

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.

V. SUMMONS TO WITNESS:

1. Where a party requires a summons to ensure the attendance of a person to give evidence in proceedings before the Board, it should make a request in writing to the Board within a reasonable period of time prior to the date of hearing. The request should:

(i) identify the name and address for service of the person(s) for whom a summons is sought;

(ii) identify the documents, if any, which the person(s) so summoned is required to bring and produce at the hearing.

2. Ordinarily, upon receipt of such a written request a summons to witness will be issued on the terms sought. A party seeking to challenge the propriety of a summons issued by the Board may do so at the outset of the hearings of the matter.

Reference: *C.M. Ventilation Ltd./Ltee. vs. Sheet Metal Workers International Association Local Union 437* (1991) 122 (NBR)(2d) 181.

3. Once advised of its issuance, it is the responsibility of the party seeking a summons to obtain it at the offices of the Board and arrange service. Proper service requires that the person summoned be served with a copy of the summons and provided with an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits before the Court of Queen's Bench.

4. The Board, of its own motion, and in the exercise of its discretion, may summon a witness to appear during any proceeding. In such circumstances, the Board will arrange for service of the summons and will provide an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits before the Court of Queen's Bench.