

INTRODUCTION TO DETERMINATIONS

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Section 12(3) of the [Labour Relations Code](#) allows the Board to decide specific issues. The Board makes many such determinations as it rules on applications. For example, the Board may determine who is an employee when a union applies to certify a bargaining unit. The Board also receives determination applications. For example, the Board may decide whether or not a person is an employer or if a collective agreement has been entered into.

Section 12(3) serves two purposes.

- It gives the Board the clear authority to decide some specific questions that fall within its area of expertise. The Code says, for each such decision, the Board's decision is **final** and **binding**. This wording is in addition to section 12(4) and 19(1). All of these provisions tell the Courts that they should be very reluctant to interfere with Board decisions.
- It allows parties to ask the Board to decide any one of the questions listed in Section 12(3). The Board will normally do so if the party has the status to apply and it is useful to do so "for the purposes of the Act."

This policy deals specifically with "determination applications." The Board rules on questions listed in Section 12(3) as they arise in other applications. This policy describes:

- who can apply and about what questions; and
- how the Board acknowledges and processes applications.

WHO CAN APPLY AND ABOUT WHAT QUESTIONS

Three issues arise from determination applications:

- Is the question one that Section 12(3) gives the Board authority to decide?
- Is it useful to make the decision for the purposes of the Act?
- Does the applicant have the status to apply for that determination?

Section 12(3) Questions

Section 12(3) gives the Board the power to make a number of decisions. The section states:

12(3) The Board may decide for the purposes of this Act whether

- (a) a person is an employer,
- (b) a person is an employee,
- (c) an organization or association is an employers' organization,

- (d) an organization of employees is a trade union,
- (e) an employer has given an employers' organization authority to bargain collectively on the employer's behalf or has revoked that authority,
- (f) a collective agreement has been entered into,
- (g) a person is bound by a collective agreement,
- (h) a person is a party to a collective agreement,
- (i) a collective agreement has been entered into on behalf of any person,
- (j) a collective agreement is in effect,
- (k) the parties to a dispute have settled the terms to be included in a collective agreement,
- (l) a group of employees is a unit appropriate for collective bargaining,
- (m) a person has applied for membership or has terminated the person's membership in a trade union,
- (n) a person is a member in good standing of a trade union,
- (o) a person is included in or excluded from a unit,
- (p) an employer is affected by a registration certificate of a registered employers' organization,
- (q) an employee is employed in a sector,
- (r) an employee is employed in a trade jurisdiction,
- (s) an employer is engaged in the construction industry or in a part of the construction industry,
- (t) a strike has occurred or is lawful under this Act, or
- (u) a lockout has occurred or is lawful under this Act,

and the Board's decision is final and binding.

Most of these determinations involve status or rights under the [Code](#). The question of whether other sections apply to people or parties often depends on these more basic determinations. In this manner, determinations can affect other rights under the [Code](#). For example, determination of employee status will affect voting rights in a representation vote.

For the Purposes of the Code

The Board's power to rule on Section 12(3) determination applications is discretionary. If the determination is unnecessary for the purposes of the Act, the Board may refuse to hear the application. Many of the issues listed in Section 12(3) also arise under collective agreements. For example, if a collective agreement's scope clause is the same as the unit description, the question of a person's managerial status might be arbitrated, or brought to the Board under Section 12(3). The Board might defer to arbitration under Section 16(4)(d). It might also find a decision was not necessary "for the purposes of the Act" and refuse the application.

Who Can Apply?

Only parties with a legal interest in the issue can apply for a determination under Section 12(3). Applications by parties who are not affected are not "for the purposes of the Act." Such people lack status to bring the application. Similar questions of status arise about who gets notice of a Section 12(3) application as an affected party and who can appear to make submissions. See: [[Section 16\(6\)](#)].

REVIEWING THE APPLICATION

Examine the application and the related documents for completeness and errors. See: [[Particulars, Chapter 19\(b\)](#)]. Request further information or supporting documents where necessary. A party seeking a determination must include all of the information set out in Rule of Procedure 6 and:

- The specific subsection covering the determination (e.g., a party seeking an employee/bargaining unit determination does so under Section 12(3)(b) and (o)).
- Details of the bargaining relationship.
- For employee determinations, the name of the person(s) in question. The Board does not make determinations on a classification or a position. Where available, documents supporting the application, such as job descriptions and organizational charts.
- Efforts made by the affected parties to resolve the dispute. Applicants should always consult with other affected parties and try to resolve the dispute before bringing the application. The Board may dismiss the application where the applicant has not consulted the other parties.

Applicants must serve a copy of the application on the respondent(s). Date and time stamp the application. Enter it in the database and open a process file. Note that, for several Section 12(3) matters, we group similar applications and treat them as one file.

ACKNOWLEDGEMENT AND PROCESSING

The Director of Settlement, with the assigned officer, determines the appropriate dispute resolution strategy. Contact the affected parties of the application, ensure they received a copy of the application, and outline the process. Applications affecting employees require a notice posted at the worksite. If the number of employees is small, it may be more appropriate to send individual letters to the employees. Schedule any settlement meetings, resolution conferences or hearing dates as soon as possible.

It is important for the officer to understand the application and the potential impact of the determination sought. Find out what steps the applicants took to resolve the dispute. Encourage them to discuss the application with the other parties first. If the employer seeks an employee determination, ask the employer to identify into which unit they believe the employee fits.

OTHER POLICIES

The policies that follow in this chapter deal with specific determinations such as employee status. Also included are window periods for certification and revocation applications because the Board may make a determination on whether or not a collective agreement is in effect. These determinations are important because they can affect the 40% support threshold in certification and revocation applications. They can affect who can vote on bargaining unit issues and who is covered by a collective agreement. The window periods are important as they decide whether an application is timely or not.