

ROLE OF THE BOARD MEMBER

THE COMPOSITION OF THE BOARD

The Alberta Labour Relations Board is established by the Legislature of Alberta under the provisions of the [Labour Relations Code](#). The legislation provides for the appointment of Board members for fixed terms, but does not dictate the qualifications of members. See: [[Board Appointments, Chapter 7\(a\)](#)]. Appointments to the Board are made by Cabinet, usually on the advice of the Minister (Employment, Immigration and Industry). Board members also hear applications under [PSERA](#) and [POCBA](#). See: [[LRC, PSERA and POCBA, Chapter 15\(a\)](#)].

By tradition, this Board has been fully representational. That is, the members have been drawn equally from organized labour and management. Changes to the Code in September 1994 allow the Lieutenant Governor in Council to establish divisions of the Board, but divisions have not been established to date.

THE BOARD MEMBERS ARE NOT DELEGATES

All members are labour relations practitioners. Members are not, however, appointed simply as representatives of, or delegates from, particular interest groups. While the advice of the various interest groups in the labour relations community is customarily sought in making an appointment, the appointment is in part a reflection of the appointee's overall credibility in the labour relations field. No person or organization has any right to recall or censure any member, or has any right to any influence over the member's conduct in respect of that member's Board related activities.

THE BOARD IS A QUASI-JUDICIAL BODY

Board hearings are conducted before panels of the Board that normally consist of at least two members and a Chair or Vice-Chair. When the Board hears cases in this fashion, it is sitting in a quasi-judicial capacity. What does quasi-judicial mean? The term recognizes that the Board is a judicial body that makes judgments about the rights and liabilities of the parties that appear before it. It recognizes that the Board, like a Court, must decide issues by hearing and weighing facts and argument, and by applying those facts to the legislation, which it may have to interpret. The use of the word "quasi" recognizes that the Board is different from a court in that it also has a major policy function. The legislature has specifically given decisions in labour relations disputes to a board consisting of people with expertise in the labour relations field.

The legislature has passed an Act that leaves a number of important issues undefined. It has said, in effect, to the parties "Your rights are only defined in a general sense, and we have left the specifics to the discretion of a group of people with the expertise to decide the important undefined policy issues in accordance with the general guidelines we have set out."

JUSTICE MUST NOT ONLY BE DONE BUT APPEAR TO BE DONE

When a panel of the Board hears a case, it is deciding people's rights. Persons who appear before the Board are entitled to know that those rights will be decided fairly. Even where those rights depend on policy considerations as well as interpretations of fact and law, parties are entitled to be absolutely confident that the policy matters will be addressed fairly and impartially, free of irrelevant and inappropriate influences.

The Board's ability to carry on its business effectively depends upon its credibility in the labour relations community. The parties will be less likely to follow the Board's directives and respond to the Board's initiative, if they do not respect the Board's integrity. This means that the Board must not only ensure that its deliberations are carried out with absolute fairness, but that they are seen to be carried out with fairness as well.

THE REALITY OF FAIRNESS

How can Board members conduct themselves so that proceedings are actually fair? The Board member must come to each hearing with an open mind on the issues that may arise. This means the members must feel comfortable that they can decide the issue objectively and fairly. Members who feel that they cannot do this should disqualify themselves from the panel.

There are a number of things that could prevent a person from dealing with an issue objectively. The member might have developed a clear dislike for one of the parties or their representative. The member may have had some direct, or substantial indirect, involvement with the case coming before the Board. Members may feel uncomfortable with the case because they, in their non-Board activities, stand to be affected by the outcome of the proceedings.

All these things could lead members to say that they might have difficulty deciding the issues involved without these other factors getting in the way of their judgment. The appropriate test is sometimes a simple application of the golden rule—would I like a person with my predisposition to decide the case if it were my rights involved?

THE APPEARANCE OF FAIRNESS

It is difficult to ensure that the proceedings seem fair. Members of the Board should avoid discussing cases that are coming before the Board with non-Board members, and even with other Board members who may be directly involved.

At hearings, members should avoid much discussion with the parties or their counsel. Frequently, members may have unrelated dealings with the participants. Unfortunately, witnesses and representatives of the parties unfamiliar with Board hearings may assume, incorrectly, that the members are talking with the parties about their case. This creates an erroneous, and poor, impression. Similarly, comments of a teasing or humorous nature, can be taken the wrong way and give a bad impression.

During the hearing itself, similar cautions should be exercised. Members are encouraged to ask questions and pursue arguments with counsel, but only to do so for the purpose of real clarification, not to help out one side or the other, giving the appearance of a partisan disposition.

Once the hearing of a matter is over, Board members should avoid all discussion of the case with any person other than those on the panel. It is improper for members to indicate leanings, decisions or anything else of a similar nature. Rumours of the contents of a Board decision are almost always destructive of the Board's reputation and credibility. False rumours cause anxiety, true rumours are taken as improper influence. Board proceedings are frequently very high profile matters involving important rights and strong emotions. Rumours about who won or lost are not only unseemly, but are harmful to good labour relations.

Particular caution must be taken when the Board is sitting out of town. A Board hearing is often big news in a small community, and the Board members must be careful that their conduct does not compromise the hearing process or the Board.

ALLEGATIONS OF BIAS

Any party may challenge a member where there is a reasonable apprehension of bias. A person may be legally disqualified from sitting where there is a reasonable apprehension that the person in question cannot give the matter fair consideration, even if the member is convinced that they in fact have no such bias. Essentially, the issues are very similar to the things that might lead persons to disqualify themselves. The question is, does it reasonably appear that the person, because of that person's past knowledge, conduct, or activities, would be unable to decide the issue with fairness and impartiality?

This may include the fact that the member works for a related employer or related trade union, may have been involved in attempts to settle the issue, may have had discussions about the case with persons involved, or may have in some other way given the appearance of being interested in the outcome in the case.

The courts have held that the Board is not biased simply because the panel is not evenly balanced between labour and management representatives. Where possible, however, this is done to ensure the appearance of fairness.

ARRIVING AT A DECISION

The Board members, just as much as the Chair or Vice-Chair, should be fully involved in and responsible for the making of a sound decision. It is up to the panel how it chooses to go about the decision-making process. In some cases the decision will be obvious, in other cases, arguments and evidence will need to be carefully reviewed and discussed before any draft decision can be formulated.

The member is not on the panel to simply wave the flag for one side or the other. A member's experience and insight, gained from their labour relations background, is an appropriate factor to be used in arriving at a decision. It can be drawn upon in argument and explanation to ensure that the labour relations consequences of a particular decision are fully explored.

The Board panel as a group must arrive at a decision, and there comes a point, once the arguments have been fairly analyzed, the facts assessed and the consequences explored, when a decision must be reached. In the rare cases where there is not consensus, the majority rules.

Each member should respect the integrity of the other members. Honest people may disagree, and these disagreements must, in the end result, give way to a decision.

THE DECISION

Unlike other boards, the Alberta Labour Relations Board has always issued decisions on behalf of the Board, and members who disagree have not filed dissents. This is a tradition of long standing, but is not required by legislation. The matter arises for discussion in caucus from time to time, and is something the caucus, if it wishes, may modify. Given the tradition, Board members have adopted the practice that they do not disassociate themselves from decisions they participated in nor do they discuss publicly what positions others have taken in caucus in arriving at the decision. In this way, Board members are sure that they are completely free to speak their minds behind closed doors.

THE MEMBER IN CAUCUS

The role of the Board sitting in full caucus, or in committee, is different than its role when sitting as a panel. In this policy discussion environment, the Board member is free to bring to bear any relevant considerations the member's experience may have to offer on the topic in issue. It is vitally important that the Board fully explore all the consequences of any policy it may adopt.

The Board member should feel free to initiate as well as participate in caucus discussions. Any suggestion about general Board policy and procedures that may improve the Board's service to the community should be brought before the caucus for consideration. This may include the concerns of particular interest groups or ideas coming from the member or other individuals. Matters can be placed on the caucus agendas by forwarding a letter to the Chair, along with any supporting material, with the request that the matter become an agenda item. It is quite proper for members to suggest to interested parties that they be used as vehicles for advancing such issues to caucus in relation to general issues, so long as it is made clear that it would be improper to raise issues related to specific cases in that way. Frequently, the Board assigns members to sub-committees to consult with the community on proposed policy or procedural changes.

Caucus discussions are held in private, and members should respect the fact that other members rely on that confidentiality to speak freely. Board policies, once arrived at, are matters that can be discussed, but the specifics that led up to the decision in question are not. Caucus agendas are similarly confidential and not for general distribution to the parties.

THE BOARD MEMBER IN THE COMMUNITY

The Board member should act as an ambassador for the Board. The Board has no easy ability to defend itself from unjust criticism, and Board members serve an important role in explaining the Board's role to those in the labour relations community. The members can help the rest of the Board, including those who serve full-time and the Board staff, to keep up to date on the concerns of those who work in the field. In turn, the member can help keep the parties posted on changes in Board procedures and policies.

When members hear criticisms of the Board, the member can help ensure that constructive suggestions are brought forward and misconceptions explained.

Board members should be careful in carrying out their regular duties that persons they are dealing with know in what capacity they are dealing with the member. A person should not be left with the impression that they are dealing with a Board member acting in an official capacity when in fact they are simply dealing with that member in some other capacity. One's membership on the Board should not be, and should not appear to be, used to exert any unjustified influence or gain any personal advantage.

REMUNERATION

Members receive a *per diem* allowance, set by regulation, for serving on the Board. Members and their employers make personal arrangements about dealing with that allowance. It is improper for any member to accept any other remuneration or reward for any work done in connection with the member's Board duties.

RESOLVING DOUBTS ABOUT THE BOARD MEMBER'S ROLE

In all cases where members are unsure about the appropriate role they should adopt as a member, or the limits of appropriate conduct, the member should feel free to consult with the Chair, the Board Legal Counsel or the other Board officers. Matters may also be raised for formal or informal caucus discussion. As in all matters of ethical conduct, there are fine lines and difficult judgments to be made. In all cases where the Board, or the member's reputation is at stake, it is better to err on the side of caution and apparent propriety than to risk later embarrassment, and the harmful effects that challenges to the conduct of Board proceedings can cause to the Board's ongoing effectiveness.