

COSTS

INTRODUCTION

The [Labour Relations Code](#) allows the Board to award costs in certain circumstances. Costs are compensation awarded to one or more parties for expenditures related to a proceeding before the Board. Section 12(2)(i) reads:

12(2) The Board may for the purposes of this Act

(i) award any costs it considers appropriate in the circumstances if an application, reference or complaint, or a reply or defence to it, is, in the opinion of the Board, trivial, frivolous, vexatious or abusive.

This policy describes:

- appropriate circumstances for costs; and
- setting the amount of costs

APPROPRIATE CIRCUMSTANCES FOR COSTS

Section 12(2)(i) allows costs where an application, reference or complaint or a reply or defense “is trivial, frivolous, vexatious or abusive.” The words trivial, frivolous, or vexatious are also used in Section 16(4)(e) of the Code referring to the power of summary dismissal. It reads:

16(4) When a complaint is made under subsection (1), a reference is made under subsection (2) or any other application to the Board is made under this Act, the Board may do one or more of the following:

(e) where the Board is of the opinion that the matter is without merit, or is frivolous, trivial or vexatious, reject the matter summarily.

As the costs power in Section 12(2) omits the reference “the matter is without merit,” it is arguably narrower than the power to dismiss summarily. This suggests that the legislation does not intend costs to be awarded just because an application or defense lacks merit. Instead, it limited the power to those cases involving some forms of abuse of process.

Parties have argued that the Board’s more general powers to rectify (contained in Section 16(8) and 17(1)) allow the Board to award costs in any case, without being limited by Section 12(2)(i). The specific power would appear to overrule the general on this point. The Board has not yet decided the issue under the [Labour Relations Code](#).

The Board has adopted a cautious approach to costs, for policy reasons. These were expressed in the pre-Code case of *Robert Hunter, Douglas Barnes and Ken Williams v. IBEW 424* [1986] Alta.L.R.B.R. 366 and include:

- awarding costs labels a winner and a loser, which is counterproductive in an industrial relations relationship;
- assessing reasonableness of costs is not something for which the Board's processes are well suited, and would detract from the Board's primary labour relations functions;
- the awarding of costs has a punitive connotation that is inappropriate in the context of labour board remedies;
- awarding costs does not respond to the real harm done; and
- routinely awarding costs would encourage parties to hold off settlements that might otherwise be appropriate in the hope of recovering costs.

SETTING THE AMOUNT OF COSTS

The Board can award "costs it considers appropriate in the circumstances." The Board must make a judgment based on the degree of frivolity, vexatiousness, etc. It must also consider the extra time and expense to which the party paying costs has put the party to whom they will be paid.

The Board's power is not equivalent to the Court's power to award costs in civil cases. The Court's power is far broader, and the policy reasons against costs are of little importance in that setting. Therefore, the Board should use its own yardstick for costs, not Court-based rules like "costs in column 5," "solicitor and own client costs" or "costs to be taxed." Taxation falls outside the Board's process and may lack sensitivity to the labour relations issues and proceedings involved.

It is generally sensible for Board panels to set out those aspects of the proceeding for which they want to award costs. Panels can articulate their general approach in a decision. They can then reserve jurisdiction to fix the final amount. This procedure allows the parties to negotiate over the matter. The Panel might also appoint a Board officer (or member) to try to mediate the issue within the Panel's guidelines. Such approaches avoid the Board becoming embroiled in the relationship between lawyers and clients during the hearing process. Direct involvement by the Board panel in such matters distracts from the case, reduces the chance of settlement and raises important questions of privilege and confidentiality. Ultimately, the Board may be forced to fix the amount of costs, but normally the labour relations issues will have, by then, been dealt with.