



## Board of Directors 2003-2004

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## President's Message

I appreciate the opportunity I have had to work with many fine members of BCCAT over the last five years. I truly have enjoyed working with my Board members and will miss the camaraderie, but it is time to move on. However, I will maintain my many friendships with Tribunal members throughout the province, and will for the next year be involved with the Board as an ex-officio member as Past President.

I would like to thank the Human Rights Tribunal for sponsoring me in my capacity on the Board for the last 13 months, and before that, the Labour Relations Board.

Much energy and effort on the Board's part and the Policy and Research Committee for the last three years has been put towards the Administrative Justice Project.

With all of the changes to the Administrative Justice system, including the Administrative Justice Office and the Administrative Tribunal Act now at an end, BCCAT will be moving forward on new projects. I look forward to contributing to those where I am able.

I feel much enriched by my experiences with BCCAT and I would encourage you to become involved. It has made my tenure in the administrative justice system much more meaningful, and I know it would be the same for anyone else who chose to become involved.

Barbara J. Junker, President

## 9th Annual Education Conference

Diversity of Tribunals

"Once the Dust has Settled: Back to Basics"

October 24 and 25, 2004

Ramada Plaza Vancouver Airport Conference Resort

10251 St. Edwards Drive, Richmond

BCCAT Annual General Meeting

Sunday, October 24, 2004 11:45 am

same location

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## Professional Development

The following two courses are scheduled for October in Vancouver. For further information or to register please visit our website at [www.bccat.net](http://www.bccat.net).

- AJ: Practice & Procedure for Decision Makers
- AJ: Practice & Procedure for Staff Members and Auxiliaries

# The Administrative Justice Office: an Update on Recent Activities

## *The New Administrative Tribunals Act*

With the new *Administrative Tribunals Act* (the ATA) being given Royal Assent on May 20, 2004, the Administrative Justice Office has been busy over the summer with a number of related activities:

### ***Proclamation:***

The general reform provisions of the ATA, which comprise the “menu of options” (sections 1 to 61), were proclaimed into force on June 30, 2004 by Order in Council 646. These sections are applicable to the various tribunals only when the consequential amendments to a tribunal’s enabling legislation are proclaimed, which gives flexibility to co-ordinate the effective date of proclamation for a particular tribunal with that tribunal’s needs and readiness to adopt the new provisions.

In that regard, OIC 646 also provided for the proclamation of the consequential amendments for the Community Care and Assisted Living Appeal Board, the Financial Services Tribunal, the Passenger Transportation Board, and the Safety Standards Appeal Board, all of whom were ready to implement the new legislative requirements. In addition, section 62, which applies to the BC Review Board appointed under the Criminal Code, was also proclaimed into force.

By OIC 684, July 7, 2004, two other “minor” amendments were proclaimed: one to immediately assist the Mental Health Review Panels to obtain the evidence they need for hearings, and the other to make the proclamation of certain WCB amendments clearer.

The intent is for the balance of the amendments to be proclaimed this fall, in consultation with tribunal chairs. The AJO has already consulted most affected tribunal chairs about the targeted proclamation date for their tribunal, with mid-October the anticipated date for most, and late November/early December targeted for the balance. The 2003 Administrative Tribunals Appointments and Administration Act will also be repealed by proclamation, but only when all tribunals governed by it have come under the ATA’s corresponding provisions.

### ***House-keeping amendments to the ATA:***

As can be expected with legislation of the ATA’s complexity, some minor cross-referencing errors and oversights have been identified (some by sharp-eyed tribunal members), so some house-keeping amendments are anticipated for this fall. Tribunals that are directly affected have already been consulted by the AJO.

### **A new location:**

In July, the AJO moved to its permanent location at 300-702 Fort Street, Victoria, slightly ahead of the originally scheduled move date of November 1; however, the excitement of an early move was quickly “dampened” by an air conditioning pipe bursting the very first night in the new office! Luckily, there was little damage to files, but the building restoration work has only just been completed. The AJO’s mailing address and phone and fax numbers remain the same:

PO Box 9210 Stn Prov Govt, Victoria, V8W 9J1  
250-387-0058 (phone) and 250-387-0079 (fax).

### **New Director, Legislation and Law Reform:**

The AJO is pleased to advise that Richard Rogers has been appointed to the position of Director, Legislation and Law Reform, commencing October 4, 2004. A graduate of the UBC Faculty of Law, and a private practitioner for several years, Richard gained extensive administrative law experience as the former Registrar of B.C.’s Property Assessment Appeal Board.

As Registrar, Richard was a member of the team that developed the legislative amendments for that tribunal’s flexible and enabling powers and authorities. He also participated directly in the development and implementation of the Board’s then new rules of practice and procedure providing a strong and effective framework for the Board’s adoption of case management and dispute resolution processes. A former member of BCCAT who participated in many of the BCCAT workshops and conferences, Richard will be well known to many of BCCAT’s members.

### **Some of the other AJO Activities:**

The AJO has also been busy over the summer, supporting various individual boards in conducting their merit-based appointment processes, and also meeting with the Circle of Chairs and the BCCAT Board of Directors. The Executive Director will be participating in a CLE program October 7, addressing the ATA, and later that month will be a panel member at BCCAT’s annual conference.

Dianne Flood, Executive Director, AJO

# Board Profiles

To familiarize our members with the work of the many different tribunals in the administrative justice community, we would like to profile a different tribunal in each newsletter. Send us a profile for inclusion in future newsletters.

## WCAT

Prior to March 3, 2003 there were three separate review and appeal processes through which to appeal decisions made by the Workers' Compensation Board (WCB) - the Workers' Compensation Review Board, the Appeal Division of the WCB, and Medical Review Panels

Effective March 3, 2003 Bill 63, the *Workers Compensation Amendment Act (No. 2), 2002*, replaced the three former appeal bodies with a new internal WCB review level, the Review Division – and created the Worker's Compensation Appeal Tribunal (WCAT) a new, independent appeal tribunal. WCAT is the final level of appeal for workers' compensation matters.

In the new system workers and employers who are directly affected by a WCB decision, and a limited group of interested parties, may request reviews of Board decisions and the Review Division must make a decision on the review within 150 days after the WCB receives the request for review.

WCAT has jurisdiction to hear appeals from final decisions made by the Review Division on most compensation matters other than vocational rehabilitation, as well as most assessment and classification decisions, and decisions imposing penalties for employers' failure to comply with specific provisions of the *Workers Compensation Act* (Act). Parties must file a notice of appeal to WCAT within 30 days after the Review Division decision was made. WCAT then requests claim file disclosure from the WCB and, subject to certain extensions, must make a final decision on the appeal within 180 days after receiving disclosure.

WCAT is structured with a Chair as the head of the organization, who serves as the chief adjudicator and executive officer of the tribunal, and is appointed by the Lieutenant Governor in Council.

In appropriate cases WCAT panels are comprised of three member, but vice chairs typically adjudicate appeals as single member panels. WCAT vice chairs must make their decisions on the justice and merits of the case, and are not generally bound by legal precedent. However, decisions made by panels composed of up to seven members, specially constituted by the chair under section 238(6) of the Act, are binding.

The word "member" is used to refer to the chair, vice chairs, and extraordinary members and temporary members that have been appointed from time to time for specific purposes under section 232 of the Act. WCAT panels must, in making their decisions, apply applicable policies of the board of directors of the WCB, subject to a process for having a policy declared unlawful.

WCAT has authority to employ a variety of appeal management processes, including pre-hearing conferences. Members have authority to require attendance of witnesses and disclosure of documents, and may take evidence under oath or affirmation.

Appeals are generally conducted either by oral hearing, held at WCAT's offices in Richmond or in various locations in BC, or by a review of the claim file evidence and any additional evidence and submissions filed by the parties.

There are currently 85 full and part time vice chairs appointed to WCAT. Vice chairs hold office in their first term for two years and may be reappointed for one or more successive terms of up to five years each. Vice chairs are appointed and reappointed by the chair, after consultation with the Minister of Labour. However, as it does with all tribunals in BC, section 14.9 of the Public Sector Employers Act limits any severance payment on early termination without cause for those whose appointments were made or renewed after May 28, 2003, to the lesser of the balance of the term or one year's pay.

Vice chairs are currently paid based on rates established by regulation. Section 178 of the new Bill 56, Administrative Tribunals Act provides that the minister will set the remuneration for members in accordance with general directives of the Treasury Board, which may specify different rates for different classes of members. The Chair will determine the class to which a member is assigned.

For additional information please visit the WCAT web site at: <http://www.wcat.bc.ca/>

# Where are they now?

....catching up with former members of the tribunal community

## Fern Jeffries

Fern Jeffries was Chair of the Employment Standards Tribunal from January 2000 to July 2002 when the government eliminated the stand-alone 'chair' position. During her tenure as Chair of the Tribunal, Fern was Vice President of BCCAT and served a term as Chair of the Circle of Chairs. Prior to her appointment to the Tribunal, Fern held a number of executive positions in government including, Assistant Deputy Minister of Skills Development, Assistant Deputy Minister of Housing Recreation and Consumer Services, and Executive Director of Policy and Legislation for the Ministry of the Attorney General.

After 25 years in the public service, Fern has returned to her previous life in Community and Organizational Development. "I have always enjoyed the challenge of making organizations work and now I get to use my organizing, planning and facilitating skills back at the community level where I started years ago".

Fern has been involved in organizing NEVCO – the Network of East Vancouver Community Organizations. This is a coalition of small agencies serving some of Canada's poorest citizens. "Small agencies are vulnerable to government's whims. A coalition however, can speak with a strong collective voice and ensure that the advocacy role is not lost when agencies deliver contracted services."

Other clients include: Vancouver Native Health Society, Fast Track to Employment, Women's Information and Safe House (WISH), and Tahltan Band social programs operating out of Dease Lake and Telegraph Creek. "It's been challenging to have variety both in terms of subject matter and geographic location". During her tenure as Chair of the Employment Standards Tribunal, Fern worked hard to ensure the independence of the administrative justice system as a critical element in assuring people who use the system that decisions are fair and impartial. Now she gets to extend that belief in 'independence' to her own career as a Community and Organizational Development Consultant.

## John Steeves

From March 2000 to December 2002 John Steeves was Chief Appeal Commissioner of the Appeal Division of the Workers' Compensation Board. The Appeal Division was eliminated by legislation.

During his time as Chief Appeal Commissioner, John was a member of various BCCAT committees, he was Chair of the Circle of Chairs, he was a member of the Advisory Committee of the Administrative Justice Project (Attorney General) and he was a Vice-President of the Canadian Council of Administrative Tribunals (CCAT). John was (and remains) a member of the law societies of B.C. and the Yukon.

Since March 2003 John has been in private practice as an arbitrator and mediator, primarily in labour relations. This involves appointments by employers and unions as a trouble shooter as well as arbitrator/mediator and he sometimes provides third-party opinions. He is a named arbitrator in collective agreements, he is a Referee for the federal Mediation and Conciliation Service and he is a member of the Register of Arbitrators for expedited arbitrations under the *Labour Relations Code*. He reports that, as a private arbitrator, the issue of independence can take on a different meaning when your next appointment to a dispute may very well depend on how your last decision was perceived in the community! But, he says, it is a system that works very well, although not perfectly like the former Appeal Division.

John also continues to be active in the administrative justice field. He is a part-time member of the Public Service Staff Relations Board (Canada) and he continues as a director with CCAT. He wishes former colleagues the very best, especially those in the workers' compensation system.



**BCCAT NEWS**

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