

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 20**

Grievance Referrals in the Construction Industry

I. Introduction

This Information Bulletin describes what happens when a union or employer in the construction industry refers a grievance to the Ontario Labour Relations Board under section 133 of the *Labour Relations Act, 1995*. These grievance referrals are governed by the provisions of the *Labour Relations Act, 1995*, and the Board's Rules of Procedure.

II. Making an Application

(i) The documents

A referral of a grievance to the Board may be made at any time after the written grievance has been delivered to the other party. The referral must be made on Form A-86 and must include a copy of the grievance being referred and a copy of the relevant collective agreement or, if the collective agreement has been filed with the Registrar and given an identification code, only the code shall be set out in the referral.

The material can be filed with the Board in any way, except registered mail, e-mail or facsimile transmission.

Before, or at the same time as, filing the referral and other documents with the Board, the referring party must deliver to the responding party: a copy of the referral (including the grievance being referred), and a completed Notice to Responding and/or Affected Party (Form C-38). Some (but not all) of this same material must be delivered to affected parties identified in the referral, and there are special rules where an accredited employers' organization is party to the collective agreement or the collective agreement is in the ICI sector. Information on delivery in these circumstances can be found in the Board's Rules of Procedure.

The material can be delivered to other parties by hand, courier, facsimile transmission, or any other way agreed upon by the parties.

(ii) The filing fee

A filing fee of \$250.00 must accompany the application. The Board will not accept or process an application that is not accompanied by the filing fee.

If the referral of a grievance is filed with the Board in any manner except through the Board's e-filing system, the filing fee may be paid by debit card

(in person only); or by certified cheque or money order made payable to the "Minister of Finance"; or by VISA or Mastercard. If paying by VISA or Mastercard, Form A-89 (Payment of Fee by Credit Card) must be completed and filed with the Board, but need not be delivered to any other party. The Board will not accept fees paid in cash.

If the referral of a grievance is filed through the Board through its e-filing system, the filing fee must be paid by Visa or Mastercard through the Board's online payment process.

III. Processing the application and appointing a Mediator

Once the application is filed with the Board, the Board will send a notice to the parties confirming that the referral has been filed and setting a hearing date. The hearing date is typically the 14th calendar day after the application was filed with the Board.

A Mediator will be appointed by the Board to inquire into the application and to endeavour to effect a settlement of the grievance. The Mediator will set a meeting for this purpose and notify the parties of the time and place of the meeting.

IV. Filing a Request for Hearing and Notice of Intent to Defend/Participate

(i) The document

A responding party who wishes to defend the grievance and any intervenor who wishes to participate in the case in any way must file a Request for Hearing and Notice of Intent to Defend/Participate (Form A-87) with the Board not later than 5 days (excluding weekends and days on which the Board's offices are closed) after the date of the Confirmation of Filing.

Form A-87 can be filed with the Board in any way except facsimile transmission, e-mail or registered mail. Form A-87 can be e-filed *as long as the filing fee is paid through the Board's online payment system.*

Before, or at the same time as, filing the Request for Hearing and Notice of Intent to Defend/Participate with the Board, the responding party and anyone wishing to intervene must deliver a copy of the completed Form A-87 to all other parties.

Form A-87 can be delivered to the other parties in accordance with Rule 6.4 and 30.1 of the Board's Rules of Procedure.

(ii) The filing fee

A filing fee of \$250.00 must accompany the Request. The Board will not accept or process a Request for Hearing and Notice of Intent to Defend/Participate that is not accompanied by the filing fee.

If the Request is filed with the Board in any manner except through the Board's e-filing system, the filing fee may be paid by debit card (in person only); or by certified cheque or money order made payable to the "Minister of Finance"; or by VISA or Mastercard. If paying by VISA or Mastercard, Form A-89 must be completed and filed with the Board, but need not be delivered to any other party. The Board will not accept fees paid in cash.

If the Request is filed through the Board through its e-filing system, the filing fee must be paid by Visa or Mastercard through the Board's online payment process.

V. Where No Timely Request for Hearing and Notice of Intent to Defend/Participate is Filed

Where the responding party fails to file a timely Request and filing fee, the referral will be placed before a panel of the Board for decision.

If the referral indicates that the applicant wants a default award in such circumstances, the Board will deem the facts alleged by the applicant to be true. If those facts establish liability, the Board will make an award in favour of the applicant. If the applicant has filed sufficient material to prove its damages, an order in respect of those damages will also issue and the previously scheduled hearing will be cancelled. If the applicant has not filed sufficient material to prove damages, the matter will continue to hearing, as previously scheduled, but solely for the purpose of proving damages.

In all other circumstances, the matter will proceed to hearing on all issues.

In order to participate in any hearing, a responding party must pay the filing fee, *in addition* to the hearing fee (see below).

VI. The Board's Power to Order a Non-Participating Party to Pay the other Party's Fees

If the Board makes an award against a party that did not participate in the case, the Board may *in addition* order that party to reimburse the successful party for filing and/or hearing fees paid to the Board (see section 133(13) of the Act).

VII. Hearing Fees

Hearing fees must be paid by all parties in accordance with the Schedule of Fees made under section 133(10) of the Act and the Board's Rules of Procedure.

For each day (or part of day) of Case Management Hearing, each party or participant must pay \$250.00 plus applicable taxes.

For each day of hearing or part of a day of hearing each party or participant must pay \$625.00, plus applicable taxes.

Hearing fees must be paid in advance of each day of hearing by 9:30 a.m. on the morning of the hearing.

Where the applicant has failed to pay the required hearing fee, the hearing will be cancelled and the application will be terminated, unless the Board orders otherwise.

A responding party who has failed to pay the required filing fee *and* hearing fee will not be permitted to participate in the case, including the hearing (if one is held) in any way, except with the permission of the Board.

VIII. No Refund of Hearing Fees

Hearing fees need not be paid before 9:30 a.m. on the morning of the hearing day. Hearing fees will not be refunded by the Board for any reason, except where the hearing was cancelled or adjourned at the behest of the Board.

IX. The Response

If the referral proceeds to hearing, a Response (Form A-88) is required and it must be filed with the Board not later than two days before the hearing. A response may be filed by any method, except facsimile transmission, e-mail or registered mail.

Before, or at the same time as, it is filed with the Board, the Response must be delivered to all other parties. The Response may be delivered to the other parties by hand, facsimile transmission, courier or by e-mail if permitted by Rule 6.4(d).

X. The Hearing

Applications under section 133 of the Act may be heard by panels of three (one Vice-Chair and two Board Members) or by a Vice-Chair sitting alone, at the discretion of the Chair.

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest at www.olrb.gov.on.ca.

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.