

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.

VI. AFFIDAVIT EVIDENCE

(i) General

1. The Board is not bound by the Rules governing admissibility of evidence in Court. It may receive and accept evidence and information on oath, affidavit or otherwise as it, in its discretion, considers fit and proper. Nevertheless, the Board may only act on evidence which has cogency in law.

References: *IRA s. 121(2)*
 PSLRA s. 21
 ESA s. 53(2)
 PBA s. 56(2)
 Inquiries Act s. 8

Reference: *R. v. Barber* 68 CLLC para. 14, 098(Ont)(CA).

2. Ordinarily, the Board will admit evidence in affidavit or declaratory form in the absence of the deponent only where the matters deposed provide information as to uncontested facts in issue. Where the facts in issue are contested, ordinarily the Board will reject evidence in affidavit or declaratory form unless the deponent is available at the proceedings to be cross-examined.

(ii) Statements of Desire

3. By its *Rules of Procedure* the Board requires oral evidence in support of a Statement of Desire filed by employees in an application for certification or for termination of bargaining rights. The Board will not admit evidence in affidavit or declaratory form filed in support of the Statement of Desire.

Reference: *C.M. Ventilation Ltd./Ltee. vs. Sheet Metal Workers International Association Local Union 437* (No. 1) CLLC, para. 16,025 (IRB); (No. 2) 91 CLLC para. 16,026(IRB).

(iii) Interim Orders

4. An Application for Interim Relief under section 106(9) of the *Industrial Relations Act* must be made in writing, outlining the facts upon which the complainant relies in seeking such interim relief.

5. Evidence in the form of an affidavit or statutory declaration may be filed in support of a request for interim relief. Such evidence should go to the issue of the irremediable harm alleged from the continuing alleged violation of a provision of the Act and not to the merits of the underlying complaint of unfair practice.

6. Where the Board schedules for hearing before it a request for interim relief, it will limit the proceedings to the issue of the alleged irreparable harm, and will not inquire into the merits of the underlying complaint of unfair practice. Any evidence tendered in the form of an affidavit or statutory declaration in support of such a request should be limited to matters in the actual knowledge of the deponent.

7. Where the Board issues an Interim Order on a request for interim relief, it schedules the underlying complaint for hearing and full inquiry in accordance with the requirements of the Act.