

# SPEEDING UP ARBITRATION

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## INTRODUCTION

Collective agreements often provide strict time limits for processing grievances up to arbitration. There are, however, no statutory time limits for completing arbitrations.

On occasion, lengthy delays in completing the arbitration process occur. There may be lengthy delays getting an issue to hearing. At other times, considerable time passes after the hearing, but before the parties receive a decision. Section 140 gives the Board the power to speed up these delays. The Board has published [Information Bulletin #20](#) to help parties make such applications.

This policy covers:

- Board powers to speed up arbitration;
- who may apply; and
- Board process to speed up arbitration.

In addition to its powers in specific cases, the Board has a general power to set industry guidelines for arbitration. This policy also describes:

- the Board's power to set arbitration industry guidelines.

## BOARD POWERS

Parties are very particular who they nominate to an arbitration panel. They are even more selective in choosing who chairs an arbitration. Depending on the availability of those chosen, it may take many months for an issue to go to a hearing. Decisions delay the process further. The length of arbitration hearings vary. This depends on the complexity of the issues, the number of witnesses and the amount of evidence submitted. These procedures and problems are not unlike hearings of the Labour Relations Board. The Board should proceed cautiously in exercising its powers to speed up an arbitration.

If the Board finds undue delay, it may virtually restructure an arbitration panel. See: [*CUPE 812 and Municipality of Crowsnest Pass* [1987] Alta. L.R.B.R. 398]. It may do so by replacing the entire panel or any of its members. It can substitute the panel with a new single arbitrator. This power overrides any procedure in the collective agreement. The Board may set time constraints on the arbitration panel. It may also give directions on how a panel should finish its business.

Section 140(1) sets out the Board's powers.

140(1) When a difference has been submitted to an arbitrator, arbitration board or other body, whether or not a hearing has been held, and one of the parties to the difference complains to the Board that the arbitrator, arbitration board or other body has failed to render an award within a reasonable time, the Board may, after consulting with the parties and the arbitrator, arbitration board or other body,

- (a) issue whatever directive it considers necessary in the circumstances to ensure that an award will be rendered in the matter without further undue delay, or
- (b) appoint a new arbitrator, arbitration board or other body to act in the place of the arbitrator, arbitration board or other body complained against.

The Board may exercise these powers whether a matter has gone to hearing or not.

Do not confuse the powers to appoint an arbitrator or an arbitration board with the authority to speed up an arbitration or replace an arbitrator or board. If the parties fail to appoint or cannot agree on the appointment of an arbitrator or arbitration panel member, either party may ask the Director of Mediation Services (or the Chair, under [PSERA](#)) to make the initial appointment. See: [[Appointing Arbitrators, Chapter 31\(g\)](#)]. The Director of Mediation Services has the power to make the initial appointment if the parties fail to do so, or cannot agree. See: [[Sections 137\(1\) and 138\(1\)\(c\)](#)]. If the arbitration process, once established, is delayed, the Labour Relations Board has the authority in Section 140 to provide direction to the arbitrator or panel, or replace any or all of them with someone else.

## WHO MAY APPLY?

Section 140 says the parties to a difference may file a complaint. Normally the only parties to the arbitration process are the union and the employer. Individuals affected by an arbitration usually do not make a formal complaint. The Board may, however, deal with an individual's complaint as detailed below under Board Process.

It may also deal with an individual complaint through a Duty of Fair Representation complaint. See: [[Duty of Fair Representation, Chapter 33\(f\)](#)]. In such a case, the employees may allege the union breached its duty by delaying the arbitration or not taking steps to get a timely decision. If the Board found a breach, it could direct the union to take steps to speed up the arbitration.

## BOARD PROCESS

The Director of Settlement reviews all complaints received under Section 140(1). A complaint must include:

- the parties' names, addresses and telephone numbers;
- what has been done so far;
- what it is that is delaying the process; and
- what the party wants the Board to do to expedite the process.

The particulars should include the original grievance and the documentation up to the arbitration hearing. Particulars should also include any correspondence between the parties (including the arbitrator) that may be important to the issue of delay. The particulars should give a detailed chronological record of the events in the grievance process. The Board need not concern itself with the merits of the grievance itself. See: [[Particulars, Chapter 19\(b\)](#)].

The Director of Settlement reviews the matter for completeness. If necessary, obtain additional information. The Director may try to resolve the matter informally or refer it immediately to the Chair.

There are two processes the Board may use to resolve matters dealing with this issue: a formal process and an informal process. It is unlikely an issue will proceed to formal hearing. In the *Crowsnest Pass* decision (above), the Board noted that the legislation used the words “after consulting with the parties.” This indicates that the legislature contemplated an informal approach to resolving this type of issue.

Parties are often reluctant to make a complaint against an arbitrator. They may feel a complaint will prejudice their case. They may worry that the arbitrator will get upset. They fear a ruling against them to “get even” for casting doubt on the arbitrator’s ability to give a timely decision. As a result, the Chair or Director will proceed cautiously, perhaps without identifying the source of the complaint.

The process begins as soon as the Board receives a complaint or even a potential complaint. This may be nothing more than a conversation between a complainant and the Director of Settlement. Full particulars are not required at this stage. The emphasis is to deal with the matter as quickly as possible and keep it low key.

Persuasion is the best tactic. Usually the participants are highly professional people who are well aware of the process. They may not be disputing facts or issues about the delay. Often it is simply a matter of circumstances that have delayed the process beyond acceptable time frames. Often, telephone conversations between the Director and the chair of the arbitration panel will resolve the matter. This type of intervention usually serves as a friendly reminder to the arbitrator that they may be inadvertently tardy in their duties.

Use the same informal approach if an individual affected by the arbitration makes a complaint to the Board. Individuals rarely make such complaints. If they do, we usually approach the trade union and ask them to deal with the individual. This may prevent the situation from becoming more serious.

If the Director cannot resolve the matter quickly, the Chair reviews the complaint immediately. The Chair may contact the parties and make similar informal inquiries. During these inquiries, the Chair

may discuss the provisions of Section 140(1) and the possibility of scheduling a hearing into the complaint.

If the informal inquiries by the Director of Settlement or Chair are not successful, the Board sets the matter to hearing as soon as possible. See: [[Hearings, Chapter 34](#)].

The Director must first:

- Ensure proper particulars support the application. The parties should have provided detailed responses to find as much common ground as possible.
- Give the arbitrator an opportunity to make representations, if the arbitrator desires, before the Board makes a decision.

The Board neither issues a Board officer report nor undertakes a formal investigation. The matter is set directly to hearing if the informal process is unsuccessful.

The Board hears evidence about the reasons for the delay. It issues a speedy ruling so as not to compound the delay. The ruling sets out strict guidelines to the arbitrator to speed up the process. The Board can appoint a new arbitrator or arbitration board. It only uses this as a last resort as the process would have to start over. This is because evidence and argument from one arbitration does not flow to another.

## **GUIDELINES FOR ARBITRATION**

Section 140(2) gives the Board the power to set up guidelines. It states:

140(2) The Board may establish guidelines for the purpose of determining acceptable standards for avoidance of delay by arbitrators, arbitration boards and other bodies.

Under Section 140(2), the Board may establish time frames as guidelines for arbitration. It could set standards saying certain types of grievances be dealt with within certain time frames. An example could be that all dismissal grievances should be heard and decisions issued within 90 days.

The Board has advised the parties that they should reach consensus on guidelines affecting them. If not, the Board will, after consulting with the parties, issue guidelines. The guidelines issued by the Board to date are limited to those outlined in [Information Bulletin #20](#).