Minutes of the OLRB Advisory Committee

September 18, 2008
Mathews Dinsdale Boardroom

In attendance: Kevin Whitaker – Chair, OLRB
Tim Parker – Director/Registrar, OLRB
Voy Stelmaszynski – Solicitor, OLRB
Joe Liberman – Employer, Committee Co-Chair
Lorne Richmond – Union, Committee Co-Chair
Daryn Jeffries – Employer
Patrick Moran – Employer
Risa Pancer – Union (by telephone)
Mark Geiger – OBA Labour and Employment Section
Bridget Lynett – Acting Legal Director, Ministry of Labour

Absent: Sunil Kapur – Employer
David Jewett – Union
Elizabeth Mitchell – Union
Kathleen Stokes – Employer

Joe Liberman chaired the meeting. Minutes of the June meeting were circulated beforehand.

Minutes were taken by Voy Stelmaszynski

Proceedings:

A. Follow-up from Earlier Meetings

1. Time for Filing of Responses by Employers in Section 133 Grievances

The members agreed to recommend for the Board's consideration that the Employer's Response (and Notice) would be delivered to the Union and filed with the Board not later than two days before the scheduled hearing date of the grievance. [The discussion concerning the timing of the filing of the "Notice" and the "Response" will continue at the next meeting.] There was a further discussion of the consolidation of documents, but the group determined that the issue did not need resolution. A further issue was raised regarding the identity of the employer (or its counsel) when the responding party has not appeared at the Board before, and a Labour Relations Officer is attempting to contact parties to schedule a settlement meeting. The group agreed that Labour Relations Officers were able to contact the appropriate parties or their counsel. There was an outstanding matter involving the timing of the issuance of default decisions. The Registrar will give this consideration.

2. Quantum of Payment of Fees for Multiple Grievances

The OLRB Chair confirmed that although this is an issue for both Unions and Employers, the Board itself is a disinterested party in the issue; the fees collected are deposited with the Consolidated Revenue Fund, and do not go directly to the Board's account. The OLRB chair advised that he had raised the issue with the Ministry of Labour. The elimination of multiple payments would signify a reduction in revenues for the Fund. The Ministry has not provided an answer to the Chair's initial raising of the issue. The Chair suggested that the Ministry of Labour may change the Regulation to establish certainty, if it determines that the issue requires clarification. If this process is engaged, the amendment to the Regulation can be communicated to the Committee and parties generally electronically. Charges would be applied *per hearing* (with grievances "stacked"), as opposed to the current practice of per grievance.

3. Scheduling of Interim Orders

The Registrar reported that the majority of applications for interim orders are scheduled within ten business days. The Board is not prepared to formalize this in a Rule, because it requires the flexibility to determine scheduling on a case-by-case basis. The Board agreed to post a notice on its website advising parties that in the normal course they can expect a hearing date on an interim application within ten working days. The Union Members agreed to monitor scheduling and re-visit the issue if the expectation is not being met.

4. Development of Case Index

The Board Solicitor advised the group that the Board is undertaking the index project, and has been in contact with CanLII for the posting of the finished product. The Index will scan all decisions and head notes from the OLRB Reports. There will be key words, and a link from the head note to the full text of the reported decision. It is anticipated that the launch will occur in the spring of 2009.

5. Card-Based Certification: Timing of Union Challenges

The Committee agreed to recommend for the Board's consideration that, in order to address the Employers' concern regarding the delay in receiving union challenges, the Board could, in its first post-application decision, direct the union to identify its challenges to an employer's list within five business days of the decision. The employer could then have a further five days to respond to the challenges. No form would be required: challenged employees could be identified using the employer's alphabetical list filed with its response. There would be no change to the existing scheduling of Regional Certification meetings. The Board will report back on the potential implementation of this recommendation.

B. New Issues

6. *Sine Die* Certification Applications

Employer counsel queried the Board's recent practice limiting adjournments allowed on applications for certification. The Registrar explained that these adjudicative adjournments generally followed earlier administrative adjournments, and the Board was of the view that repeated and lengthy delays in the resolution of certification applications not only prevented other unions from organizing a workplace, but also and more importantly they deprived employees of representation in accordance with the legislation.

7. OBA Labour and Employment Section

The representative of the OBA advised the group that the OBA Labour Section has been re-named the Labour and Employment Section and it includes among its membership lawyers who practise non-labour relations law (wrongful dismissal, employment standards). With that in mind, he would be canvassing the Section for issues to be raised at the Committee. The representative added that Chief Justice Warren Winkler had recently addressed the Section and made comments regarding new ways of handling wrongful dismissals, which make up a significant portion of the court's time. The Committee agreed that it was appropriate to expand its mandate to entertain the Section's issues accordingly.

8. Privacy Issues

The OLRB Chair told the group that the issue of personal information in adjudicative decisions has been percolating at both the federal and provincial levels in recent months. Privacy Commissioners are looking at the extent to which personal information is included in tribunal decisions, and whether that information needs to be spelled out in the current way. Both Employer and Union members agreed that the public nature of some litigation, and the public airing of facts, circumstances and identities were a necessary tool that each side uses to its advantage. The Chair advised that the Board would be developing a protocol to address this issue, and would be bringing that protocol to the group for review and comment.

9. Electronic Filing

The Registrar asked whether there was any appetite for a pilot project utilizing email for communication—and potentially limited filing—with the Board. Both Employer and Union counsel stated that would be their preference. Counsel routinely use email as their chief means of communication between themselves. The Registrar stated that he would consider initiating such a pilot for institutional parties in certain kinds of Board applications.

10. Scheduling

Union counsel expressed disappointment in the apparent delays in scheduling continuations at the Board. There was some discussion of the issue, and no real agreement that this was the case. The Registrar took pains to explain some of his

methods and variables—the juggling of not only Vice-Chairs', but lawyers' calendars, the complexity of the cases, adjournments, etc.

C. Next Meeting

December 4, 2008

Hicks Morley Hamilton Stewart Storie LLP
TD Tower, 30th Floor
Toronto Dominion Centre
Toronto, ON M5K 1K8

Meeting adjourned at 7:10pm.

Minutes prepared by Voy Stelmaszynski