

## **THE HEARING PROCESS UNDER THE *EMPLOYMENT STANDARDS ACT***

*The following is an Information Bulletin prepared by the administration staff of the New Brunswick Labour and Employment Board (“Board”). It is designed to provide general information and a clearer understanding of Board hearings under the Employment Standards Act, especially for self-represented parties. This Information Bulletin is an informal tool and is not binding on the Board.*

### **Preparing for a Hearing**

Once the Board sets a hearing date, it will inform the parties involved of the date, time and place of the hearing. The hearing will generally proceed in the official language chosen by the party that referred the matter to the Board. However, if you wish to proceed in the other official language, please contact the Board immediately upon being notified of the hearing so that appropriate arrangements may be made. These may include securing a bilingual decision-maker and translation services.

You do not need to be represented by a lawyer at any stage of the Board’s proceedings; however, you may hire one, at your own cost, if you so choose.

If you have witnesses that support your case, you should bring them with you. If you believe that one of your witnesses may not appear at the hearing, you may ask the Board to prepare a summons compelling the person to appear. It is the responsibility of the person requesting the summons to deliver it to the witness and to pay all related costs. The Board’s staff can answer any questions you may have about this process.

If you have any documents that support your case, you should bring the original document as well as a sufficient number of copies to distribute to the Board Chairperson and the other parties. Documents filed with the Board during the hearing are referred to as “exhibit evidence”. Unless both parties agree on the authenticity of a particular document, it can only be introduced through a witness who created, sent or received the document. Remember that you can be your own witness.

### **Hearing Process**

At the hearing, a single-member panel, consisting of the Board’s Chairperson or a Board Vice-Chairperson, will ask the parties to present their evidence. Evidence is presented either by calling a witness to testify (oral evidence), or by presenting documents, letters or other objects (exhibit evidence) in support of your case.

#### **Order of presentation of evidence during a hearing (who goes first)**

Under section 69(1) of the *Act*, the Director of Employment Standards (“the Director”) is made a party to any matter referred to the Board and is responsible to present the case in support of any decision or order she has made.

Accordingly, if the Director has made an order in your favour, the Director will proceed first and will have the opportunity to call you as a witness. If, as the referring party, you are the party against whom an order is made, then you will follow the Director’s evidence with your own.

### **Examination, cross-examination & re-examination**

Again, because the Director proceeds first, the Director is required to call the first evidence, and to ask questions relevant to the order made. If you are the party against whom the order has been made, then you proceed next. You have the right to cross-examine any witnesses that the Director has called before you call any of your own evidence, either through yourself or a supporting witness. As a matter of practice, where the Director has called a witness, and you have cross-examined, the Director then has the right to re-examination, as is the case for you in the event of any witnesses that you call. It is to be noted that during re-examination it is expected that you will only address issues that were brought up on cross-examination and were not addressed in the original questioning of the witness. The Board Chair will generally assist self-represented parties as to any rules of evidence.

All witnesses must be sworn in, either by taking an oath on the Bible or by solemnly affirming to tell the truth during their testimony. If you are representing yourself, you may be your own witness. You will take the witness stand and be sworn in, like all other witnesses, and recount the facts, as best you can, that lead to the filing of a Complaint. The opposing party, regularly the Director, will have an opportunity to cross-examine you once you finish telling your side of the story.

During this stage of the hearing process, you should not be telling the Board how you would like the case to be decided; you are merely presenting the facts and explaining what happened.

When all witnesses have testified and any relevant documents have been submitted into evidence, the parties proceed to the argument stage.

### **Argument**

At this point in the hearing process, the parties have told the Board about the facts that lead to the Complaint (what events took place, what was said, etc.).

At the argument stage, the parties, in the same order that the evidence was presented, will tell the Board what they would like the Board to conclude, based on the facts and evidence already presented, and why. The Director will argue on behalf of the party on whose behalf it is acting.

To support your case, you may, in your arguments, refer to past decisions of the Board or of other labour boards and courts where similar issues were examined. That being said, Board members will take into account the *Act's* provisions and relevant past decisions, and will base their decision on the information on the file and their appreciation of the witnesses' testimony.

### **After the Hearing**

Once the hearing has concluded, the Board is required to write a Decision and it will be sent to the parties by mail as soon as possible.

If a party refuses to comply with the Decision, additional steps may be taken, including, for example, the imposition of fines and/or a filing of the Board's Decision with the Court for enforcement.