

CHAPTER 109A

ADMINISTRATIVE APPEAL TRIBUNAL

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CHAPTER 109A

ADMINISTRATIVE APPEAL TRIBUNAL

An Act to provide for the establishment of an Administrative Appeal Tribunal for Barbados and for related matters. 1981-18.
1996-15.

[By Proclamation] Commence-
ment.

Citation

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

Interpretation

2. In this Act, Definitions.
"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

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. Establish-
ment of
Tribunal.

4. (1) The Tribunal shall consist of Constitution of
Tribunal.
(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.
Cap. 21.

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

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

Divisions
of
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.

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.

Sittings.

(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*, 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.

1996-15.
Cap. 271.

(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

Determi-
nations.

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.
First
Schedule.

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.

First
Schedule.

(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.
Cap. 355A.

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* 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* and rules made thereunder; Cap. 47.

(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.

Cap. 78A.

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

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. Evidence and representation.

(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.

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. Public and private hearings.

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

(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.

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. Subpoenas and penalties.

(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
jurisdic-
tion 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.

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

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. Amendments and repeals.

(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. Second Schedule.

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

FIRST SCHEDULE

s. 10.

(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

PART I

(Section 21(1))

Enactments

Amendments

- Interpretation Act, Cap. 1* In section 46, insert in its appropriate alphabetical order the following definition:
- Cap. 109A* “Administrative Appeal Tribunal” or “Tribunal” means the tribunal established under section 3 of the *Administrative Appeal Tribunal Act*.
- National Insurance and Social Security Act, Cap. 47* In section 35,
- (a) delete subsection (1) and substitute therefor the following subsection:
- “(1) Regulations may provide for the determination by the Board, or by such persons appointed or constituted in accordance with the regulations, of any question arising under or in connection with this Act, including any claim to benefit.”.
- (b) delete subsection (2) and substitute therefor the following:
- “(2) An appeal shall lie to the Administrative Appeal Tribunal as provided by the *Administrative Appeal Tribunal Act* in respect of any question or claim to benefit determined by the Board, or by such persons as are appointed or constituted in accordance with subsection (1).”.
- Cap. 109A*
- Airline Service Business Tax Act, Cap. 59A.* In section 12, delete the words “Income Tax Appeal Board” and “Board” wherever they appear in subsections (2) and (3) and substitute therefor the words “Administrative Appeal Tribunal” and “Tribunal”, as the case may be.

*Enactments**Amendments**Betting and Gaming Duties Act, Cap. 60.*

In section 17, delete subsection (7) and substitute therefor the following:

“(7) A person aggrieved by any decision of the Committee may appeal to the Administrative Appeal Tribunal within 14 days of being notified thereof, and the Tribunal may confirm or vary such decision.”.

In section 31,

- (a) delete the words “the Minister” appearing in the second line of subsection (2) and substitute therefor the words “the Administrative Appeal Tribunal”;
- (b) delete the words “the Minister” appearing in the fourth line of subsection (2) and substitute therefor the words “the Tribunal”.

Customs Act, Cap. 66.

In section 132,

- (a) delete the words “the arbitration of a referee appointed by the Minister whose decision shall be final and conclusive” appearing in the fifth and sixth lines of paragraph (a) of subsection (1) and substitute therefor the words “the Administrative Appeal Tribunal”;
- (b) delete the words “the High Court” appearing in paragraph (b) of subsection (1) and substitute therefor the words “the Administrative Appeal Tribunal”;
- (c) delete the words “the referee or Court” appearing in the first and second lines of subsection (2) and substitute therefor the words “the Administrative Appeal Tribunal”.

Entertainment Tax Act, Cap. 69.

In section 8, delete the words “the High Court and the decision of the Court shall be final.” appearing in subsection (3) and substitute therefor the words “the Administrative Appeal Tribunal.”.

Enactments

Amendments

Estate Duty Act, Cap. 70.

In section 36,

- (a) delete the word "Court" appearing in the tenth and thirteenth lines of subsection (1) and substitute therefor the words "Administrative Appeal Tribunal" and "Tribunal" respectively.
- (b) delete the word "Court" wherever it appears in subsections (2) to (4) and substitute therefor the word "Tribunal".

Hotel Aids Act, Cap. 72.

In section 9, delete the words "Income Tax Appeal Board" appearing in the third and fourth lines and substitute therefor the words "Administrative Appeal Tribunal".

Hotels and Restaurants (Sales Tax) Act, Cap. 72A.

In section 13, delete the words, "Income Tax Appeal Board" and "Board" wherever they appear in subsections (2) and (3) and substitute therefor the words "Administrative Appeal Tribunal" and "Tribunal", as the case may be.

Income Tax Act, Cap. 73.

In section 59,

- (a) delete the words "Income Tax Appeal Board" appearing in the fourth line of subsection (1) and substitute therefor the words "Administrative Appeal Tribunal";
- (b) delete the words " , by delivering to the Secretary of the Income Tax Appeal Board six copies of a notice of appeal" appearing in the sixth and seventh lines of subsection (1).

In section 63,

- (a) delete the words "and to section 61" appearing in the second line;
- (b) delete the words "the Income Tax Appeal Board" appearing in paragraph (b) and

<i>Enactments</i>	<i>Amendments</i>
<i>Income Tax Act, Cap. 73.</i>	<p>substitute therefor the words "the Administrative Appeal Tribunal";</p> <p>In section 79,</p> <p>(a) delete the words "Income Tax Appeal Board" appearing in paragraph (h) (iii) of subsection (1) and substitute therefor the words "Administrative Appeal Tribunal";</p> <p>(b) delete the words "Income Tax Appeal Board" appearing in paragraph (a) (iii) of subsection (2) and substitute therefor the words "Administrative Appeal Tribunal".</p> <p>In section 84, delete paragraph (h).</p>
<i>Land Development Duty Act, Cap. 78.</i>	<p>In section 2, delete the definition "Income Tax Appeal Board";</p> <p>In section 17, delete the words "the Income Tax Appeal Board" appearing in subsection (1) and substitute therefor the words "the Administrative Appeal Tribunal".</p> <p>In section 20,</p> <p>(a) delete the words "a Judge in chambers" and "the Income Tax Appeal Board" wherever they appear and substitute therefor the words "the High Court" and "the Administrative Appeal Tribunal" respectively;</p> <p>(b) delete the words "under section 21" appearing in the eighth line.</p> <p>In section 23,</p> <p>(a) delete all the words beginning "the Land Valuation Board" in the seventh line to the words "the Court of Appeal" appearing in the ninth line of subsection (1) and substi-</p>

*Enactments**Amendments*

Land Development Duty Act, Cap. 78.

tute therefor the words "the Administrative Appeal Tribunal";

- (b) delete the words "The Land Valuation Board and the Court of Appeal" appearing in the first line of subsection (3) and substitute therefor the words "The Administrative Appeal Tribunal".

Land Tax Act, Cap. 78A.

In section 14,

- (a) delete the words "the High Court" appearing in subsection (1) and substitute therefor the words "the Administrative Appeal Tribunal".
- (b) renumber the existing section 14(1) as amended by paragraph (a) as section 14.

In section 22,

- (a) delete the words "the Minister" appearing in subsection (1) and substitute therefor the words "the Administrative Appeal Tribunal";
- (b) delete subsection (2) and renumber section 22(1) as amended by paragraph (a) as section 22.

In section 23,

- (a) delete the words "the Minister" appearing in subsection (1) and substitute therefor the words "the Administrative Appeal Tribunal";
- (b) delete the words "the Minister" appearing in subsection (2) and substitute therefor the words "the Tribunal".

Petroleum Winning Operations Taxation Act, Cap. 82A.

In section 2,

- (a) delete the definition "Income Tax Appeal Board";

*Enactments**Amendments*

*Petroleum Winning
Operations Taxation Act,
Cap. 82A.*

(b) delete the words "Income Tax Appeal Board" and "Board" appearing in subsection (4) and substitute therefor the words "Administrative Appeal Tribunal" and "Tribunal" respectively.

In section 37, delete the words "Income Tax Appeal Board" and "Board" wherever they appear in subsection (1) and substitute therefor the words "Administrative Appeal Tribunal" and "Tribunal" respectively.

In section 38, delete the words "Income Tax Appeal Board" appearing in subsection (1) and substitute therefor the words "Administrative Appeal Tribunal".

*Property Transfer Tax
Act, Cap. 84A.*

In section 11, delete the words "Land Valuation Board", "Board" and "Board's" wherever they appear in subsections (1) to (5) and substitute therefor the words "Administrative Appeal Tribunal", "Tribunal", or "Tribunal's", as the case may be.

*Land Valuation Act, Cap.
229A.*

In section 2 delete the definition "Board".

In section 20, delete the words "the Land Valuation Board", "the Board" and "the Board's" wherever they appear in subsections (1) to (6) and substitute therefor the words "the Administrative Appeal Tribunal", "the Tribunal" and "the Tribunal's", as the case may be.

In section 37, delete all the words beginning "to the Land Valuation Board" in the second line to "Court of Appeal" appearing in the third line of subsection (1) and substitute therefor the words "to the Administrative Appeal Tribunal".

In section 38, delete the words "the Board or" appearing in the second line of paragraph (c).

THE LAWS OF BARBADOS

*Enactments**Amendments*

*Land Valuation Act,
Cap. 229A.*

In section 42, delete the words "the Land Valuation Board" appearing in subsection (4) and substitute therefor the words "the Administrative Appeal Tribunal".

*Cinematograph Film
Censorship Act, Cap.
299.*

In section 4, delete the words "to the Minister whose decision shall be final" appearing in the third and fourth lines and substitute therefor the words "to the Administrative Appeal Tribunal".

*Severance Payments Act,
Cap. 355A.*

In section 33,

(a) delete the words "a tribunal in accordance with regulations made under Part VI" appearing in the third and fourth lines of subsection (2) and substitute therefor the words "the Administrative Appeal Tribunal";

(b) substitute a full stop for the comma immediately following the words "Fourth Schedule" appearing in paragraph (c) of subsection (2) and delete the last 3 lines of that subsection.

(c) delete the word "tribunal" wherever it appears in subsection (4) and substitute therefor the words "Administrative Appeal Tribunal".

In section 36, delete the words "a tribunal" appearing in subsection (1) and substitute therefor the words "the Administrative Appeal Tribunal".

In section 38,

(a) delete the words "a tribunal appointed and constituted in accordance with the Sixth Schedule" appearing in the fifth and sixth lines of subsection (1) and substitute therefor the words, "the Administrative Appeal Tribunal";

*Enactments**Amendments*

*Severance Payments Act,
Cap. 355A.*

(b) Delete the words "a tribunal" appearing in the second line of subsection (3) and substitute therefor the words "the Tribunal".

In section 43, delete the words "a tribunal" appearing in the first line of subsection (2) and substitute therefor the words "the Administrative Appeal Tribunal".

*Service Tax Act, 1980
(Act 1980—33).*

In section 13,

(a) delete the words, "the Income Tax Appeal Board" appearing in subsection (2) and substitute therefor the words "the Administrative Appeal Tribunal".

(b) delete subsections (3) and (4).

SECOND SCHEDULE

s.21(2)

PART II

*Enactments**Repeals*

*National Assistance Act,
Cap. 48.*

Section 11(2) is repealed.

*Betting and Gaming Duties
Act, Cap. 60.*

Sections 17(8) and 31(3) are repealed.

Customs Act, Cap. 66.

Sections 132(3) and (4) are repealed.

Income Tax Act, Cap. 73.

Sections 58, 59(2) to (10), 60, 61 and 62 are repealed.

*Land Development Duty
Act, Cap. 78.*

Sections 17(2) to (9) and sections 18, 19, 21 and 27(6) are repealed.

Land Tax Act, Cap. 78A.

Sections 14(2) to (8), and sections 15 and 16 are repealed.

THE LAWS OF BARBADOS

*Enactments**Repeals*

*Petroleum Winning
Operations Taxation Act,
Cap. 82.*

Section 37(2) is repealed.

*Property Transfer Tax
Act, Cap. 84A.*

Sections 11(6) and 12 are repealed.

*Land Valuation Act,
Cap. 229A.*

Sections 5, 21 to 24, 43(c) and the Schedule are repealed.

*Severance Payments Act,
Cap. 355A.*

Sections 33(5), 38(4) and (5), 39, 43(3) and the Sixth Schedule are repealed.