

ONTARIO LABOUR RELATIONS BOARD

PROCEDURES ON ACCESS TO DOCUMENTS AND EXHIBITS CONTAINED IN BOARD ADJUDICATION¹ FILES

Background

The Board collects and maintains adjudication files solely for the purpose of resolving labour and employment related disputes through mediation or litigation. The Board's jurisdiction is derived from the *Labour Relations Act, 1995*, *Employment Standards Act, 2000*, *Occupational Health and Safety Act*, and a variety of other statutes.

Legal Framework

Documents² and exhibits contained in Board adjudication files may be subject to some or all of the following legal considerations: the implied undertaking rule³; specific orders of the Board⁴ (e.g., directing that the documents may only be used for the purposes of the litigation); provisions of the *Labour Relations Act, 1995* and other constituting acts; orders of a court; and other statutes addressing information (e.g., the *Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*).

Principle of Open Hearings

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. Board hearings are public except where the Board is of the opinion that “matters involving public security may be disclosed” or “intimate financial or personal matters or other matters” exist such that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that hearings be open to the public (see s. 9, *Statutory Powers Procedure Act*). However it does not necessarily follow that because a hearing is open to the public access to any specific document or exhibit will be granted. For active adjudication files, this decision is subject to an order of a Vice-Chair.

¹ An important distinction is made between adjudication files and institutional files (records not collected for the purpose of litigation before the Board, but for general administrative/institutional reasons). Requests for records from institutional files are handled pursuant to the *Freedom of Information and Protection of Privacy Act*.

² Documents include applications, responses and interventions.

³ See *Shaw-Almex Industries Limited* [1984] OLRB Rep. April 659; *USW v. Maxi* 1998 CanLII 18322 (ON LRB).

⁴ See *LIUNA, OPDC v. Rail Cantech Inc* 2012 CanLII 51768 (ON LRB) for one example of many.

PROCEDURE FOR ACCESS TO BOARD ADJUDICATION FILES

A. Requests from parties involved in the proceeding before the Board

Information from the Board's file may be provided to the following parties in the litigation before the Board:

- A party to the proceeding;
- A lawyer or paralegal representing one of the parties;
- An agent with written authorization to represent a party.

A letter should be sent to the Registrar requesting the specific information that is missing. The Solicitors' Office will address these requests.

B. Requests from parties seeking to intervene in a matter

A party seeking to intervene should request the documents from the applicant and/or respondent. If this is unsuccessful then a request should be made to the Registrar to put the matter before a Vice-Chair for a decision.

C. Requests from third parties (not involved in the adjudication)

i) Active Adjudication files

Requests for documents in active adjudication files will be determined by a Vice-Chair. The Vice-Chair may seek submissions from the parties to the adjudication and will determine whether to provide access, and to what extent, after considering the following factors:

- The implied undertaking rule;
- Any order of the Board that may have issued addressing documents production;
- The open court principle;
- The purposes underlying freedom of information and privacy legislation;
- Any other statutes or factors deemed appropriate by the Vice-Chair.

ii) Closed or inactive Adjudication files

Requests for documents from closed or inactive adjudication files, depending on the nature of the case and documents requested, will be determined by the Chair or a Vice-Chair (pursuant to the factors set out above) or by the Head pursuant to FIPPA. The Chair, in consultation with the Solicitors, will decide whether these requests will be addressed by the Chair or a Vice-Chair or by the Head, pursuant to *FIPPA*.

If it is determined that the request for documents will be determined by the Chair or a Vice-Chair, the Chair or Vice-Chair *may* advise the parties in the Board file of the request (**including the identity of the requester**) and *may* provide an opportunity for those parties to provide submissions. Whether or not the Chair or Vice-Chair requests submissions, all parties to the Board file in which a request for documents is made will be advised of the Board's determination of the request.