

HEARINGS AND SCHEDULING

INTRODUCTION

This chapter addresses how the Labour Relations Board makes decisions. Fairness dictates that the Board give people notice and an opportunity to be heard before making decisions that affect their interests. For that reason, the Board holds some form of **hearing** before making a **decision**.

This policy describes:

- types of Board decisions and how they are made;
- types of hearings to hear affected parties;
- the scheduling process;
- the after-hearing process; and
- tracking exhibits.

TYPES OF BOARD DECISIONS AND HOW THEY ARE MADE

The Labour Relations Board actually consists of all its approximately 44 members. Obviously, they cannot all meet to decide every item of business. How decisions are made depends on what the decisions are about. Decisions fall into three types:

- **Policy Decisions:** These are decisions about the way the Board should administer the [Code](#). They involve general principles more so than minor details. They apply to all matters, not specific cases. These decisions are made at meetings of the full Board called “Caucus Meetings.”
- **Administrative Decisions:** These are day-to-day questions about how staff carry out tasks assigned by the Board. They include administrative matters like staffing, budgeting, and office procedures. They also include procedural matters about the way cases are handled. This includes decisions about pre-hearing issues such as notice, investigations, reports etc. delegated to staff under the Rules. The Chair, as the Board’s Chief Executive Officer, has overall responsibility for administering the Board’s resources. The Board’s Rules give staff the authority to make many administrative decisions about individual cases assigned to them. For examples, see the Director of Settlement’s powers under [Rule 22](#), or the powers given to Returning Officers under the [Voting Rules](#).
- **Quasi-Judicial Decisions:** These are decisions that involve deciding a party’s rights under the [Labour Relations Code](#), the [Public Service Employee Relations Act](#) or [Police Officers Collective Bargaining Act](#). They require the exercise of the Board’s judgment. These decisions may also have policy implications for the Board.

The rest of this policy describes how the Board makes these quasi-judicial decisions. Because these decisions affect rights, affected parties must be given notice and a chance to make representations. How much notice and what form of representation varies with the kind of question(s) being decided. For the sake of brevity, we call the opportunity to make representations “a hearing.” We use this term, even though it sometimes does not involve a meeting with parties actually present.

Quorum

Instead of the full Board hearing each case, Section 9 of the [Code](#) allows the Board to sit in smaller groups called “panels.” The smallest allowable group (“the quorum”) is the Chair or a Vice-Chair presiding at a meeting with two other members. See: [[Section 9\(6\)](#)].

Section 9(7) says “A *decision* of a majority of the members of the Board or a panel present and constituting a quorum is the decision of the Board...”. This means that, when the minimum panel of three people makes a decision, it is as legally valid as if it had been made by the full Board. Panel decisions require the support of two of the three panel members.

There are two exceptions to the quorum rule. Board members can make informal decisions under Section 11. The Chair or a Vice-Chair can also make some decisions sitting alone under Section 9(10), 9(11) and 15(5) of the [Code](#) or Section 3(3) of the [Act](#).

Section 11—Informal Decisions

Section 11 allows the Board to use an informal hearing process to try to resolve a case. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)]. If the parties agree to adopt a report issued by the Board member, they apply under Section 11(3). The report then must go before a Board panel for confirmation. Once confirmed, an informal decision becomes a legally enforceable Board decision.

Chair or Vice-Chair Sitting Alone

Section 9(10) of the [Code](#) allows the Chair or a Vice-Chair, sitting alone, to decide under Section 12(3) whether:

- a person is an employee;
- an organization of employees is a trade union;
- a group of employees is a unit appropriate for collective bargaining;
- a person has applied for membership or has terminated their membership in a trade union;
- a person is a member in good standing in a trade union;
- a person is included in or excluded from a unit;

or to decide:

- any question that arises with respect to a strike or lockout vote ([Section 76\(4\)](#));
- whether to grant a requested adjournment ([Section \) 9\(1\)](#));

- whether to grant a requested notice to attend or notice to attend and produce documents (Section 14(2)); and
- who is eligible to vote on any matter ([Section 15\(5\)](#));

or to direct:

- persons to stop electioneering for any period of time before the date of a vote ([Section 14\(5\)](#));

or to grant any order or directive within the Board's jurisdiction:

- where all the parties consent; or
- where, after a period of notice determined by the Board, none of the parties object ([Section 9\(11\)](#)).

Under Section 3(3) of the [Act](#), a Chair or Vice-Chair alone can determine if:

- a person is an employee;
- an organization of employees is a trade union;
- two or more employees are a bargaining unit;
- a person has applied for membership;
- a person is a member in good standing of a trade union; or
- a person is included or excluded for a unit.

Frequently, the Chair or Vice-Chairs use these powers in certification applications where there are no objections and the parties waive a hearing. See: [[Certification, Chapter 21\(f\)](#)].

Objections

If no objections are raised, the Board may deal with the case without an in-person hearing. Otherwise the Board will hold the hearing as scheduled. If the Board receives no objections, it processes the application based on the information in the officer's report. In a certification or employee-initiated revocation application, it sets or confirms the date of the representation vote if there is 40% support of the employees. If the support is lacking or if there is some other problem with the application, the Board will dismiss the application.

If there are objections to the application or to the officer's report, the Board will hear from the parties on these matters at the hearing. Often when parties come together for the hearing, the Board officer helps them resolve any or all disputes up until the hearing starts.

While the Chair or a Vice-Chair can sit alone in any of these cases, panels are often used. For contentious matters, the advantages of a full panel normally outweigh the efficiency of a single

person deciding the case alone.

TYPES OF HEARINGS

A hearing is the way the Board gives parties a chance to make submissions or call evidence before it issues a decision. Section 12(2)(c) allows the Board to “*conduct any hearings it considers necessary.*” The Board’s duty to give notice is set out in Section 16(6):

16(6) The Board shall give notice to any party that, in the opinion of the Board, may be affected by a complaint, reference or application filed with the Board.

Hearings take a variety of forms. Generally they can be broken down this way:

- regular hearings;
- administrative panels;
- urgent hearings;
- written submissions;
- resolution conferences;
- documentary reviews; and
- the Chair/Vice-Chair sitting alone.

Regular Hearings

The Board handles most contested matters through a regular (formal) hearing. This includes determinations, contested certification and revocation applications, unfair labour practices, references, sale-lease-transfer or spin-off applications. The Board gives parties written notice of the hearing. At the hearing, they can call evidence and present arguments to support their position before the Board makes its decision.

Administrative Panels

Administrative panels are Board meetings without the parties being present. They deal with uncontested matters which require Board review and approval. In most situations, these administrative panels hear cases where the parties have received an officer’s report and take no issue with its contents. Sometimes, such panels will deal with uncontentious or preliminary matters where a decision must be made, but the only submissions necessary can be taken from the correspondence on the Board’s file. Such situations often arise in cases involving employer and trade union name changes, successor rights applications and determinations. Parties may confirm in writing that they have no objections, or an officer can confirm there are no objections in an Officer’s Confirmation Memorandum or report.

Such panels also usually deal with applications for notices to attend and notices to attend and produce without an in-person hearing. See: [[Notice to Attend/Produce, Chapter 32](#)]. Administrative

panels can handle uncontested certification or revocation applications without an in-person hearing, deciding such cases on the basis of the officer's report and confirmation that no employees registered timely objections. Finally, such panels examine duty of fair representation complaints to determine if they merit a full hearing.

Urgent Hearings

Urgent hearings are just like regular hearings, except that they are called on short notice because of the urgency of the case. Urgent hearings are always held for:

- applications alleging illegal strikes and lockouts;
- hot cargo matters;
- picketing cases; and
- proposal votes.

Urgent hearings may also be held for:

- disputed ballots on certification or revocation matters;
- cases alleging illegal employment terminations;
- interim orders needed to restore the status quo;
- urgent bargaining matters; and
- duty of fair representation complaints where delay may result in a real financial loss. See [\[*Duty of Fair Representation, Chapter 33\(f\)*\]](#).

Urgent hearings are infrequently held in these cases. Even an urgent hearing usually requires a minimum of 4 hours of notice to the parties. A party may request an urgent hearing. The Director of Settlement assesses the need for an urgent hearing and schedules the hearing accordingly.

Written Submissions

It is not necessary to have a regular hearing to decide all matters. The Board can decide some issues on the basis of written submissions. The Director of Settlement may decide there is no need for a hearing if there is no dispute over evidence. In some cases the parties may agree on the evidence through an agreed statement of facts.

Matters that can be handled in this fashion include employee determinations and questions involving law and its interpretation or application. Reconsideration applications are often dealt with this way.

If the Director of Settlement decides the Board will deal with a matter through written submissions, the Director confirms this in writing with the parties. The Director's letter to the parties should fix dates for filing written submissions, as well as rebuttal and counter-rebuttal. Establish dates for submissions based on the complexity of the matter. In most cases, 15-20 days is sufficient for written submissions. One week should be adequate for rebuttal.

Resolution Conferences

As part of the Board's dispute resolution technique, the Board schedules resolution conferences to help settled cases prior to hearing. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)]. Resolution conferences normally occur two weeks prior to a hearing date and are held for:

- determinations;
- applications to modify bargaining rights;
- unfair labour practices;
- duty of fair representation complaints;
- applications for religious exemption from union dues; and
- any other application the Director of Settlement directs.

Following a resolution conference, the Chair or Vice-Chair records any withdrawal or settlement of issues, any agreement between the parties about procedure, and any case management directives on a Hearing Summary. This summary is given to the Hearing Co-ordinator who puts the original in the Board's process file.

Documentary Review

In some limited cases, a file may be forwarded to a Chair or Vice-Chair to review alone or with a panel for the purpose of:

- giving advice and directions on how to proceed with the file;
- determining if the matter should proceed to a formal hearing; or
- determining if the matter should be dismissed under Section 16(4)(e).

This documentary review is a form of hearing and may entail a conference call or meeting set up by the Hearing Co-ordinator. The panel records its decisions on how to proceed with the file on the Hearing Summary. The Hearing Co-ordinator places the original on the process file and enters any commitments into the database.

THE SCHEDULING PROCESS

To schedule a matter for hearing, the Board must decide:

- when the hearing will begin and how long it will take;
- who will sit on the hearing panel, given availability, conflicts and suitability; and
- where to hold the hearing.

Responsibility for Scheduling

Section 9(5) gives the Chair the authority to decide who will chair a hearing. The Chair or designated Vice-Chair then has the authority under Section 9(1) to set the time and place.

9(1) The members of the Board shall meet at the times and places specified by the Chair or a vice-chair, and may meet as the Board or as divisions of the Board.

(5) At the direction of the Chair, a vice-chair shall preside at a meeting of the Board or one of its divisions.

Once the Chair has referred a matter to a panel for hearing, Rule 22(1)(j) delegates the power to set the date and place of hearing to the Director of Settlement. This power is subject to any express direction from the Chair or Vice-Chair. The Director may delegate this responsibility to an officer.

After the time, place and persons to sit on a hearing are set, the Hearing Co-ordinator immediately enters that information in the database. Many staff rely upon this information. All posting must be prompt, comprehensive and accurate. The information in the hearing schedule about which Chair or Vice-Chair or panel members are assigned is posted on the Board's website but is normally subject to change until 48 hours before the hearing. This is because the panel may change before the hearing if other commitments arise.

Setting the Time and Date

The Director of Settlement examines the hearing calendar for suitable hearing times and dates. See: [[Rules of Procedure, Rule 22\(1\)\(j\)](#)]. The Director schedules hearings as soon as possible given the need for procedural fairness.

- **Urgent matters:** Schedule for hearing right away. Provide a minimum four hours notice.
- **Regular matters:** Schedule so the parties receive adequate written notice of a hearing. Find dates convenient for the parties, if possible. The Board has the responsibility to schedule the matter in a timely way. If a sufficiently close convenient date cannot be found, fix a date and let the objecting party apply to adjourn.
- **Certification and revocation applications:** Schedule 8 to 10 working days from the date of receipt of the application.

The Board also schedules resolution conferences at this time. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)]. These conferences are scheduled for most regular matters and occur approximately 14 days before the hearing date, depending upon the availability of the Chair or Vice-Chair and other parties.

The Director of Settlement must assess the amount of time required to hear a matter. The Director reviews the file and holds preliminary discussions with the officer and the assigned Chair or Vice-Chair and the parties if necessary. The Director must assign an adequate amount of time to deal with

a matter. Complex matters involving several parties and witnesses may take one or more days.

Straightforward matters can be scheduled with other simple matters. Schedule most cases for a hearing starting at 9 a.m. or 1 p.m. If there are several matters scheduled for the same day, stagger the start times realistically, given their likely length.

Before scheduling a hearing date, confirm the Chair or Vice-Chair is available for that time. Immediately confirm that Board members are also available.

Who Will Sit

The Board usually sits using three-person panels. In some cases, the Chair will direct that more than three persons will sit. This may happen for reconsiderations or matters which have major policy implications. New Board members may also “ghost sit” a panel to learn how the Board operates. The new member sits in on the hearing and the deliberations but does not participate.

Always try to balance Board panels. This means assigning panels so that there is equal representation from employer and trade union Board members. Legally, any two members can sit, but balanced panels are desirable.

Board members cannot sit on matters where they have a conflict of interest. See [[Role of the Board Member, Chapter 7\(b\)](#)]. If there is any doubt, advise the Chair or Vice-Chair, who may speak to the member. They may decide that another Board member should sit. Avoid unnecessary adjournments by identifying conflicts before the hearing takes place.

The Chair may direct that particular Board members sit on matters that require special expertise.

Schedule Board members to sit on panels closest to their place of residence whenever possible. This reduces travel costs.

Try to equalize the amount of time Board members sit.

Location

The Board can sit anywhere in the province but virtually all hearings take place in the Edmonton or Calgary hearing rooms. Hearings outside of Edmonton or Calgary require the permission of the Chair.

The Hearing Co-ordinator makes any out-of-town hearing arrangements. The Hearing Co-ordinator books the room (preferably a government building), out-of-town accommodations, and flights for the panel. The Hearing Co-ordinator advises the staff at the hearing location about how the room should be set up.

Adjournments and Rescheduling

The Director of Settlement has the power to adjourn a matter set for hearing if all the affected parties consent. See: [[Rule 22\(1\)\(1\)](#)]. The Director should normally reschedule the matter at the same time as granting the adjournment.

If consent cannot be obtained, the Director of Settlement should refer adjournment requests to the Chair who will either hear the request or assign it to a suitable panel or Vice-Chair. Section 9(1) gives the Chair or Vice-Chair sitting alone the power to deal with adjournments.

If a request for an adjournment comes before a panel during a hearing, the panel will deal with the request, and usually any rescheduling issues, at that time. The Hearing Co-ordinator must make sure the panel has all the necessary information about available dates so that any rescheduling does not create a conflict. If a hearing is rescheduled, note particularly whether the same panel must hear the case because they are seized with the matter.

Cancellations

If there are no objections and the Chair or Vice-Chair is agreeable to cancelling the hearing, the officer must tell the affected parties that the Board has received no objections. Then discuss cancelling the hearing. If both parties agree to waive the hearing, cancel it. If any party with status insists on a hearing, the hearing goes ahead as scheduled. This is so, even if no one files an objection.

If the hearing is to be cancelled the officer prepares a memo to file. This memo confirms the Board received no objections to the application or the officer's report. It confirms whether the parties agree to waive the hearing. Post the memo on the process file as a supporting document.

AFTER THE HEARING

The Board may decide an issue immediately and issue an oral decision (with or without reasons to follow). See: [[Oral Decisions, Chapter 34\(c\)\(i\)](#)]. The Board may also decide to reserve its decisions and issue a written decision later on. See: [[Written Decisions, Chapter 34\(c\)\(ii\)](#)].

It is the responsibility of the Chair or Vice-Chair to retain an extra set of exhibits for the Board's records (in case the file is judicially reviewed). These are given to the Hearing Co-ordinator after the hearing. The Chair or Vice-Chair must also prepare a hearing summary and provide it to the Hearing Co-ordinator. The Hearing Co-ordinator enters it into the database and the original is placed on the process file.

TRACKING EXHIBITS

The Hearing Co-ordinator is responsible for gathering the exhibits from the Chair or Vice-Chair after a hearing. The exhibits must be placed in a file (corresponding to the hearing package), stamped and recorded in the database for quick retrieval and reference by the Board panel should the hearing continue.

The Hearing Co-ordinator must make sure all of the exhibits are clean, original copies. The exhibits are kept at the Co-ordinator's desk until the hearing is closed. Once the hearing is closed, the file number changes from 8116 to 8117 (when closed) or 8118 (when under judicial review). When closed, the exhibits are then placed with the closed hearing package in the file room.