

CHAPTER 109A

ADMINISTRATIVE APPEAL TRIBUNAL 1981-18

This Act comes into operation on a date to be fixed by proclamation.

Amended by:

1996-15

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

1997

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 109A

**ADMINISTRATIVE APPEAL TRIBUNAL
1981-18**

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**BARBADOS****ADMINISTRATIVE APPEAL TRIBUNAL
1981-18**

An Act to provide for the establishment of an Administrative Appeal Tribunal for Barbados and for related matters.

CITATION**Short title**

1. This Act may be cited as the *Administrative Appeal Tribunal Act*.

INTERPRETATION**Definitions**

2. In this Act,
“appeal” includes an application or reference;
“President” means the person appointed under section 4(2);
“Tribunal” means the Administrative Appeal Tribunal established under section 3.

PART 1
THE TRIBUNAL

Establishment of Tribunal

3. There shall be an Administrative Appeal Tribunal for Barbados which shall hear and determine appeals from decisions of certain tribunals and authorities in accordance with this Act.

Constitution of Tribunal

- 4.(1)** The Tribunal shall consist of
- (a) a President, who shall be a person qualified for appointment as a Judge under section 4 of the *Supreme Court of Judicature Act*, Cap. 117A;
 - (b) not more than 4 legal members, who shall be persons appearing to the Governor-General to have suitable legal qualifications;
 - (c) not more than 16 ordinary members who shall be persons appearing to the Governor-General to have suitable professional or other qualifications.
- (2) The President shall be appointed by the Governor-General, acting on the recommendation of the Judicial and Legal Service Commission by instrument under the Public Seal and shall be subject to removal and disciplinary control in accordance with section 93 of the *Constitution*.
- (3) The legal and ordinary members shall be appointed by the Governor-General by instrument under the Public Seal and shall hold office upon such conditions and for such period of time as may be specified in the relevant instrument of appointment.
- (4) The President shall be a full-time member, but the legal and ordinary members may be full-time or part-time members, as the circumstances require.
- (5) No full-time member may engage in paid employment outside the duties of his office.

(6) In case of illness, incapacity or absence from Barbados, the President may in writing designate a legal member as acting President for a specified period of time, and such member may then exercise the functions of the President during that period.

Tenure of members

5.(1) The President and every member of the Tribunal shall vacate office on attaining the age of 65 years, but may be re-appointed under section 4 for any period not exceeding 2 years.

(2) The Governor-General may exercise the power conferred by subsection (1) on more than one occasion in relation to the President or any other member.

Staff

6. The Tribunal shall have a secretary and such other staff as may be provided by order under the *Civil Establishment Act*, Cap. 21.

Divisions of Tribunal

7.(1) There shall be the following divisions of the Tribunal:

- (a) General Division;
- (b) Employment Division;
- (c) Social Security Division;
- (d) Tax and Valuation Division.

(2) The jurisdiction and powers of the Tribunal may be exercised by any Division, subject to any restrictions and conditions that may be prescribed by the rules.

(3) An appeal to the Tribunal shall be heard and determined by the Division to which it is assigned by direction of the President.

Sittings

8.(1) A Division sitting to hear and determine an appeal shall, subject to subsections (3) and (4), consist of such members as the President may assign to that Division for that appeal.

(2) The President or a legal member designated by him shall preside at each sitting of a Division.

(3) Where an appeal to the Tribunal involves a question of national insurance, income tax, value added tax, severance payments, or of a retirement pension or funeral grant under the *Sugar Workers (Provident Fund) Act, Cap. 271*, the Division to which it is assigned shall consist of a legal member and 2 other members; and in the case of an appeal involving a question of national insurance, severance payment, or of a retirement pension or funeral grant, the 2 other members must be nominated by an organisation representative of employers and of employees.

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(4) Where the President is satisfied that subsection (3) does not apply to an appeal and that the appeal can be heard and determined by a single member, whether or not a legal member, he may so direct, and for that appeal the Division shall consist of that member only.

PART II**JURISDICTION AND PROCEEDINGS****Determinations**

9.(1) In determining an appeal, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.

(2) In case of difference of opinion among members sitting together, the opinion of the majority shall prevail, and in case of equality of numbers, the

opinion of the presiding member shall prevail; provided that where the question to be determined is one of law, account shall not be taken of the opinion of an ordinary member.

Right of appeal

10.(1) Where under any law in force before the commencement of this Act there was a right of appeal or application to a body or authority specified in the *First Schedule*, there shall be a similar right of appeal or application to the Tribunal in accordance with the rules.

(2) The Tribunal may make any order or grant any certificate or take any action which would have been within the power of a body or authority specified in the *First Schedule* to make upon an appeal or application before the commencement of this Act.

(3) The bodies and authorities specified in the *First Schedule* shall continue to hear and determine any appeal or application which was partly or fully heard at the commencement of this Act, but any appeal or application still awaiting hearing by any of them at such commencement shall be heard and determined by the Tribunal.

(4) Except as provided by subsection (3), the bodies and authorities specified in the *First Schedule* shall cease to exist.

Additional rights of appeal and substituted appeals

11.(1) An appeal lies to the Tribunal in accordance with the rules from a decision given after the commencement of this Act by

- (a) the National Insurance Board upon any claim or question arising under the *Severance Payments Act*, Cap. 355A and authorised to be determined by that Board under section 24A of that Act;
- (b) the National Insurance Board in respect of any retirement pension or funeral grant under the *Sugar Workers (Provident Fund) Act*, Cap. 271.

(2) Where an appeal lies to the Tribunal under paragraph (b) of subsection (1), the decision of the Tribunal is final.

(3) Where before the commencement of this Act, an appeal lay directly to the High Court or to a referee, after such commencement, an appeal lies, in the first instance, in accordance with the rules, to the Tribunal in the following cases:

- (a) appeal from determinations of the National Insurance Board made under section 35 of the *National Insurance and Social Security Act*, Cap. 47 and rules made thereunder;
- (b) appeals from decisions of the Commissioner of Inland Revenue under section 8(3) of the *Entertainment Tax Act*, Cap. 69;
- (c) appeals from decisions of the Commissioner of Estate Duty under section 36 of the *Estate Duty Act*, Cap. 70;
- (d) appeals from decisions of the Collector of Taxes under section 14 of the *Land Tax Act*, Cap. 78A;
- (e) appeals from decisions of the Commissioner of Inland Revenue under section 60 of the *Income Tax Act*, Cap. 73;
- (f) appeals from decisions of the Commissioner of Valuations under section 21 of the *Land Valuation Act*, Cap. 229A;
- (g) applications to the High Court and references to a referee appointed by the Minister under section 132 of the *Customs Act*, Cap. 66,

and, accordingly, no appeal lies directly to the High Court or to a referee in those cases after the commencement of this Act.

(4) Where an appeal formerly lay to the Minister, after the commencement of this Act, such appeal lies to the Tribunal in accordance with the rules in the following cases:

- (a) appeals from determinations of the Betting and Gaming Committee under section 17 of the *Betting and Gaming Duties Act*, Cap. 60;

(b) appeals from decisions of the Board under section 4 of the *Cinematograph Film Censorship Act*, Cap. 299;

(c) appeals from decisions of the Land Taxation Relief Board under section 22 of the *Land Tax Act*, Cap. 78A,

and accordingly no appeal lies to a Minister in those cases after the commencement of this Act.

(5) Where an appeal lies to the Tribunal under subsection (4), the decision of the Tribunal is final.

Appeals to High Court

12.(1) Any party to an appeal determined by the Tribunal who is dissatisfied with the determination on a point of law may, except where the decision of the Tribunal is by law made final, appeal to the High Court in accordance with rules of court.

(2) On an appeal under subsection (1), the High Court may make any order or give any decision which might have been made or given by the Tribunal, and may, if it thinks fit, remit the case to the Tribunal with directions as to its determination by the Tribunal.

Evidence and representation

13.(1) The Tribunal may, if it thinks fit, receive oral or written evidence, and under oath or otherwise, but is not bound by the legal rules of evidence.

(2) The Tribunal shall allow every party to an appeal to appear in person or by representative, and, where the Tribunal receives oral evidence, to examine and cross-examine witnesses.

Public and private hearings

14. The Tribunal shall receive evidence in public except where it is of opinion that evidence may be disclosed relating to financial or other personal circumstances of any person and that the balance of advantage is in favour of

preventing the disclosure of the evidence in public, having regard both to the public interest and to the interest of the person concerned.

Procedure generally

15.(1) The Tribunal may in relation to its own procedure determine any matter that is not prescribed by this Act or the rules.

(2) Rules under this Act may

- (a) prescribe the procedure of the Tribunal and its Divisions in matters not prescribed by this Act;
- (b) make different provisions as to such procedure in different classes of cases;
- (c) provide for the charging of fees and reimbursement of expenses and award of cost;
- (d) prescribe the periods of time within which any appeal or class of appeal to the Tribunal shall be lodged.

Subpoenas and penalties

16.(1) The Tribunal may issue subpoenas, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents or other evidence, requiring parties or witnesses to answer questions, and of conducting its proceedings in a proper and orderly manner.

(2) The Tribunal may report to the High Court the conduct of any person who disobeys any subpoena order or direction properly issued under subsection (1), or says or does any other thing that would, if the Tribunal were a superior court of law, be contempt of court.

(3) Where a report is made under subsection (2), the High Court shall hear the complaint and any defence, and may punish the person concerned in the same manner as if that person had been guilty of contempt of the High Court.

Natural justice

17. Every hearing and determination by the Tribunal must be in accordance with the principles of natural justice, and the Tribunal is under a duty to give reasons for decisions in accordance with Part II of the *Administrative Justice Act*, Cap. 109B.

PART III

GENERAL

Power to order stay

18.(1) The Tribunal, or in case of special urgency, the President, may if it thinks fit on the application of a party to an appeal, not being an appeal involving a question of income tax, direct that, pending determination of the appeal, no action, or no action of a particular kind, be taken to apply or enforce the decision or determination that is the subject of the appeal.

(2) Where a direction is issued under subsection (1), it shall not be lawful to take any action in disobedience of the direction.

Power to extend jurisdiction of Tribunal

19.(1) The Governor-General may by order subject to affirmative resolution

- (a) provide for a right of appeal to the Tribunal from the decisions or determinations of any statutory body or authority;
- (b) transfer from any statutory body or authority any class of appeals to the Tribunal so that those appeals shall lie to the Tribunal and not to that body or authority from the date specified in the order;
- (c) abolish any statutory body or authority if after a transfer under paragraph (b) that body or authority is left without any further functions.

(2) An order under this section may amend or repeal any statutory provision as may be required to give effect to the order, and may provide that any decision of the Tribunal is final.

Rules

20. The Judicial Advisory Council may make rules to give effect to the provisions of this Act.

Amendments and repeals

21.(1) The enactments specified in the first column of Part I of the Second Schedule are amended in the respects set out in the second column thereto.

(2) The enactments specified in the first column of Part II of the Second Schedule are repealed to the extent specified in the second column thereto.

Commencement

22. This Act comes into force on a day to be fixed by proclamation.

FIRST SCHEDULE

(Section 10)

National Insurance Appeal Tribunals

The National Insurance Commissioner

The Severance Payments Tribunal

The Income Tax Appeal Board

The Land Valuation Board

SECOND SCHEDULE

















