

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.

II WITHDRAWALS:

(i) General:

1. The consent of the Board is required to withdraw a matter before it. In considering whether to grant a request for consent to withdraw the Board takes into consideration all relevant factors including the nature of the underlying application, the terms of the governing statute, the circumstances surrounding the request, the wishes of the parties and broader public policy.
2. In all circumstances the Board reserves to itself the discretion to grant a request to withdraw a matter before it, or to refuse the request and dismiss the matter.

Reference *W.J. Beairsto Co. Ltd., IR-039-95*, unreported decision issued 2 June 1995

(ii) Withdrawal Prior to the date of hearing:

1. A request for consent to withdraw should be made to the Board in writing with a copy to each interested party.
2. Ordinarily, where a request to withdraw is made prior to the date of hearing such that all parties in interest can be advised in a timely manner, consent to withdraw will be granted by the Board upon that request and the hearing cancelled.
3. Where it is not possible to advise the parties in interest that a request for consent to withdraw has been made, the hearing will proceed and the request will be dealt with at its outset.

(iii) Withdrawal on the date of hearing:

1. Ordinarily, if consent is given by all parties in interest, the Board will grant the request for consent to withdraw a matter made at the outset of the proceedings.
2. Where at the hearing consent by the parties in interest is withheld on the request to withdraw, ordinarily the Board will dismiss the matter before it rather than grant the request to withdraw.

3. However, even absent consent by all parties in interest to the request to withdraw, the Board ordinarily will grant its consent to withdraw the matter before it, where the applicant and respondent have resolved the matter in dispute between them on the basis of such withdrawal.

4. Once the Board is seized of the matter on its merits and evidence has been led it will ordinarily not grant its consent to a request to withdraw and will dismiss an application in such circumstances, unless withdrawal of the application is a term of settlement of the underlying dispute between the parties.

(iv) **Deemed withdrawal:**

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 the adjournment *sine die* was granted, the Board will consider the matter to be withdrawn.