

**OLRB Notice to Community – Covid-19**  
**March 19<sup>th</sup> – July 27<sup>th</sup>, 2020**

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**Ontario Labour Relations Board**

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**Important Notice to Community – Revised - March 19<sup>th</sup>, 2020**

Effective immediately, in light of current public health and government information, the Ontario Labour Relations Board is cancelling all in-person hearings scheduled up to and including May 29, 2020. The Board will continue to assess the need for the cancellation of hearings scheduled after May 29. Please continue to monitor the Board's website for updated notices.

The parties may make submissions to the Board with respect to rescheduling their adjourned hearing to be held instead by telephone or in writing.

The Board will continue to receive applications, responses and any other submissions in accordance with its Rules of Procedure. However, in the circumstances, please be advised that case processing may be delayed.

The Board's front-line reception area will be closed to the public for walk-in inquiries. Such inquiries may be made by phone, fax or electronic submission (Form A-108). Courier and mail will continue to be received.

All representation votes until further notice will be held electronically. This may cause delay in some cases. Please see the Board's recent notice regarding electronic voting for detailed information.

All in-person mediation meetings scheduled until further notice will be cancelled and held instead by teleconference or email.

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**Notice to Community – March 23, 2020**

Effective immediately, and until further notice, in light of current public health and government information, the Ontario Labour Relations Board is implementing the following changes:

1. With respect to **certification/ termination/ displacement applications**, the applicant will now be required to confirm to the Board that the employer is continuing to operate and carry on business. Changes have been made to the following forms: A-1, A-6, A-71 and A-77.
2. While the Board is continuing to hold representation votes electronically, votes will not be held for workplaces closed as a result of the current public health situation. Applicants should also be aware that votes may be delayed.
3. With respect to grievance referrals in the construction industry, no default decisions will be issued until the applicant has confirmed to the Board, by way of declaration, that the employer is continuing to operate and carry on business.
4. Case Management Hearings for March 18 and March 25 were cancelled. Efforts will be made to schedule upcoming CMHs via teleconference. These CMHs will not be limited to Wednesdays, and may be scheduled for any weekday.

An order was made on March 20, under subsection 7.1(2) of the *Emergency Management and Civil Protection Act*. The order suspends limitation periods retroactive to Monday, March 16, 2020, and also suspends, retroactive to March 16, 2020, any statute, regulation, rule or by-law establishing any period of time in which any step must be taken in any proceeding. This latter suspension, however, is subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding.

**Please be advised that the Board is exercising its discretion NOT to suspend the time periods in which steps must be taken in its proceedings. So long as the required declarations that an employer is continuing to operate and carry on business have been made, the Board will process applications in the usual course. The Board will continue, however, to exercise its discretion to extend timelines at the request of the parties to proceedings, as may be appropriate in all of the circumstances and where there is a specific and compelling reason to do so.**

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**Notice to Community – Revised - March 25, 2020**

The Board has reached the difficult decision to revise its operations until further notice. This decision was made having considered the measures taken by the Government under the *Emergency Management and Civil Protection Act*, and in light of a direction by the Government that employees who do not support critical services and who cannot work remotely remain at home. This decision was not made lightly but is increasingly necessary in order to protect the Board's employees. Dedicated employees have been diligently attending at work throughout the current crisis to receive and process the applications which continue to be filed at the Board each day.

The Board is continuing to work to increase its capacity to have more staff work remotely from home. Please continue to consult the Board's website with respect to updates as we work to expand the services available.

The changes below will be effective immediately and until further notice.

1. In-person hearings are cancelled up to and including **May 29, 2020**.
2. The Board will continue to accept applications/ responses/ interventions and other submissions and materials. However, all such filings must be made electronically, or they will not be accepted:
  - All Board forms and other submissions and material must be filed through the Board's e-filing process, not regular email, courier, hand delivery or fax.
  - Certification and termination applications/responses/ interventions may be electronically filed using the Form A-108 (electronic submissions form).
  - The Board's Form A-108 should not be used to file other forms, which can already be e-filed on their own.
  - E-filing also applies to correspondence and submissions filed with respect to matters currently before the Board.

To be clear, effective immediately, the Board will be unable to accept applications or any other materials that have been mailed, couriered or faxed. Please note that we have also been advised that the Board's mailroom will be shut down as of today. If you have sent material in hard copy, and receipt has not yet been acknowledged, it would be prudent to re-send this material electronically.

3. Although applications may continue to be filed in accordance with this notice, during this time,

the Board will process the highest priority matters first, as the Board deems necessary and appropriate to determine on an urgent basis, reflecting the particular urgencies and constraints of the current situation. All other applications will be processed to the extent that they can be further processed (e.g. referred to mediation) in view of the more limited capacity of the Board in these extraordinary circumstances.

4. Where possible, matters will be referred to a mediator for mediation by teleconference or email.

5. The Board will also be scheduling, where possible, Case Management Hearings via teleconference or videoconference.

6. Parties may continue to make submissions requesting hearings by teleconference or videoconference or any other alternative means.

7. With respect to certification and termination applications, the Board will continue to accept electronic membership evidence where the authenticity of this evidence can be verified. (See, for example, the discussion in *United Steel*, 2019 CanLII 123094). During this time, the Board will also accept photocopies of membership evidence. Originals must be retained, and the Board may require the applicant to produce, at a later date, the originals of the membership evidence. Certificates may not be granted until the Board has the opportunity to request and review the original membership evidence.

The Board anticipates that, when circumstances allow, it will resume regular operations and matters which have been received but not processed will be processed in the ordinary course.

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**Notice to Community - March 29, 2020 - Regular updates**

Check the notices on the Board's website regularly, including with respect to the requirements for filing applications with the Board, because they may update and revise previous requirements.

Specifically, please note that, given the current circumstances, the requirements set out in the Board's notices on the website will supersede any instructions on e-forms, and in particular with respect to the use of email. There is a delay, outside of the Board's control, in amending these forms and current changes may not be reflected.

**Notice to Community March 29, 2020 - Delivery by email for certain applications**

Effective immediately, and until further notice, applications delivered by way email will be acceptable to the Board for the following matters: certification applications, termination applications, section 133 grievance referrals and applications for interim orders.

A party relying upon delivery by email will need to confirm to the Board not only that the employer is continuing to operate and carry on business, but also that the email used for delivery is one which can be relied upon for effective notice to the responding party and/or other affected party. Until the appropriate e-forms are updated, a party relying upon delivery by email may provide this confirmation by writing it in on one of the statement boxes on the applicable form, or by way of separate and attached letter.

**Notice to Community March 29, 2020 - Required Contact Information**

Until further notice, an email or fax number is required for each party to a proceeding or the matter may not be processed further by the Board.

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**Notice to Community – April 6, 2020 – Revised - Grievance Referrals in the Construction Industry - (Revised June 24, 2020)**

Effective immediately, and until further notice, Rule 37.1 of the Board’s Rules of Procedure is amended as follows:

A responding party who has filed a Request in compliance with Rules 35.1 and 35.2, must also file a response to the application with the Board **not later than fifteen (15) days after the application was delivered.** Before, or at the same time as filing its response, a responding party must deliver a copy of the response to the applicant and to any other responding party who has filed a Request.

**For section 133 applications filed with the Board on or before April 6, 2020, and where a response to the application has not yet been filed, the responding party must file its response not later than April 28, 2020.** Before, or at the same time as filing its response, a responding party must deliver a copy of the response to the applicant and to any other responding party who has filed a Request.

The filing of responses will allow the Board to determine if the application can be further processed (either by written submissions, telephone or video conference etc.) during the COVID 19 situation other than by hearings which would otherwise have been automatically scheduled in 14 days in accordance with the Act.

For clarity, with respect to section 133 applications filed on or before April 6, 2020, the Board **does not** expect a response to be filed if the Referral has already been otherwise dealt with by the Board (e.g. deferred pending the determination of other proceedings, already adjourned on the agreement of the parties to facilitate settlement discussions etc.).

Where a matter has been adjourned, and is subsequently re-listed for hearing, a response to the application must be filed not later than fifteen days after the matter is re-listed for hearing, if a response has not yet been filed.

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**Notice to Community – April 21, 2020 – Revised – Delivery of applications by email during pandemic (Revised May 6, 2020)**

In its Notice to Community dated March 29, 2020, the Board advised that applications delivered by way of email would be acceptable for the following matters, certification applications, termination applications, section 133 grievance referrals and applications for interim orders. The Notice set out certain requirements on a party relying upon delivery by email for such application.

Effective immediately, and until further notice, the Board advises that ALL applications may be delivered by way of email. **Any applicant relying upon delivery by email will need to attach the completed A-139 to the application, deliver it to the Responding and Interested Party(ies) and file it with the Board.**

This form requires confirmation to the Board that the email used for delivery is one which can be relied upon for effective notice to the responding party and/or affected party, and to explain the basis for that confirmation. Where applicable, the party will also be required to confirm that the employer is continuing to operate and carry on business, and to explain the basis for that confirmation.

In light of the additional Form A-139, changes have been made to return the following forms to their pre-pandemic versions: A-1, A-6, A-71 and A-77.

In addition, for clarity, whether or not delivered to the other party/ parties by way of email, all certification applications and termination applications must be filed with a declaration, declaring the applicant's belief that the Responding Party is currently operational and the basis for that belief.

Moreover, in any application where the applicant is requesting that the Board take action during the pandemic period, and in particular requesting that the Board make any default decision, the declarations in Form A-139 are required, and Form A-139 may be used to this end.

Please note that the requirements set out in this notice supersede any previous instructions with respect to delivery by email. There is a delay, outside of the Board's control, in amending various forms and current changes may not be reflected.

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**Notice to Community – May 8, 2020 – Notice Regarding Hearings to June 30, 2020**

Due to the Covid-19 Pandemic, all in-person hearings are cancelled up to June 30, 2020. Please be advised that individual Notices of Cancellation of Hearing will not be issued.

Please note that the Board will also review each file scheduled for hearing up to June 30, 2020 and will advise by Board Decision or Registrar's Notice whether the hearing will proceed by alternate means (in writing, by teleconference or video conference). Parties may also write to the Board to request that a hearing proceed by alternate means and should advise the Board whether the request is on consent of the other parties. If the request is opposed, the party making the request should provide its reasons why the Board should proceed with the hearing by alternate means

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May 14, 2020 - **New Information Bulletin, "Information Bulletin 37, Video Hearings"**

**ONTARIO LABOUR RELATIONS BOARD INFORMATION BULLETIN NO. 37****Video Hearings****GENERAL**

This Information Bulletin describes the guidelines that parties, non-parties and participants (generally described as “participants” or “parties”) are expected to adhere to during a video hearing.

The Ontario Labour Relations Board (“the Board”) may conduct hearings by video. As procedural fairness in the Board’s proceedings is paramount, these guidelines are intended to facilitate a fair and smooth hearing process.

As hearings before the Board are public, anyone wishing to observe a video hearing should write to the Registrar’s office to obtain the details of the hearing.

All observers are expected to comply with the directions in this Information Bulletin and the directions of the presiding Vice-Chair. Observers are required to take all steps to minimize disruption of the proceeding.

**VIDEO HEARINGS**

There are benefits in conducting hearings by video. This includes increased accessibility, reduced costs, and more efficient allocation of resources. Successful management of a video hearing may require the Vice-Chair to deal with new issues such as technological challenges, ensuring that witnesses understand the requirements of candour and truth and managing digital evidence.

The Board recognizes that not every case is suitable for a video hearing. If proceeding by video is contested, a Vice-Chair will determine the appropriate format of the hearing. Otherwise, it may be the Registrar’s office that determines if a hearing will proceed by video.

The Board’s Rules of Procedure (“the Rules”) apply to video hearings. This Information Bulletin does not amend the Rules or limit the Board’s statutory powers. A video hearing, like any other hearing held by the Board, is a legal proceeding to determine rights and obligations under the Act. If you do not attend, the hearing will proceed without you and your rights and obligations will be determined in your absence.

**PRACTICE GUIDELINES**

The following practice guidelines, which may be amended by a Vice-Chair on a case by case basis, apply to hearings conducted by video. A party seeking to amend a guideline for a particular hearing should make a submission to the Registrar's office.

### **Technology**

The Board uses Zoom technology, but also has the capacity to use Skype or Microsoft Teams. If a party seeks to use another platform to host the video hearing, that party should make submissions to the Board with a detailed explanation about why an alternative platform should be used.

Participants are expected to check and test their technology in advance of the hearing. At a minimum, participants should have a computer (or smart phone or tablet), a microphone, a video/web camera, and an internet connection with sufficient bandwidth to support video hearings. The Board will provide a call-in number for participants lacking the required technology so they can participate in the hearing by telephone.

### **Electronic Filing**

The Board's Rules stipulate the manner and restricted size of e-filing submissions and documents. Documents that are properly filed will usually be available to the Vice-Chair to use during the hearing. However, if the material is lengthy, the Vice-Chair may direct the parties to prepare the material in a specific manner for the purpose of the hearing.

A party seeking to rely on a significant number of documents or voluminous material may request permission by writing to the Registrar's office to use a third-party Cloud tool (such as Drop Box, Google Drive, or Microsoft OneDrive) to share with the Vice-Chair and the other parties. If necessary, a participant may contact the Registrar's office for direction on how to share the link with the Vice-Chair. It is the party's responsibility to ensure that the use of the third-party Cloud tool is simple and straightforward for the Vice-Chair and the other parties to access. All documents and other material shared with the Vice-Chair in this manner for the hearing must also be filed with the Board in accordance with its Rules of Procedure.

If utilizing a third-party Cloud tool, a Vice-Chair may download the documents to his/her computer even prior to such documents being marked as exhibits. This may be necessary to ensure a smooth process and an organized utilization of the documents. A Vice-Chair will only download documents saved as PDFs, Microsoft (e.g. word or excel) formats, images and videos. Vice-Chairs will not download file types that could be harmful to their computers or network.

Documents should be labelled in a manner that identifies them clearly for the Vice-Chair so that it is not necessary to open the document to understand what it is.

Lengthy documents must be clearly page-numbered so that specific pages can be easily accessed by the Vice-Chair and the parties.

### **Books of Authorities**

Parties should not file a Book of Authorities with the Board. Instead, parties should simply include hyperlinks to publicly available databases such as [www.canlii.org](http://www.canlii.org), a free legal information database. If the authority is not available on a publicly available database, parties may e-file a copy of the authority or utilize the third party cloud option as noted above.

### **Conduct of the Hearing**

The Notice of Hearing, issued by the Registrar's Office, will contain the details of the video hearing. These details are only to be shared with counsel, clients, participants, and witnesses.

Where technology permits, the Vice-Chair will utilize a waiting room for participants to remain until allowed into the hearing room by the Vice-Chair.

The Vice-Chair will commence the hearing at the stipulated start time in the Notice of Hearing. There may be some informality as parties get comfortable using the software and making any adjustments (e.g. lighting, microphone, headsets, etc). The Vice-Chair will take attendance to account for all persons participating in the hearing. The Board does not use a formal Hearing Appearance Sheet for video hearings.

All participants, other than counsel (or self-represented party) and the witness, are to have their microphones muted.

If the Vice-Chair engages in mediation, only the parties in the hearing will be permitted to participate in the mediation. The Vice-Chair may use virtual break-out rooms to facilitate the private discussions.

A typical break and lunch schedule will be utilized at the discretion of the Vice-Chair. A participant seeking to take a break for any reason, including to enable counsel to consult with an advisor may make such a request to the Vice-Chair.

### **Witnesses**

Although witnesses testifying in a video hearing are testifying from a remote location, they are expected to conduct themselves in every respect as if they are in an in-person hearing.

All witnesses in the Board's proceeding must ensure that at any time they are giving evidence:

- I. They are alone in a room with a closed door;
- II. They do not have any other electronic device in the room including a cell phone;
- III. They use any computer or tablet only for the purposes of the video hearing, that all other applications are closed and that they do not use any of the communication functions of the computer (text, email, etc.) at any stage while they are still a witness testifying; and
- IV. They have with them only the exhibits that have been properly introduced in this proceeding and that they look at those exhibits only when asked to do so by counsel.

Witnesses may be required to demonstrate compliance with the above directions at any time by any means permitted by the Vice-Chair. A failure to comply with these directions may impact the credibility of the witness. As part of the swearing or affirmation oath, the witness will be asked to confirm their understanding and commitment as described in this section.

It is expected that counsel (or self-represented party) will review these guidelines with witnesses they intend to call at the hearing.

### **Summons To Witness**

A party may serve a Summons To Witness on a potential witness in the normal course. The summons must be provided by the Board and contain the necessary hearing information. Reproductions or revisions of the Board's summons are not permitted. The Board has the authority to permit a summons to be served by substituted service, although this will be rarely exercised. Parties are advised to consult the emerging jurisprudence on serving an electronic summons.

### **Etiquette and Decorum**

Video hearings are formal hearings before a Vice-Chair. Participants are expected to dress appropriately and be situated in a location free from distractions. Participants should take appropriate steps to ensure proper lighting, suitable backgrounds and minimal external noise.

### **Recording of Proceedings**

Participants are entitled to take notes of the proceeding. However, unless a participant advances a compelling reason and obtains the Board's permission, audio and video recording of the proceeding is not permitted.

### **Commitment to Procedural Fairness**

The Board is committed to the principles of procedural fairness. At any time during the video hearing, the Vice-Chair may, on his/her own motion or on the motion of a party, end the proceeding and direct an in-person hearing be scheduled, if the Vice-Chair is concerned about the integrity or fairness of the hearing process.

### **IMPORTANT NOTE**

IN ACCORDANCE WITH THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.

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**Notice to Community – June 10, 2020 – Notice Regarding Hearings to July 31, 2020**

Due to the Covid-19 Pandemic, all in-person hearings are cancelled up to **July 31, 2020**. Please be advised that individual Notices of Cancellation of Hearing will not be issued.

Please note that the Board will continue to review each file scheduled for hearing up to July 31, 2020 and will advise by Board Decision or Registrar's Notice whether the hearing will proceed by alternate means (in writing, by teleconference or video conference). Parties may also write to the Board to request that a hearing proceed by alternate means and should advise the Board whether the request is on consent of the other parties. If the request is opposed, the party making the request should provide its reasons why the Board should proceed with the hearing by alternate means.

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**Notice to Community – June 24, 2020 – Availability of Decisions and Lists of Applications**

The Board is continuing to expand the resumption of services. Please note that, effective immediately, the Board is resuming its previous practice of posting and distributing a weekly list of applications filed with the Board. As a result, the Board will be discontinuing the posting of certifications and termination applications, which had been introduced as a temporary measure.

Please note that the Board will also be resuming its practice of posting decisions of general interest on its website. However, normal distribution of cases to CanLII has resumed, and the Board will no longer be focusing solely on the posting of decisions related to the pandemic.

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**Notice to Community – July 7, 2020 – Grievance Referral Hearing Payments**

Effective immediately, payment for hearings in grievance referrals must be made online by credit card using Grievance Referral Hearing Payment Form A-85 which is now posted on the Board's website.

**Payments for grievance hearings must be completed before the commencement of the hearing.** After submitting Form A-85, parties will receive a receipt for payment. Parties may be required to show the receipt to the Vice-Chair before the hearing commences.

In the event that a grievance is resolved prior to the hearing and a hearing is no longer necessary, parties who have already made the payment may request a refund for the payment by submitting their request in a letter attached to the Electronic Submissions Form A-108.

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**Notice to Community – July 17, 2020**

Due to the Covid-19 pandemic, all in-person hearings are cancelled until August 7, 2020. Until further notice (which may extend later than August 7, 2020), the presumption is that matters will proceed by video hearing. Parties may write to the Board if they object to proceeding by video hearing. Any party objecting to proceeding with the hearing by video should advise whether the objection is on consent and should set out the basis for their objection.

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**Notice to Community – July 21, 2020 – Notice Regarding Hearings**

In line with the Province’s Framework for Reopening, and steps taken by the courts and other adjudicative agencies, the OLRB has begun planning for a gradual phased re-opening of some limited hearing rooms. The Board anticipates having the protocols and spaces prepared to resume in-person hearing, on a very limited basis, hopefully by mid-August. The presumption will continue to be that matters will proceed by video hearing, unless an in-person hearing is specifically directed by the Board.

As always, the health and safety of the Board’s employees, OICs and stakeholders will remain the top priority. The plan to gradually and carefully re-introduce in-person proceedings is being developed with the assistance of public health expert advice, including a risk assessment by the Public Sector Health and Safety Association. Materials for in-person hearings during the COVID-19 pandemic are in the process of being created and will specifically outline procedures to protect the health and safety of all participants during in-person hearings. A further announcement will be made when these arrangements are in place.

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**Notice to Community – July 27, 2020 – Certification and Termination Applications/  
Construction Industry**

Effective immediately, and until such time as the Board resumes acceptance of Priority Courier packages, Rule 24.2 of the Board's Rules of Procedure is amended as follows:

**CERTIFICATION AND TERMINATION APPLICATIONS IN THE CONSTRUCTION INDUSTRY**

**RULE 24 FILING AND  
DELIVERING**

...

24.2 The date of filing is the date that a document is received by the Board. **However, if an application is filed electronically, the date of filing is the date on which the application was sent (the date recorded in the return email which automatically generates upon successful email submission).**