend, until the board of directors makes a determination under subsection (6), any other appeal proceedings that are pending before the appeal tribunal and that the chair considers to be affected by the same policy.

(6) Within 90 days after receiving a notice under subsection (5)(a), the board of directors must review the policy and determine whether the appeal tribunal may refuse to apply it under subsection (1).

(7) On a review under subsection (6), the board of directors must provide the following with an opportunity to make written submissions:

(a) the parties to the appeal referred to in subsection (2);

(b) the parties to any appeals that were pending before the appeal tribunal on the date the chair sent a notice under subsection (5)(a) and that were suspended under subsection (5)(b).

(8) After the board of directors makes a determination under subsection (6), the board of directors must refer the matter back to the appeal tribunal, and the appeal tribunal is bound by that determination.

(9) The chair must not make a general delegation of the chair's authority under subsection (3), (4) or (5) but, if the chair considers there may be a reasonable apprehension of bias, the chair may delegate this authority to a vice chair or to a panel of the appeal tribunal for the purposes of a specific appeal.

305 Suspension of appeal proceedings pending Board decision

(1) On application of the appellant or on the chair's own initiative, the chair may suspend appeal proceedings if a Board's decision respecting a matter that is related to the appeal is pending.

(2) Within 30 days after the Board's decision referred to in subsection (1) is made, the appellant may request the appeal tribunal to continue the appeal proceedings and, on receiving that request, the appeal tribunal must continue the proceedings.

(3) If the appellant requests the appeal tribunal to continue the appeal proceedings before the Board's decision referred to in subsection (1) is made, the chair may

(a) direct the appeal tribunal to continue the proceedings, or

(b) continue the suspension until the Board's decision is made.

(4) The chair may extend the time to make a request under subsection (2), including making an extension of the time after the time to make the request has expired, if this is done on application and the chair is satisfied that

(a) special circumstances existed that preclude or precluded the making of a request within the time required by subsection (2), and

(b) an injustice would otherwise result.

306 Decision on appeal

(1) On an appeal, the appeal tribunal may confirm, vary or cancel the appealed decision or order.

(2) Despite subsection (1), on an appeal under section 289(2) *[other Board decisions that may be appealed]*, the appeal tribunal may make one of the following decisions:

(a) the matter that is the subject of the application under section 125 must be reopened;

(b) the matter that is the subject of the application under section 125 may not be reopened.

(3) The appeal tribunal's final decision on an appeal must be made in writing with reasons.

(4) Subject to any suspensions of the appeal proceedings permitted under this Part, the appeal tribunal must make its final decision on an appeal

(a) within 180 days after the appeal tribunal receives a copy of the records provided under section 295(3) *[Board provision of policies and records]* respecting the matter under appeal, or

(b) if a shorter time period is prescribed by the Lieutenant Governor in Council, within that shorter time period.

(5) The chair may extend the applicable time period under subsection (4) if

(a) the complexity of the proceedings in the appeal or of the matter under appeal makes the time period impractical, or

(b) the appellant requests a delay in the proceedings to submit new evidence or make additional submissions.

(6) If the appellant has requested a delay for a reason referred to in subsection (5)(b), the chair may extend the time for not more than 45 days.

(7) If the time is extended under subsection (6), the chair, on application, must extend the time for an additional period not longer than that granted under subsection (6) to allow the other parties to the appeal to submit new evidence or to make additional submissions.

(8) The chair may extend the time under this section even if the applicable time period under subsection (4) has expired.

307 Amendment to final decision

(1) On application by a party, or on the appeal tribunal's own initiative, the appeal tribunal may amend a final decision to

(a) correct any of the following:

(i) a clerical or typographical error;

(ii) an accidental or inadvertent error, omission or similar mistake;

(iii) an arithmetical error made in a computation, or

(b) clarify the final decision.

(2) Unless the appeal tribunal determines otherwise, an amendment under subsection (1) must not be made more than 90 days after all parties have been served with the final decision.

(3) [repealed]

(4) The appeal tribunal may not amend a final decision other than in those circumstances described in subsection (1).

(5) This section must not be construed as limiting the appeal tribunal's ability, on request of a party, to reopen an appeal in order to cure a jurisdictional defect.

308 Exclusive jurisdiction of appeal tribunal

The appeal tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under this Part and to make any order permitted to be made, including the following:

(a) all appeals from review decisions as permitted under section 288 *[review decisions that may be appealed]*;

(b) all appeals from Board decisions or orders as permitted under section 289 *[other Board decisions that may be appealed]*;

(c) all matters that the appeal tribunal is requested to determine under section 311 *[request for certification to court]*;

(d) all other matters for which a regulation under section 315 *[regulations respecting this Part]* permits an appeal to the appeal tribunal under this Part.

309 Appeal tribunal decision or action final

(1) Any decision or action of the chair or the appeal tribunal under this Part is final and conclusive and is not open to question or review in any court.

(2) Proceedings by or before the chair or appeal tribunal under this Part must not

(a) be restrained by injunction, prohibition or other process or proceeding in any court, or

(b) be removed by certiorari or otherwise into any court.

(3) The Board must comply with a final decision of the appeal tribunal made in an appeal under this Part.

(4) A party in whose favour the appeal tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the Supreme Court.

(5) A final decision filed under subsection (4) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

310 Reconsideration of appeal tribunal decision

(1) This section applies to the following:

(a) a decision in a completed appeal by the appeal tribunal under this Part or under Part 2 *[Transitional Provisions]* of the *Workers Compensation Amendment Act (No. 2), 2002*;

(b) a decision in a completed appeal by the appeal division under a former enactment or under Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*.

(2) A party to a completed appeal may apply to the chair for reconsideration of the decision in that appeal if new evidence has become available or been discovered.

(3) On receiving an application under subsection (2), the chair may refer the decision to the appeal tribunal for reconsideration if the chair is satisfied that the evidence referred to in the application

(a) is substantial and material to the decision, and

(b) did not exist at the time of the appeal hearing or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

(4) Each party to a completed appeal may apply for reconsideration of a decision under this section on one occasion only.

311 Request for appeal tribunal certification to court

(1) If a court action is commenced based on

(a) a personal injury,

(b) death, or

(c) a disability caused by occupational disease,

the court or a party to the action may request the appeal tribunal to make a determination under subsection (2) and to certify that determination to the court.

(2) For the purposes of subsection (1), the appeal tribunal may determine any matter that is relevant to the action and within the Board's jurisdiction under this Act, including determining whether

(a) a person was, at the time the cause of action arose, a worker,

(b) a worker's injury, death or disability arose out of, and in the course of, the worker's employment,

(c) an employer or the employer's servant or agent was, at the time the cause of action arose, employed by another employer, or

(d) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of the compensation provisions.

(3) This Part, except section 306(4) *[time for making final decision]*, applies to proceedings under this section as if the proceedings were an appeal under this Part.

312 Payment of compensation following appeal

(1) If the appeal tribunal's decision on an appeal requires the payment of compensation, all or part of which was deferred under section 275(3) *[payment following review decision]*, interest must be paid on the deferred amount of that compensation as specified in subsection (2).

(2) Interest payable under subsection (1) must be calculated in accordance with the policies of the board of directors and begins

(a) 41 days after the review officer made the appealed decision, or

(b) on an earlier day determined in accordance with the policies of the board of directors.

313 Effect of appeal in relation to employer payment obligations

(1) The commencement of an appeal under this Part respecting a matter described in section 268(1)(c) *[employer assessments, classifications, monetary penalties or compensation payments]* does not relieve an employer from paying an amount in respect of a matter that is the subject of the appeal.

(2) If the decision on the appeal requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.

314 Confidentiality obligations

(1) Members of the appeal tribunal and officers, employees and contractors of the appeal tribunal must not disclose any information obtained by them or of which they have been informed while performing their duties and functions under this Part, except as may be necessary to discharge their obligations under this Part.

(2) If information is disclosed for the purposes of this Part to a person other than the person the information is about, the person to whom the information is disclosed must not disclose the information except in the circumstances listed in section 235(1)(a) to (d) [*confidentiality â€“ compensation claim information*].

(3) A person who contravenes subsection (1) or (2) commits an offence.

315 Regulations respecting this Part

The Lieutenant Governor in Council may make regulations as follows:

(a) prescribing

(i) decisions or orders under this Act that may be appealed under this Part,

(ii) who may appeal those decisions or orders, and

(iii) classes of decisions for purposes of section 288(2)(a) *[review decisions that may not be appealed]*;

(b) respecting the awarding of costs by the appeal tribunal in an appeal under this Part;

(c) prescribing the circumstances under which the appeal tribunal may order the Board to reimburse the expenses incurred by a party to an appeal under this Part;

(d) prescribing qualifications of health professionals for purposes of section 301 *[health professional assistance to appeal tribunal]*.