

## **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.

### III. APPLICATIONS FOR RECONSIDERATION:

1. Where the Board is empowered by statute to reconsider its decisions, its discretion whether to reconsider or re-hear a matter is extremely broad. The Board may reconsider a matter on its own motion or on application. There is no right in any party to have the Board exercise its reconsideration power.

Reference: re *Union Canadienne de l'industrie des pêches et des travailleurs Section Locale 140* (1981) 34(NBR) (2d) 258(CA).

2. Reconsideration is not an appeal from the original decision of the Board. Thus, except in the most unusual circumstances applications for reconsideration are referred to the Panel of the Board which issued the original decision and the order for which reconsideration is sought.

3. Ordinarily, the Board will not accede to a request to reconsider unless:

(i) a party intends to adduce new evidence which was not previously available to it by the exercise of due diligence and which, if proved, would be likely to make a difference to the outcome of the case; or

(ii) a party intends to make representations which it did not have an opportunity to raise at the original hearing.

Reference: *Prospect Contractors Ltd.* (I.R.B 10B-1-91) unreported decision issued 7 December 1992.

Reference: *Commercial Masonry Ltd.* (I.R.B. 10B-1-93) unreported decision issued 9 August 1993.

4. Where the Board directs that a hearing be held to show cause why an application for reconsideration should be entertained, it may in addition tentatively list the matter for re-hearing on the merits at the same time in the event the request for reconsideration is granted.

**IV. SERVICE OF DOCUMENTS AND NOTICE OF PROCEEDINGS:**

1. One copy of all notices, documents and correspondence is served by the Board
  - (i) on each of the parties to the proceedings;
  - (ii) on additional parties named as having an interest in the proceedings; and
  - (iii) as required, on persons determined by the Board to have an interest in the proceedings.
2. In addition, each of the parties in interest to the proceedings may advise the Board in writing of the name and address of one additional person for service of all notices, documents and correspondence in the proceedings.
3. Where counsel is retained, a copy of all notices, documents, and correspondence will be served on counsel. Once counsel is retained the parties should direct all correspondence and inquiries to the Board with respect to the matter through counsel.