

# Update

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JULY 1999

## REVIEW OF CHANGES TO ONTARIO LABOUR RELATIONS BOARD RULES OF PROCEDURE

### INTRODUCTION

Effective August 1, 1999, the OLRB has :

- C published new Rules of Procedure which make some important changes to the rules,
- C adopted all new forms, and
- C adopted some new information bulletins.

The changes to the rules will apply to all proceedings as of August 1, 1999, including proceedings that have already commenced. However, actions taken or documents filed prior to August 1st do not become invalid simply because the old rules were followed.

There are some very important changes, particularly with respect to time limits and new responsibilities placed upon the parties to deliver forms, bulletins, and to certify that these have been delivered to the other parties in the proceeding.

This *Update* reviews significant changes made by the new rules. We have prepared an alphabetical index to the new rules which is attached to this *Update*.

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Copies of the rules, forms and information bulletins can be obtained by contacting the OLRB at 416-326-7500. Forms and information bulletins can be obtained on computer disk as well as in hard copy. Appendix "B" to the new rules consists of charts setting out the specific procedural requirements for each type of proceeding.

### GENERAL MATTERS

The Rules on General Matters set out the general procedural requirements for all proceedings (except for appeals under s. 61 of the *Occupational Health and Safety Act*). Additional requirements for certain proceedings are found in separate sections of the rules.

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## Forms

### < **New Forms to be Used as of August 1, 1999**

Do not use the old forms as of August 1st. The Board will not process any pleading which uses an old form as of that date.

### < **“A” and “C” Forms: see Appendix “A”**

There are now two kinds of forms - “A” forms and “C” forms.

“A” forms which are the Board’s format for applications, responses, interventions and other similar documents. While these are very similar to the old “A” forms, the Board has made some important changes. The most significant change is to the certificate of delivery which is now required for all pleadings. While the new certificate similar to the certificates of delivery that have been used in the past on certification applications and responses, it requires much more detailed information.

“C” forms are essentially official Board notices prepared for particular types of proceedings. These are forms which parties, often the Applicant, must deliver to the other parties. These notices give detailed directions from the Board, including information about the nature of the proceeding, how to contact the Board, what is required to be filed in order to participate, etc.

## Delivery of Documents to the Parties

### < **Requirement to Deliver and to Certify Delivery of Pleadings: see *Rules 25, 26, 32***

The new rules make it clear that all pleadings must be delivered by the parties to the other parties to the proceeding. As noted above, detailed certificates of delivery must be completed.

### < **New Requirement to Deliver Documents and Correspondence and to Prove Delivery: see *Rules 33, 34***

The new Rule 33 requires that all documents filed with the Board, including letters, be delivered to the parties. Proof of delivery of such documents must also be filed with the Board. This statement of delivery must advise the Board who was copied, how they were copied and when they were copied. Rule 34 clarifies that these requirements do not apply to documents which disclose a person’s support or non-support of a union.

### < **Time Limits Run from Delivery of Application**

Generally speaking, the Board will no longer deliver official notice of the commencement of the proceeding to respondents and will not be serving pleadings on various parties. Instead, the proceeding will be initiated by the applicant delivering to the other parties the required application, Board notices and information bulletins and blank response forms.

The significance of this change is that time limits for response will usually start to run from the moment the party receives the document. Respondents should no longer expect the Board to send them a notice of proceeding indicating that the time limits for response start to run from the date of the Board’s letter.

### < **Method of Delivery: see *Rule 20***

The general Rules now set out the specific requirements as to how applications, responses and requests are to be delivered.

Applications, responses and requests relating to certification applications, decertification applications, requests for interim orders, matters relating to strikes and lock-outs, and

construction industry grievance referrals **must** be delivered in one of the following ways:

- C hand delivery
- C courier
- C facsimile transmission
- C any other way agreed upon by the parties.

All other applications, responses and other documents **may** be delivered in any of the following ways:

- C hand delivery
- C courier
- C regular mail
- C facsimile transmission
- C any other way agreed upon by the parties.

< **Date of Delivery: see Rule 23**

The date of delivery continues to be the date the document is received by the party or its authorized representative. However, the rules now state that

- C a document delivered after 5:00 p.m. will be deemed to be delivered on the next day, and
- C a document delivered by regular mail will be deemed to be delivered on the fifth day after the document was mailed.

< **Exception for Delivery of Application to Comply with Time Limits: see Rule 22**

The rules contain a new provision which states that the Board may make an order for substituted delivery or for such other order as may be appropriate where the Board considers that it is impractical for any reason to deliver an application within the time period set out in the rules.

### Filing Documents with the Board

< **Time Limits for Filing Documents: See Rule 14**

There are now time limits for filing an application with the Board once it has been delivered to the other parties:

- C applications relating to unlawful lockouts and strikes must be filed no later than one (1) day after delivery to a respondent
- C certification, decertification, and interim order applications must be filed with the Board no later than two (2) days after delivery to the respondent
- C in all other cases, the application must be filed with the Board within five (5) days after delivery to the respondent.

Of course, you can continue to file the application with the Board on the same day you delivered it to the respondent, provided you can certify that you have delivered it.

< **Application Will Not be Processed if Not Filed in Time: see Rule 15**

The new filing time limits are of critical importance. A new rule, Rule 15, provides that the Board **will not process** an application that fails to comply with a time limit prescribed in Rule 14 and **the matter will be terminated**.

< **Date of Filing: see Rules 12, 13**

The date of filing continues to be the date a document is received by the Board (with the exception of certification and decertification applications in the construction industry).

However, the rules now provide that a filing received after the close of business hours, i.e. 5:00 p.m., will be deemed to be filed on the next

day unless otherwise accepted by the Board (Rule 13). The Board advises that near the end of the day its fax machines are typically busy. Therefore, it is quite possible that you will start faxing a document before 5:00 p.m. but it will not be received at the Board until sometime after 5:00 p.m.

Unless the rules say otherwise, "days" means the Board's working days which are: Monday to Friday, excluding statutory holidays, and any other day the Board is closed. "Other days the Board is closed" at this time means Remembrance Day (November 11th), Easter Monday and the Civic Holiday.

**< Number of Copies to be Filed: see Rule 10**

Parties are now required to file **five** copies of applications and responses, instead of seven copies.

Exceptions to this rule are:

- C **four** copies are required for jurisdictional dispute complaints
- C **three** copies are required for cases under the *Public Sector Labour Relations Transition Act*, duty of fair representation complaints, and complaints relating to strikes or lock-outs
- C where a document is permitted by the Rules to be filed by fax, an additional hard copy should not be filed: see *Rules 11, 19*.

**< Manner of Filing: See Rule 16**

Documents cannot be filed by e-mail or registered mail.

**Documents which cannot be filed by fax: see Rule 17:**

The following documents cannot be filed by fax:

- C applications
- C responses (except as outlined below)
- C membership evidence
- C evidence that employees do not wish to be represented by a trade union.

**Documents which may be filed by fax: see Rule 18:**

Only the following documents may be filed by fax:

- C responses and representations filed in cases covered by:
  - C Rule 61 - representation votes
  - C Rules 69 and 135 - certification
  - C Rules 74 and 141 - termination of bargaining rights under ss. 63 or 132 of the *Act*
  - C Rule 98 - interim orders
  - C Rule 100 - strikes or lock-outs
- C requests filed in relation to construction industry grievance referrals when accompanied by the filing fee and a completed Payment of Fee by Credit Card form
- C other documents that are short and urgent.

**< Filing of Documents Prior to Hearing or Consultation: see Rule 36**

Under the former rules, parties were required to file documents upon which they would be

relying at the same time as they filed an estimate of the number of hearing days required. The date by which this information had to be filed was set by the Registrar.

Under the new rules, the Registrar will continue to set the time by which an estimate of hearing days must be filed. However, the deadline for filing documents is now not later than **ten days prior** to the hearing or consultation. Three copies of all documents must be filed.

**< Requirement to Organize Documents Filed: see Rule 37**

With respect to documents filed in relation to hearings, there are two new requirements. First, documents filed with the Board must be arranged in consecutively numbered pages. Second, documents must be accompanied by a table of contents describing each document.

**< Consequences where Rules not Followed: see Rule 41**

The rule under which the Board may decide a case on the facts filed in the application if a response is not filed in the way required by the rules, now also expressly permits the Board to cancel a scheduled hearing or consultation.

**Electronic Hearings: see Rule 53**

The new rules make provision for electronic hearings where considered advisable by the Board. The Board will not conduct an electronic hearing if it is satisfied that a party will likely suffer significant prejudice, unless the only purpose of the hearing is to deal with procedural matters. Parties located outside Toronto may wish to consider the electronic hearing option in appropriate cases in order to reduce the cost of litigation.

**No Provision for Board to Act on Report of Labour Relations Officer: see Rule 59**

The new rules do not include the former provisions which enabled the Board to decide a case on the basis of written materials where there is a report by a labour relations officer and where the parties either do not file representations on the report or do not request an oral hearing in their representations.

**CERTIFICATION APPLICATIONS**

The additional rules relating to certification applications are generally the same. However, the numbering of the Information Bulletins has changed and there are a few new Board documents which must be included with the application. In addition, the Rules now state that applications and accompanying materials must also be provided to any affected union identified in the materials.

**DECERTIFICATION APPLICATIONS**

As with certification applications, the rules governing documents to be filed with decertification applications are also generally the same but for some changes in numbering and additional forms.

**< Response to be Delivered and Filed within Two Days: see Rule 74**

The important change to the decertification rules is that responses, including interventions, must be delivered and filed not later than **two days**, reduced from five days, after the application is delivered.

< **Application Terminated if not Filed Two Days After Delivery: see Rule 75**

New Rule 75 provides that an application will be terminated if it is not filed with the Board within two days after delivery to the union and employer.

**SALE OF BUSINESS AND RELATED EMPLOYER APPLICATIONS**

< **Applicant's Document Requirements: see Rules 85**

Applications under s. 69 and s.1(4) of the *Act* must include a list of all documents upon which the applicant intends to rely as well as copies of the documents if the applicant has them.

< **Respondent's Document Requirements: see Rule 86**

Not later than ten (10) days after the response is due to be filed, the respondent must deliver and file a list of all relevant documents and copies of these documents.

**DUTY OF FAIR REPRESENTATION AND FAIR REFERRAL**

< **Delivery to Senior Union Official Required: see Rule 89**

Duty of fair representation complaints should be delivered to the senior union official responsible for the bargaining unit. Duty of fair referral complaints should be delivered to the senior union official at the hiring hall.

< **Employer to be Named and to Receive Copy: see Rule 90**

A duty of fair representation complaint must name the employer as an affected party and a copy of the complaint must be delivered to the employer together with certain forms.

**RECONSIDERATION REQUESTS**

< **Time Limit Shortened: see Rule 96**

The time limit for making reconsideration requests has been shortened to **twenty (20)** days from thirty (30) days from the date of the Board's decision, unless the Board permits otherwise.

**CONSTRUCTION INDUSTRY GRIEVANCE REFERRALS**

Construction Industry Grievance Referrals now require the payment of filing fees and payment of fees for each hearing day. Payments are to be made by certified cheque, money order, debit card, Visa or MasterCard. Cash will not be accepted. For hearing fees, these are due by 9:30 a.m. on each day, though the deadline can be extended to 10:30 a.m. in limited circumstances. No refunds will be paid, even if you settle a case, except where the Board cancels, or adjourns the case on its own. If the Applicant does not pay the filing fee, the Grievance Referral is not processed. If the Applicant does not pay the hearing fee, the hearing will normally be cancelled and the matter may be terminated. If a respondent does not pay the filing or hearing fee, they are not allowed to participate without further permission of the Board.

**NEW RULES APPLY TO ALL PROCEEDINGS**

Rules 165-166, which are found under the heading "Transition Provisions", make it clear that there is no period of transition from the old rules to the new rules. Effective August 1, 1999, the new rules apply to all cases before the Board unless the Board orders otherwise.

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