



ONTARIO LABOUR RELATIONS BOARD POLICY ON OPENNESS AND PRIVACY

Open Justice

The Ontario Labour Relations Board is an independent quasi-judicial tribunal which conducts mediation and adjudication proceedings under a variety of labour-related statutes, including the *Labour Relations Act, 1995*, the *Employment Standards Act, 2000* and the *Occupational Health and Safety Act*. This document outlines the Board's policy on the openness of its processes and describes how the Board handles issues relating to privacy rights.

The concept of "open justice" is a significant principle in our legal system. The *Statutory Powers Procedure Act*, which governs the conduct of most administrative decision-makers in Ontario, provides that oral hearings are to be open to the public, save for exceptional circumstances. Because of its mandate and the nature of its proceedings, the Board maintains an open justice policy to foster transparency in its processes, accountability and fairness in adjudication.

The Board's website, notices, information bulletins and other publications advise parties and the community that Board hearings are open to the public. Parties who engage the Board's services should be aware that they are embarking on a process that presumes a public airing of the dispute between them, including the publication of the names of parties to proceedings before the Board, and of its decisions. Parties and their witnesses are subject to public scrutiny when giving evidence before the Board and they are more likely to be truthful if their identity is known. Board decisions currently identify parties and their witnesses by name, and may set out whatever information about them that is relevant to the determination of the dispute.

At the same time, the Board acknowledges that in some instances the disclosure of an individual's personal information during a hearing or in a written decision may have an impact on that person's life. Privacy concerns arise most frequently when identifying aspects of a person's life are made public. The Board endeavours to include this information only to the extent necessary for the determination of the dispute.

With the advances in technology and the availability of electronic dissemination of material—including OLRB decisions—the Board recognizes that in some instances it may be appropriate to limit the concept of openness as it relates to

the identity and circumstances of individuals who are parties or witnesses in proceedings before the Board.

In exceptional circumstances, the Board will depart from its open justice principles and in doing so, the Board may grant requests to maintain the confidentiality of specific evidence and tailor Board decisions to accommodate the protection of an individual's privacy (including depersonalizing the identity of parties or witnesses or holding a hearing in private).

The Board considers its policy to be consistent with the protocol adopted by the Heads of Federal Administrative Tribunals Forum¹ (endorsed by the Council of Canadian Administrative Tribunals) and the principles found in the Canadian Judicial Council's *Use of Personal Information in Judgments and Recommended Protocol*.²

Effective June 30, 2019, the Board is also subject to the *Tribunal Adjudicative Records Act, 2019* ("TARA"). TARA provides that the Board's adjudicative records are presumptively available to the public, and also permits the Board to make orders that certain records be treated as confidential. Adjudicative records include, among other things, applications and written submissions filed with the Board, the register of proceedings before the Board and the Board's decisions.

Access to Board files and decisions

Board files are available to the public, subject to the applicable restrictions set out in TARA, the *Freedom of Information and Protection of Privacy Act*, other Acts, the common law, or by order of the Board.

Requests made to the Board for access to documents are dealt with in accordance with the Board's Rules. A third party seeking documents related to a Board proceeding is free to make a request of the parties to the file.

Summaries of significant Board decisions are published monthly in *Highlights*, available electronically by free subscription through the Solicitors' Office. Full text of these decisions appears in the bi-monthly *Ontario Labour Relations Board Reports* (by paid subscription).

Individual Board decisions are available in hard or electronic copy through the Ontario Workplace Tribunals Library (www.owtl.on.ca, photocopying fees

¹ <http://www.hfatf-fptaf.gc.ca/declaration-web-eng.php>

² http://cjc-ccm.gc.ca/cmslib/general/news_pub_techissues_UseProtocol_2005_en.pdf

apply), or in electronic format on public websites (www.canlii.org) or by subscription (www.lexisnexis.ca).