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INFORMATION CIRCULAR

The following is one in a series of information circulars prepared by the administration staff of the CIRB. The circulars are designed to provide employees, trade unions and employers with general information and a clearer understanding of Board processes. This information circular is an informal tool and is not binding on the Board.

No. 08—Your Unfair Labour Practice Complaint and the Public Hearing Process

The complaint you filed is scheduled for public hearing and you want to appear before the Board without a lawyer, a union representative or any other type of representative. This information circular is intended for you; it will explain the various stages of the hearing and will answer the following questions.

- When does the Board hold a hearing?
- How do you prepare for a hearing?
- What is the order of presentation of evidence during a hearing (that is, who goes first)?
- What happens at the argument stage?
- What is the role of the Board's industrial relations officers before and after a hearing is held?
- What happens after the hearing?

When does the Board hold a hearing?

You can request that the Board hold a public hearing to deal with your complaint, but it is the Board that determines whether or not to hold a hearing, on the basis of the requirements of the *Canada Labour Code* (the *Code*) and the information on file.

16. The Board has, in relation to any proceeding before it, power

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(*l.1*) to defer deciding any matter, where the Board considers that the matter could be resolved by arbitration or an alternate method of resolution;

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(*o.1*) to summarily refuse to hear, or dismiss, a matter for want of jurisdiction or lack of evidence;

Canada

...

16.1 The Board may decide any matter before it without holding an oral hearing.

The Board may refuse to hold a public hearing and decide the case on the basis of the information on file, that is, information that the parties provided or that the industrial relations officer gathered during the investigation. For this reason, it is very important that you present all relevant facts and arguments in support of your complaint **in writing** and attach all exhibits, as you may not have the opportunity to produce other evidence or arguments at a formal hearing.

How do you prepare for a hearing?

Once the Board has decided to hold a public hearing, it will inform the parties involved of the date, time and place of the hearing. If you need simultaneous translation services, the Board will provide them on request.

At the hearing, the single-member or three-member panel will ask you to present your evidence, which can be done in two ways. When you call a witness to testify at the hearing, you are presenting *oral evidence*. And documents, letters or other objects you present to the Board are known as *exhibit evidence*.

Be aware that documents or exhibit evidence must be introduced *through a witness*, who may have sent or received a copy of the document. Another approach is to agree with the other party on the authenticity of the document presented. The Board marks for identification all documents you produce. Make sure you provide a sufficient number of copies of all documents you plan to introduce as evidence to be distributed to the panel hearing your complaint and to the other parties.

If you believe that one of the persons you want to question may not appear at a hearing, it is safer to obtain a summons (subpoena) from the Board. The industrial relations officer responsible for investigating your complaint will complete the form and indicate, at your request, the documents you want the witnesses to bring with them to the hearing. However, do remember that if you request a summons, it is your responsibility to deliver it and pay all related costs (see section 118 of the *Code*).

HEARING PROCESS

What is the order of presentation of evidence during a hearing (who goes first)?

The order in which the evidence is to be presented to the Board during the hearing varies according to the type of complaint. Ordinarily, if you claim that the employer or union violated a provision of the *Code*, you are responsible for proving, to the Board's satisfaction, that the employer or union has committed acts prohibited by the *Code*. It is said that you carry the burden of proof and you are the first to present evidence.

If you claim that your employer or its representative violated section 94(3) of the *Code*, by disciplining you for union activities for example, the employer must prove it has not violated the *Code*, rather than you having to prove that a violation did occur. The employer would be asked to present its evidence first at a hearing. This procedure, described in section 98(4) of the *Code*, allows you to be informed of the employer's reasons and to respond to them.

Examination, Cross-examination and Re-examination of a Witness

If you are the first to present your evidence, you are *examining* the witness, that is, you ask questions relevant to your complaint. The other party then gets a chance to question that person. This is called *cross-examination* of the witness. Finally, you get a chance to *re-examine* your witness; however, you cannot during re-examination explore issues that did not come up in the initial examination and in cross-examination.

Once you have presented your evidence, the Board will ask the other parties to present their evidence, following the same procedure. When all witnesses have been heard, the presentation of evidence is completed and we proceed to the argument stage.

What happens at the argument stage?

At this stage, the Board is aware of all the facts of the case, but it does not know how the parties interpret these facts. You and the other parties, in the same order that the evidence was presented, take turns trying to convince the Board, through arguments, to allow your complaint.

To support your case, you can, in your arguments, refer to past decisions (case law or jurisprudence) of the Board or of other labour boards and courts, where similar issues were examined. You need not be intimidated by your lack of knowledge of established jurisprudence. Board members are well aware of the *Code's* provisions and of past decisions, and base their decision on the information on file and their appreciation of the witnesses' testimony.

What is the role of the industrial relations officer before and after a hearing is held?

After receiving a complaint, the Board appoints an industrial relations officer to investigate the complaint and try and help the parties settle the matter. This process is called *mediation*. All that is discussed during mediation between the officer and the parties is confidential. The Board will not be told of what transpired from these discussions. Board officers can help you and the other parties organize the facts and issues so as to zero in on exactly what is in dispute. They can also provide you and any other party with copies of past Board decisions dealing with similar issues.

Experience has shown that it is better for the parties to find a solution on their own. However, if the parties cannot reach an agreement, the officer will inform the Board and will write a report describing the areas of disagreement. The report is filed with the Board and distributed to the parties for their comments. The Board then determines whether it can deal with the complaint on the basis of the information on file or whether it must schedule a hearing.

Board officers remain available at all times to assist you and the other parties in reaching a settlement even after a hearing is scheduled. As mentioned above, they also provide assistance with respect to obtaining summonses. Since they are fully acquainted with the Board's practices in conducting a hearing, feel free to consult with them on any matter related to the hearing. However, they must remain neutral, and cannot act or be seen to act as advocates.

What happens after the hearing?

At the conclusion of a hearing, the Board will make every effort to transmit its decision to the parties as soon as possible.

In some cases, the Board will appoint an industrial relations officer to assist the parties in implementing the decision. If a party refuses to comply with the decision, the Board will on request take additional steps to ensure compliance with the terms of the decision.

For more information about the Board, refer to circulars concerning the role of the industrial relations officer and the scheduling of hearings.

Revised 2001