

ONTARIO LABOUR RELATIONS BOARD INFORMATION BULLETIN NO. 36

Applications for Review of a Notice of Contravention under the *Building Opportunities in the Skilled Trades Act, 2021*

This Information Bulletin describes what happens when a person (including a corporate entity) who has had a Notice of Contravention issued against them by the Registrar or an Inspector under the *Building Opportunities in the Skilled Trades Act, 2021* ("BOSTA" or "Act"), applies for a review of that Notice of Contravention.

The BOSTA provides that applications for review may be made to the Ontario Labour Relations Board (the "Board") in respect of Notices of Contravention under s. 6 or 7 of the Act. The Board is responsible for processing and determining these applications. The Board is a quasi-judicial administrative tribunal and its decision-making is completely independent of the Ministry of Labour, Immigration, Training and Skills Development.

MAKING AN APPLICATION

Timeliness

Applications for Review **MUST** be received by the Board within **15 calendar days** after receipt of the Notice of Contravention. If you want the Board to consider your application even though it has been filed after the 15-day time limit, you should include with your application all of your reasons why an extension of time should be granted by the Board.

The Process

Before filing the application with the Board, you must **deliver your application** to the Director appointed under BOSTA and any other person or organization whom you identify as potentially affected by the application.

The application should consist of 1) a copy of the completed Form (A-134) and 2) all supporting documents (including the Notice of Contravention). Be sure to complete the Certificate of Delivery in the application, indicating when and how you delivered the application to BOSTA and any other parties you identified.

Other material, including the blank Response form (A-135) and the OLRB Rules of Procedure are available from the Board (505 University Avenue,

Toronto, Ontario, M5G 2P1 - Tel. no. [416] 326-7500) or from the Board's website at www.olrb.gov.on.ca.

The completed application package may be delivered in accordance with Rules 6.4 and 22A.1 of the Board's Rules of Procedure.

Not later than five days (not including weekends, statutory holidays or any other day the Board is closed) after delivering the application to the Director appointed under BOSTA and any other parties you have identified in the application, you must file one copy of the application with the Board. The application may be filed in any way other than by facsimile transmission, e-mail or registered mail. If the application is not filed within five days after delivering the package to the Director appointed under BOSTA, the matter may be terminated (or may not proceed if you do file it later).

FILING A RESPONSE

The Director appointed pursuant to BOSTA, and any other party wishing to participate in the case, must file a response within 21 calendar days of the hearing or consultation that is scheduled in the matter. They must first deliver a copy of the response to the applicant and each other by hand, courier, regular mail, facsimile transmission or any method agreed to by the parties. They must then file one copy of their response with the Board, using any method other than facsimile transmission, e-mail or registered mail.

If you do not file your response/intervention and other required documentation in the way required by the Board's Rules of Procedure, the Board may not process your response/intervention and documents, and may decide the application without further notice to you. Furthermore, you may be deemed to have accepted all the facts stated in the application.

HOW THE APPLICATION IS PROCESSED

After the application is filed, the Board will review the materials and determine how it will be processed. The matter may be referred to a Mediator, or may be scheduled for a pre-hearing conference, a consultation or a hearing. In some cases, the Board may be satisfied that it can rule on the application based on the written materials it has received.

If the application is referred to mediation, the Mediator will contact the parties to arrange a meeting. The purpose of this meeting is to try to help the parties reach an agreement to settle the application and therefore avoid the need for adjudication.

Mediators do not decide the case. They do not represent any of the parties nor do they act as advisors to any of the parties, including the Director appointed under BOSTA, in the case. Their role is to help the parties reach a settlement of the Application. During your meeting, the Mediator may explain the case law on the issues in dispute to the parties. This is done to assist you to realistically assess your position and evaluate any settlement offers. This is **not** legal advice.

In order to encourage frank and open discussion, the Mediator considers everything said in the meeting to be mediation and is confidential. The Mediator does not provide his/her file or forward your documents to the Board. Remember, if you want a document considered in the hearing you must deliver it to the other parties and file it with the Board in accordance with the Board's Rules. Similarly, parties must copy each other on any correspondence filed with the Board.

THE HEARING/CONSULTATION

If the Application is not settled, a hearing/consultation may be held in Toronto or in the Regional Centre (Ottawa, Sault Ste. Marie, Sudbury/North Bay, Thunder Bay, Timmins, or Windsor) closest to the workplace. Alternatively if the Board considers it appropriate, the hearing/consultation may take place by videoconference or teleconference. The Board will send a Notice of Hearing/Consultation giving the date, time and either the location of the hearing/consultation, or type of electronic hearing.

On occasion, the Board may determine that a Case Management Hearing ("CMH") should be held to consider how the application should proceed. If the Board decides that it should hold a CMH, you will receive written notice with directions about what will be dealt with at the CMH.

CONSULTATIONS

A consultation is different from a hearing. A consultation is meant to be more informal and less costly to the parties than a hearing, and the Vice-Chair plays a much more active role in a consultation than in a hearing. The goal of a consultation is to allow the Vice-Chair to expeditiously focus in on the issues in dispute and determine whether a contravention has occurred.

While the precise format of a consultation varies depending on the nature of the case and the approach of the individual adjudicators, there are some universal features. To draw out the facts and arguments necessary to decide the issue, the Vice-Chair may: 1) question the parties and their

representatives, 2) express views, 3) define or re-define the issues, and 4) make determinations as to what matters are agreed to or are in dispute. The giving of evidence under oath and the cross-examination of witnesses are normally not part of a consultation, and when they are, it is only with respect to those matters that are defined by the Board.

Because the opportunity to call witnesses and present evidence in a consultation is limited, the Board relies heavily on the information that is provided in the application and response. As such, the applicant and the Director appointed under BOSTA (and any other affected party that participates) are required to provide in their application and response all of the material facts that they intend to rely on. Parties who fail to do so may not be allowed to present any evidence or make any representations about these facts at the consultation.

The hearing/consultation is a legal proceeding and will determine your rights and obligations under the Act. If you have information or evidence to present to the Board, you must attend the hearing when it is scheduled. The question for the Board is whether there has been a contravention of either section 6 or 7 of BOSTA and if so, what the appropriate order should be. PLEASE NOTE: The Board does not review the conduct or procedures of the Director appointed pursuant to BOSTA in coming to its decision. The Board starts its hearing with a "clean slate" in order to make its determination. The onus is on the Director appointed under BOSTA to prove on a balance of probabilities that a contravention of the Act occurred. The Board may also review the quantum of the penalty imposed by the Director Appointed Under BOSTA. **If you do not attend, the hearing will proceed without you and your rights and obligations will be determined in your absence.**

Each party must file with the Board not later than ten days before the first date set for hearing or consultation two copies of all documents upon which it will be relying in the case. At the same time, each party must deliver copies of those documents to each of the other parties. Documents filed with the Board must be arranged in consecutively numbered pages and must be accompanied by a table of contents describing each document.

You must also arrange to have any witnesses you intend to call on to give oral testimony present at the hearing. If you are unsure whether a witness on your behalf will come to the hearing, you may serve them with a summons from the Board ordering that person to attend and to bring with them whatever documents you describe in the summons. Contact the Board and request that a summons form be sent to you. Please allow sufficient time before the hearing to obtain the summons and serve it, in person with the required payment for travel and attendance, on your witness. You are

responsible for the attendance of your witnesses. If you fail to ensure their attendance the hearing may proceed without their evidence.

You are entitled but not required to be represented by a lawyer or other representative at the hearing. The Board will not provide a lawyer or representative for you.

At the hearing, the parties will likely be asked to make a brief opening statement explaining the circumstances surrounding the issuance of the Notice of Contravention. Unless everyone agrees about the facts, the parties will need to present evidence. This involves witnesses giving testimony and the introduction of documents. The Director appointed under BOSTA will proceed first to establish the grounds for issuing its Notice of Contravention.

The Board decides the case based only on information presented at the hearing/consultation. You cannot give additional information after the hearing unless the Board specifically asks you to do so. You may not communicate privately with the panel assigned to the case before, during or after the hearing.

ADJOURNMENTS

Sometimes it is impossible to attend the hearing on the date it is scheduled. In that case, you may ask the Board to adjourn the hearing to a different date. **Except in extremely urgent situations, you must ask the other parties for their consent to the adjournment before making the request to the Board.** If the other parties will not consent, you should advise the Board in writing setting out the reasons for your request. A copy of your request must also be sent to the other parties who will have an opportunity to respond. The Board considers the parties' positions and will issue a decision. **If you need an adjournment, you must make your request as soon as possible.** Otherwise there may not be enough time to consider your request and the hearing will go ahead as scheduled.

THE DECISION

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.

The Board's decision is final and binding on the parties. There is no appeal from the decision except by a process called judicial review, which takes place at the Superior Court of Justice, Divisional Court.

IMPORTANT NOTE

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.