

BOARD POWERS

INTRODUCTION

The Labour Relations Board takes actions and makes decisions that may dramatically affect the rights of individuals and organizations. It must have power under law to do so. This policy discusses:

- the source and nature of the Labour Relations Board's powers; and
- the limits of the Board's powers.

THE BOARD AS A STATUTORY TRIBUNAL

The Labour Relations Board is a *statutory tribunal*. That is, it is an adjudicative body created by an Act of the Alberta Legislature (specifically, the [Labour Relations Code](#) and its predecessor Acts). Statutory tribunals derive all their powers either expressly or by implication from the Act that creates them. They have no power to do anything unless the statute gives it to them. In this respect the Board is unlike the superior Courts. It does not have the Courts' *inherent* powers, such as their power to:

- decide issues by application of the common (non-statutory) law and principles of "equity" (but it does apply the principles of common law when considering matters over which it has jurisdiction);
- oversee statutory tribunals to ensure that they operate according to the Legislature's will and the requirements of the Constitution;
- govern their own procedure (but the Board does have broad powers under Section 12); and
- enforce their own procedure—up to and including the power to punish for contempt (although there are statutory provisions covering this matter).

Like any corporate body, the Board can only act through its officials and employees. Limits upon the Board's power are also limits on the power of the persons it acts through. Section 12(6) of the Code protects Board members and employees from personal liability. It only does so, however, while the member or employee acts "in good faith" and "in the course of the member's or person's duties." The converse proposition is this: where a member or employee of the Board knowingly acts outside the Board's statutory authority, at best the action will be invalid. At worst, the Board or the individual may be liable for any loss caused by the illegal act. The Board's general authority to administer the Code comes from several sources. Section 8(1) continues the Board as established by previous legislation. Section 12(4) says:

12(4) The Board has exclusive jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Board thereon is final and conclusive for all purposes (...).

Section 12(5) gives the Board all “necessary jurisdiction and power” to carry out duties given to it on an *ad hoc* basis by the Lieutenant Governor in Council. Section 12(1) confirms the superior Courts’ approach to overseeing the activities of statutory tribunals like the Board:

12(1) Notwithstanding anything in this Act, the powers and duties of the Board shall be performed and exercised in a manner consistent with the jurisdiction conferred on the Board by this Act or any other enactment conferring jurisdiction on the Board.

The most significant “other enactments” that give authority to the Board are the [Public Service Employee Relations Act](#) (PSERA) and the [Police Officers Collective Bargaining Act](#) (POCBA). PSERA creates a distinct bargaining regime for many public sector employees and directs the Board to administer it. The POCBA creates a distinct bargaining regime for police officers and directs the Board to administer it.

PROCEDURAL POWERS

The subject matter over which the Board has authority is therefore limited to the rights and prohibitions set out in the Code, PSERA and the POCBA. The Board, however, has broad procedural powers to perform this task. These procedural powers include the power to:

- receive an application, reference or complaint (Section 12(2)(a));
- investigate a matter before it (Section 12(2)(b)) including the powers to demand, inspect and copy documents, to enter business premises, to interview employees without their employer being present, to require sworn or unsworn answers to questions, and to post notices (Section 13);
- attempt to assist parties to settle their disputes (Section 12(2)(h));
- conduct hearings (Section 12(2)(c));
- compel the attendance of witnesses (Section 14(2));
- accept evidence whether admissible in a court or not (Section 14(5));
- make rules concerning just about any aspect of its procedure (Sections 12(2)(g) and 15(4)(a));
- make interim and final orders as it considers necessary (Section 12(2)(e), (f)); and
- order votes on a wide variety of issues (Section 15).

The Legislature has directed some tribunals to observe minimum procedural requirements in the [Administrative Procedures and Jurisdiction Act](#), R.S.A. 2000, c. A-3. The Board is not totally subject to that Act, and so has greater freedom to set its own procedure.

The Labour Relations Board has a broad degree of discretion in the way it exercises these powers. The superior Courts often refer to a senior tribunal like the Board as the “master of its own procedure.” A Court will not quickly second guess a procedural action or ruling by the Board as long as the Board has acted on a reasonable view of its powers and without treating a party unfairly.

LIMITATIONS ON THE BOARD'S POWERS

The first limitation on the Board's powers is the one noted above: the Board has only the powers given to it under legislation. For example, the Board has no power to punish for contempt of the Board. Only a superior Court may take direct action to enforce a Board order. See: [[Enforcement of Directives, Chapter 35](#)].

The second limitation is that the Board must meet the requirements of natural justice. One judge has described natural justice as "fair play in action." Sometimes we call this notion "the duty to be fair" or "due process." It amounts to one idea: both parties to a dispute are entitled to a fair chance to put their own case and meet their opponent's case in front of an impartial tribunal that independently decides the dispute on its merits.

The third limitation overlaps with the second. The Board must exercise its powers reasonably. Courts assume that Legislatures did not give tribunals their powers with the intention that they be free to use them irrationally.

Finally, the Board is an element of "government" and so is subject to the [Canadian Charter of Rights and Freedoms](#). The Charter protects certain rights that are relevant to Board proceedings. They include:

- the right not to be deprived of "security of the person" except according to principles of "fundamental justice" (Section 7);
- the right to be secure from an unreasonable search or seizure (Section 8) including a forced disclosure of documents without any basis to believe they are relevant;
- the right of a party or witness who is deaf or does not understand English, to an interpreter (Section 14); and
- the right of individuals to equal treatment by the Board without discrimination (Section 15).

If the Board violates any of these limits on its powers, the Courts may intervene. The Court has the power under Section 19 of the Code to set aside any action or decision of the Board that ignores these limits. See: [[Judicial Review, Chapter 36](#)].

ADMINISTRATIVE POWERS

The Board consists of its Chair, Vice-Chairs and members. Its ability to carry out its work comes from its ability to draw on the staff and financial resources allocated to it by government.

The Board submits its budget estimates with the [Ministry](#) and works closely with certain branches of the Department. In its internal administration, however, it is independent of the Department. The [Public Service Act](#) designates the Chair of the Board as a "deputy head." As such, s/he is directly responsible for administration of the Code. By Section 8 of the *Public Service Act*, the Chair has control over the attendance,

performance, and division of duties among staff of the Board. For further explanation of the relationship between the Board and the Ministry, see: [[Relationship with the Ministry, Chapter 6\(b\)](#)].