

Labour and Employment Board

Notes on Practice and Procedure:

Introduction - General

1. Under each of the Statutory Labour and Employment Law Regimes over which it has jurisdiction, the Board is mandated to determine its own procedure and to make Rules governing its procedure.

Reference: *Industrial Relations Act* s. 121(3)
 Public Service Labour Relations Act s. 18(1)(g)
 Employment Standards Act s. 53(3)
 Pension Benefit Act s. 96(3)

2. Rules of Procedure in the form of subordinate legislation exist under each of the statutory Labour and Employment Law regimes over which the Board has jurisdiction, and parties before the Board are expected to comply with their provisions.

3. Practice before the Board is governed by the enabling legislation, the subordinate legislation, and the jurisprudence developed by the Board and its predecessor Tribunals.

4. The Courts require that the Board 'take a consistent approach to matters of practice' if it is to 'operate effectively or command the respect of disputing parties or indeed of the public'. Furthermore, 'a party should not see its case undermined by a shifting in the position of the Board on matters of practice or procedure'. There is a danger that inconsistency of practice and procedure may prejudice a party before the Board.

Reference: *The Queen in Right of New Brunswick and Canadian Union of Public Employees* (1982) 133 DLR(3d) 434 at 437 (NBQB).

5. The Board strives to develop an integrated practice and procedure which cuts across the discrete labour and employment law regimes entrusted to its superintendance. In its decision in *Burman & Fellows Electrical Contracting Co. Ltd.* (unreported decision I.R.B. 2-8-94, issued 24 January 1995); the Board noted:

"...[I]n the case of its practice and procedure, the Labour and Employment Board, as a matter of first impression, inherits the practices and procedures of the defunct Tribunal developed under their respective enabling legislation and as expressed formally in subordinate legislation or informally by practice. However, ... the very fact of structural integration would indicate a legislative intent that a single cohesive and coherent practice and procedure be developed by the Labour and Employment Board in the exercise of its general jurisdiction over the several employment law regimes entrusted to its administration. This is a process now in its infancy which will mature apace as the Board undertakes its mandate and exercises its superintending jurisdiction over ... enabling legislation with respect to which the Legislative Assembly may from time to time vest it with jurisdiction." [para. 14].

6. These Notes on Practice and Procedure are intended to give the parties direction and assistance in matters brought before the Board for consideration in proceedings before it.

Departure from the Practice and Procedure of the Board is permitted only when, in the interests of justice, the merits of a particular case require such departure.

I. **ADJOURNMENTS:**

(i) **General:**

1. On receipt of an application, complaint, request or other matter, the Board sets an initial date of hearing in compliance with statutory requirements and the applicable Rules of Procedure. Requests for Adjournment are dealt with as set out in this Practice Note.

2. In making requests for adjournment parties are reminded "that the Board exercises its jurisdiction in matters where, in general, any delay can cause serious and irreparable harm."

Reference: *Regina v. Quebec Labour Relations Board, ex parte Komo Construction Inc.* (1967) 1 DLR (3d) 125 at 127 (SCC).

3. In determining whether to grant an adjournment or refuse it, the Board takes into consideration the reason for the request, the right of all parties to have the matter dealt with expeditiously, the purpose of the statute engaged, and the interests of justice in general. A party is not entitled to an adjournment for its own convenience or that of counsel.

Reference: *Gill Lumber (Chipman) (1973) Ltd. v. United Brotherhood of Carpenters and Joiners of America, Local 2142* (1974) 7NBR (2d) (41) at para. 11(CA).

Re Pleasant Mill Works Ltd. (I.R.B. 2-9-92) unreported decision issued 21 December 1992 at para. 2-4

Re Olympic Metals Limited (IR-037-95); (IR-028-95); unreported decision issued June 1995 at para.

(ii) **Adjournments on Consent:**

1. A party seeking an adjournment must do so in writing addressed to the Board with a copy to each interested party. It is the responsibility of the party seeking an adjournment to obtain the consent of all interested parties, and to advise the Board that such consent has been obtained.

2. Where the consent of all interested parties has been obtained, the Board will ordinarily grant the request for an adjournment. However, the Board reserves the right to deny a request for an adjournment even where all interested parties have consented to it.

3. Where an adjournment has been granted, the Board reserves to itself the discretion to set a new date of hearing, although it will take into consideration the preferences of the parties.

(iii) **Contested Requests for Adjournment:**

1. Where the party seeking an adjournment is unable to obtain the consent of all interested parties, it may request that the adjournment application be heard by conference call prior to the hearing date set. Where the request is timely and it is otherwise feasible, the Board will accommodate such request for a conference call hearing.

2. In all other circumstances, the request for an adjournment will be considered at the commencement of the hearing set for the matter.

(iv) **Adjournments During a Hearing**

1. Requests for adjournment during the course of a hearing are dealt with by the Board on the merits of the case within the context of the general principles outlined at paragraphs I.i.

(v) **Adjournments sine die:**

1. Where all parties have agreed to adjourn a matter indefinitely, the applicant should advise the Board in writing of the agreement. The matter will be adjourned *sine die*. In such cases, if no written request to reschedule the matter is forthcoming within six(6) months from the date that adjournment *sine die* was granted, the Board will consider the matter to be withdrawn.