



# Labour BOARD

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## **Rules of Procedure**

# LABOUR BOARD (Nova Scotia) Rules of Procedure

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## **PART I - GENERAL RULES**

### **Rule 1 - General Matters and Definitions**

#### **1.01 Short Title**

These Labour Board Rules of Procedure may be cited as the Labour Board Rules. Any reference to “Rule” or “Rules” means the applicable Labour Board Rule or Rules, unless another meaning is clear.

#### **1.02 Application**

These Rules apply to all proceedings before the Labour Board, with necessary modifications to suit the particular nature of the proceeding, or as specifically provided in a Rule. These Rules shall be broadly interpreted to produce a quick, just and inexpensive determination of the issues before the Board.

#### **1.03 General Authority**

Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to effectively determine the matter before it.

#### **1.04 Procedural and Policy Statements**

These Rules are designed to be read in conjunction with any Procedural or Policy Statement previously issued by the Board, or that which may be issued from time to time. The specific provisions of such a Procedural or Policy Statement will prevail over any of these Rules if the two are in apparent conflict. These Procedural and Policy Statements can be found on the Board’s website at: <https://novascotia.ca/lae/labourboard/procedures>.

#### **1.05 Conflicts with Other Legislation**

Where any of these Rules is in conflict with any statute or regulation, the provisions of the statute or regulation shall be followed.

#### **1.06 Public Access to Proceedings**

Hearings are conducted using in whole, or in some combination, paper hearings, oral hearings, or hearings aided by technology such as telephone or video link. Oral hearings are open to the public. However, at times, the Board deals with

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intimate financial or personal information. The Board may partially or totally restrict access to hearings to protect the privacy of such information. In such cases, the Board will decide who will remain in the hearing during all or part of the proceeding.

A party who wishes to restrict public access to a hearing or to documents to be referred to at a hearing, should make a request at the earliest opportunity. The request should address the reasons for the restriction, including the nature and extent of the specific harm that might result if full public access were permitted. The Board shall in all instances attempt to balance the privacy interests of the parties with the public interest.

Hearings are not normally recorded, unless recording is specifically ordered by the Board as a result of a request of a party or on the Board's own motion (see Rule 18). Media may attend hearings, however they are not permitted to take video or audio recordings of the proceeding. Media members may not interview hearing participants inside Board hearing rooms and are expected to be respectful of other users of public space.

Except as required by the *Freedom of Information and Protection of Privacy Act*, all documents that are filed in a proceeding pursuant to a filing requirement of these Rules or the statutes and regulations under the Board's jurisdiction, or that are received in evidence in a proceeding, shall be treated as confidential and only available to the parties to the matter.

### **1.07 Disclosure of Personal Information**

When filing any matter with the Labour Board, all information included in the filing is normally provided to the other party or parties named as respondents, interveners or interested parties, unless a particular Rule, statute or regulation provides otherwise. Further, such information may be referred to in the order or reasons issued by the Board at the conclusion of the case, on the Board's website and in print and online reporting services that may publish the Board's decision. Should a party seek to have any such information withheld from another party, or from the public, they should apply to the Board for an exception.

### **1.08 Language of Proceedings and other Accommodations**

Hearings are normally conducted in English. The Board is committed to ensuring that proceedings are conducted in accordance with the principles of natural justice and fairness and will make reasonable accommodation at Board expense for the provision of interpreter services, including sign language interpretation.

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## 1.09 Definitions

The terms used in these Rules have the following meaning, unless the context requires they have a different meaning:

“affidavit” means a written statement of facts made under oath or affirmation, and includes a statutory declaration.

“application” includes any application, complaint, referral, request or appeal made to the Labour Board under any of the statutes that grant the Board jurisdiction to decide a matter.

“applicant” means a person who makes an application to the Board, and any person added as a party-applicant by the Board in a proceeding before it.

“Board” means the Labour Board, as established by the *Labour Board Act*.

“Case Management Conference” means a meeting with the parties chaired by the Chair, Vice-Chair or Officer of the Board and is part of the process that enables the Board to monitor and manage a case from the time a matter is filed with the Board to its conclusion.

“Chair” means either the Chair of the Board, or a Vice-Chair who is case managing a proceeding or conducting a hearing, unless the context clearly indicates that it means the Chair appointed pursuant to Section 3(1)(a) of the *Labour Board Act*.

“Civil Procedure Rules” means the *Nova Scotia Civil Procedure Rules* made by the judges of the Nova Scotia Court of Appeal and the Supreme Court of Nova Scotia.

“Director” means the Director of Labour Standards in matters arising under the *Labour Standards Code*, or the Director of Occupational Health and Safety in matters arising out of the *Occupational Health and Safety Act*.

“document” means any written, visual and audio material, other than oral testimony, and includes information stored in electronic form that can be replicated and provided to the Board and to the other parties.



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“electronic hearing” means a hearing held by telephone conference or some other form of electronic technology allowing all parties and participants to hear one another, but not necessarily see one another.

“Chief Administrator” means the Chief Administrator of the Labour Board and includes their representative.

“form” or “required form” means the form required by the Board, which can be obtained by contacting the Board or, in some instances, by consulting the forms available on the Board’s website at <https://novascotia.ca/lae/labourboard/forms/>.

“hearing” means an oral, written or electronic hearing, or some combination of the aforementioned, in an application before the Board.

“Minister” means the Minister of Labour, Skills and Immigration or any designated representative thereof.

“oral hearing” means a hearing before the Board which the parties or their representatives attend in person.

“panel” means the Chair and members hearing a matter, and includes a Chair conducting a hearing by sole adjudication, where permitted by statute.

“person” includes a corporation and the heirs, executors, administrators or other legal representatives of a person.

“proceeding” means a matter before the Labour Board.

“representative” means legal counsel or a person authorized to act on behalf of a party or parties or interested party or parties.

“response” includes a reply, intervention, statement of defence, or any other response to an application.

“responding party” or “respondent” means any person who has status as provided by specific legislation, other than a person on behalf of the Board, who is served with an application.

“statutory declaration” means a written statement of facts verified by solemn declaration of the person making the statement before a competent authority.

“written hearing” or “paper review” means a hearing held solely by means of the exchange of documents, in written form, with no oral hearing.

## **1.10 Matters Not Dealt with in the Rules of Procedure**

If these Rules do not provide for a matter of procedure, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate any matter before it, including following the Civil Procedure Rules, by analogy, in whole or in part.

## **1.11 Waiving or Varying a Rule**

Except where a contrary intention appears in statute or regulation, the Board may waive or vary any of these Rules at any time, where it is just or expedient to do so.

## **1.12 Board May Act on Its Own Initiative**

The Board may exercise any of its powers under these Rules on its own initiative or at the request of a party.

## **1.13 Issuing Directions**

The Board may, at any time before the final order or decision, issue general or specific procedural directions, or an interim decision, or such order as may seem appropriate.

## **1.14 Directing Parties to Give Notice**

The Board may direct a party to give written notice of an application, hearing or other matter to all or any other parties and interveners, and except where the form and content of the notice or the manner in which it is to be given is prescribed in statute or regulation, the Board may direct the form and content of the notice or the manner in which it is to be given, including whether it be in hardcopy or electronic format.

## **1.15 Communications With the Board**

Normally, any communication to the Board that requests any action or relief in relation to a matter before the Board, must be copied to all other parties to the proceeding.

All communications to the Board are to be made through the Chief Administrator or other staff of the Board and not directly to the Chair or panel, unless specifically directed in advance by a Chair.

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Where a party has been directed to communicate to the Board, whether before, during or after a hearing, the Chair presiding over the matter may give more explicit directions concerning which other parties or interveners, if any, should be copied with the communication, and by what means.

## **1.16 Exceptions Permitting Confidential (*ex parte*) Communication**

A request that the Board issue a subpoena to a witness does not have to be copied to any other party to the proceeding.

Nothing in this Rule precludes a party having confidential communication (i.e., caucusing) with a Chair or Officer who is conducting a mediation or other ADR process, where such caucusing is permitted by the Chair or Officer.

Nothing in this Rule precludes a party having discussions with a Board staff member who is providing navigational support regarding matters that are procedural and not substantive in nature.

## **Rule 2 - Non-Compliance with Forms and Procedures**

### **2.01 Forms and Defects in Form**

The Board has approved and published a number of forms for certain applications or filings, which are available by contacting the Board or consulting the Board's website at <https://novascotia.ca/lae/labourboard/forms>. Parties should note that the Board reserves the right to add to, withdraw, substitute or amend these forms at any time, and that the current version of a form should be used. However, it is sufficient if there is substantial compliance with a form, notice or document required by these Rules.

Where no particular form is published or provided, parties shall do their best to file documents that are legible, complete, reasonably organized and that use plain language, thus allowing the Board and opposing parties to understand what the party is saying or requesting.

In any case, no proceeding will be held to be invalid by reason only of a defect or other irregularity in form.

### **2.02 Compliance with Procedures**

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The Board expects that these Rules and Board orders will be followed. If a party has not complied with a requirement of these Rules or a procedural order, the Board will decide what remedy, if any, may flow from the breach.

## **Rule 3 - Representatives**

### **3.01 Notification of Board**

If a party is to be represented at a hearing before the Board, the Board must be notified in advance of the identity of the representative and their right to act on behalf of the party.

### **3.02 Notification of Change of Representation**

The Board must be notified of any change in representation as soon as possible to ensure correct and timely action. Where a named representative no longer has authority to act, or withdraws, the Board must be provided with up-to-date contact information for the party, including the name of a responsible individual, mailing address, phone and fax number, and e-mail address, if applicable.

## **Rule 4 - Parties and Other Participants**

### **4.01 Identity of Parties**

Parties in matters include the persons described in a statute, regulation, or form as the applicant(s), appellant(s), claimant(s) or respondent(s). The Director may be a party in a matter under the *Occupational Health and Safety Act*, or *Labour Standards Code*. The Board may also accept interested persons, such as interveners, as parties to matters. The Attorney General for Nova Scotia may be a party to a matter where Notice of Constitutional Question has been given. The Minister is not a party to any proceeding unless the Minister expressly seeks party status in a specific proceeding.

### **4.02 Application for Party Status**

Interested parties and interveners may apply in writing for the right to be heard and appear before the Board on any matter by demonstrating that they have an interest in the outcome of the proceeding.

### **4.03 Factors Considered When Adding a Party**

In determining whether a party should be added to a proceeding (whether as an intervener, or in some other capacity) the Board may consider any of the following:

- a) whether the person has a genuine interest in the subject matter of the proceeding;
- b) whether the person may be adversely affected by the proceeding;
- c) whether there are issues of law or fact that exist in common between the person and one or more of the parties;
- d) whether there is a public interest component to the hearing; and
- e) whether there will be undue delay or prejudice to other parties if the person is given the status of a party.

### **4.04 Factors Considered in Allowing Intervener Status**

In deciding whether to allow a person to participate in all or part of the proceedings as an intervener, the Board may consider any of the following factors:

- a) the nature of the case;
- b) the issues;
- c) whether the person has a genuine interest in the issues;
- d) the likelihood of the person being able to make a useful and different contribution to the Board's understanding of the issues;
- e) delay or prejudice to the parties; and
- f) any other matter it considers relevant.

## **Rule 5 - Computation of Time**

### **5.01 Definitions of “Business Day” and “Holiday” and “Day”**

- (a) “Business day” is any day that is not a holiday.
- (b) “Day” means any calendar day, including a holiday, except where the specific provisions of legislation or a rule, or a reasonable interpretation thereof, dictates that a “day” is intended to be equivalent to a business day.
- (c) “Holiday” means any Saturday or Sunday, New Year’s Day, Good Friday, Dominion Day, Christmas Day, the birthday or the day appointed for the celebration of birth of the reigning Sovereign, Victoria Day, Labour Day, Remembrance Day, and any day appointed by any statute in force in the Province of Nova Scotia or by Proclamation of the Governor General or the Lieutenant Governor as a general holiday or for general fast or Thanksgiving, and whenever a holiday other than Remembrance Day falls on a Sunday the expression holiday includes the following day. For clarity, this includes a day that is observed by employees of the government of Nova Scotia.

Where there is a conflict between Rule 5.01 and a definition in the statute governing the application, the definition in the statute will apply.

### **5.02 Computation of Days**

Subject to Rule 5.03, in computing time periods under these Rules, or in an order or decision of the Board,

- (a) where there is a reference to a number of “business days” between two events, the time period shall be counted by excluding the day on which the first event happens, and the holidays that occur between the two events shall not be counted;
- (b) where there is reference to a number of days, and where the context clearly refers to calendar days between two events, the period shall be counted by excluding the day on which the first event happens, but including all days thereafter, including holidays;
- (c) where the time for doing an act under these Rules expires on a holiday, the act may properly be done on the next business day;

- (d) where, under these Rules, a document has been served or would be deemed to be received on a day that is a holiday, it shall be deemed to have been served or received on the next business day; and
- (e) all materials required to be filed with the Board must be received by the Board during normal business hours established by the Board (currently 8:30 a.m. to 4:30 p.m.). Any material required to be filed which is received by the Board after the close of business hours, including material sent via e-mail or fax, will be deemed to have been filed on the next following business day.

### **5.03 Changing Time Periods**

Subject to any limitations contained in a statute or regulation that would specifically prohibit the Board from doing so, the Board may, at any time and on such conditions as it considers appropriate, lengthen or shorten the time for the performance of any obligation under these Rules or under any statute or regulation.

## **Rule 6 - Constitutional Challenges**

### **6.01 Jurisdiction**

The Board may hear Constitutional or Charter challenges and Charter claims within the context of matters otherwise falling within the Board's jurisdiction.

### **6.02 Notice of a Constitutional Challenge**

To initiate a Constitutional challenge, the party raising this issue must submit written notice to the Board and all other parties as early as possible in the process. Notice may also be provided at a Case Management Conference in which case it will be transmitted to all parties by the Board in the form of a Case Management Summary.

### **6.03 Adjournment for Constitutional Challenge**

If notice of a Constitutional challenge has been received and the Board deems it appropriate, an adjournment of a scheduled hearing, or additional time before the scheduling of a hearing, may be granted to allow for preparation.

## **6.04 Response and Pre-Hearing of Constitutional Issues**

Following receipt of notice of a Constitutional challenge, another party may file a response on the issue. The Board may then request submissions from all parties on the issue of jurisdiction, lack of grounds, or any other issue raised by the responding party.

## **6.05 Parties Responsible for Notice**

It is the responsibility of any party raising a Constitutional question to determine whether notice thereof to the Attorney General of Nova Scotia is required by the *Constitutional Questions Act*, and that party bears the sole responsibility to notify the Attorney General in accordance with that *Act*. Failure by a party to notify the Attorney General may result in an adjournment of a hearing or, if an adjournment would seriously prejudice another party, the Board may refuse to consider or dismiss the Constitutional question.

## **PART II - COMMENCEMENT OF PROCEEDINGS**

### **Rule 7 - Commencement, Filing, and Service**

#### **7.01 Statutory Authority**

Where there is a conflict or inconsistency between the procedures in this Rule and the procedures prescribed in statute or regulation, the relevant provisions of the statute or regulation prevail. A reference to a statute in Rule 7 is deemed to include any regulation made under that statute.

Notwithstanding the procedures described in this Rule, a person seeking relief under the *Highway Workers Collective Bargaining Act*, or the *Civil Service Collective Bargaining Act* must consult with and seek direction from the Board as to the procedure to be followed..

#### **7.02 Commencement**

Every application must be started in the manner set out in the statute governing the application.

Where the statute governing the application is silent on the manner in which an application is started, the application is commenced by filing the required form with Board. Subject to Rule 8.02 where no such form exists, the application is



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commenced by writing to the Board and providing the nature of the issue, identifying the parties involved, naming the relevant enabling provision in a statute or regulations, and setting out the remedy you are requesting from the Board.

### **7.03 Reply and Subsequent Filing**

All responses and all subsequent filings required or permitted under these Rules or the statute governing the application must be in the required form and, where no such form is specified, in such form as the party chooses or as directed by the Board.

### **7.04 Manner of Filing**

Any document filed pursuant to Rule 7.02 or 7.03 is deemed to be filed only when all required information identified in a required form or these Rules has been received by the Board by one of the following:

- (a) personal service;
- (b) priority post, registered mail or another similar special delivery mail;  
or
- (c) facsimile or e-mail, where the receiving party made known that it has the capability and is willing to receive documents by such means.

The Board may waive a filing requirement for the purpose of these Rules in its sole discretion.

### **7.05 Service**

A document required to be served on a party must be served in the manner set out in the statute governing the application.

Where the statute governing the application is silent on the manner of service, a document must be served by:

- (a) personal service;
- (b) priority post, registered mail or another similar special delivery mail;  
or
- (c) facsimile or e-mail, where the receiving party made known that it has the capability and is willing to receive documents by such means.

Service is deemed effective on the earlier of the following

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- (a) the date the document is received;
- (b) where delivered by priority post, registered mail or other similar special delivery mail, the date of the first attempt to serve the document, or notice that the document is being held, to the party's last known address; or
- (c) where delivered by facsimile or email, the date of transmission.

### **PART III - RULES FOR SPECIFIC PROCEEDINGS**

#### **Rule 8 - Matters Under the *Trade Union Act***

##### **8.01 Application of the *Trade Union Procedure Regulations***

An application under the *Trade Union Act* will be determined in accordance with the *Trade Union Procedure Regulations*.

##### **8.02 Complaints From Trade Unions and Employers**

Subject to any statutory requirements, all other applications under the *Trade Union Act*, including complaints (other than DFR complaints), shall be submitted in the required form. Where no particular form is required, all complaints from trade unions or employers available under the *Act* shall be made directly to the Board, in writing, with all available information in support of the complaint, including:

- (a) relevant dates and times of impugned actions;
- (b) nature of the impugned actions;
- (c) consequences of the impugned actions;
- (d) names of witnesses, affected organizations or employers, and any other possible sources of corroboration; and
- (e) any other information supporting the claim.

Upon receipt of a complaint, the Board will notify the other party and will begin the process of creating a file on the matter. This will include seeking responses, meeting with both parties to explore alternative dispute resolution mechanisms, and conducting investigations if deemed necessary.

Any complaint that is lacking in sufficient substance may be dismissed without a hearing.

## **Rule 9 - Subpoenas and Summoning Witnesses**

### **9.01 Summoning Witnesses**

The Board has the same powers to summon witnesses or compel the production of documents as commissioners under the *Public Inquiries Act*.

### **9.02 Motion by Party to Summon Witness**

A party may request that the Board summon a witness for the hearing. The request may be made during a Case Management Conference, or at any other time. The Board will then issue a subpoena requiring the attendance and participation of that witness, unless it is clear on the face of the request that the person being summoned does not have relevant evidence, or is not compellable as a witness, or the documents being sought are not relevant.

Wherever possible, the party requesting the subpoena shall prepare the subpoena for the Board's review and execution, but where that is not practical, the Board may offer to prepare the subpoena on the party's behalf.

It is the responsibility of the party requesting the subpoena to serve it personally upon the person being summoned, in a timely manner and together with the appropriate witness fees and conduct money as is provided for witnesses in proceedings in the Nova Scotia Supreme Court, as set out in the *Costs and Fees Act* and the Regulations thereunder. (Court staff, lawyers or professional bailiffs are good resources to be consulted about the correct amounts of witness fees and conduct money to be paid.)

### **9.03 Enforcement of Subpoena**

In the event of non-compliance with a subpoena, it is the responsibility of the parties to enforce same through the Supreme Court of Nova Scotia by contacting the office of the Prothonotary. Parties may also refer to Rule 50 of the *Civil Procedure Rules* for additional information about the enforcement of subpoenas by the courts. Should non-compliance with a subpoena cause prejudice to a party at a hearing, the Board may grant an adjournment of the hearing on such terms as are just to all parties.

## **9.04 Production Hearings to Obtain Documents**

Where a party is required to serve a subpoena for the production of documents only, and desires to obtain production in advance of the hearing, that party may request the scheduling of a Production Hearing before the Chair or a Vice-Chair of the Board, on a date prior to the hearing, and the subpoena shall specify that the person in control of such documents shall attend at that time and produce the specified documents to the requesting party. At that time, the Board will consider and rule upon any arguments concerning relevance or any other issue concerning the liability to produce the requested documents.

## **PART IV - PRE-HEARING PROCEDURES**

### **Rule 10 - Notices of Hearing and Pre-Hearing (Case Management) Conferences**

#### **10.01 Requirement for Pre-Hearing (Case Management) Conference**

Except in extraordinary cases, no matter will proceed to a hearing unless there has first been at least one (1) Case Management Conference involving all parties.

#### **10.02 Case Management Conference – Procedure**

A Case Management Conference will be held either in person or via teleconference – or a combination of both – as the Board directs. It will be held in accordance with the Board’s Information Bulletin on Case Management Conferences, available on the Board website<sup>1</sup> and these Rules.

#### **10.03 Persons Who May Conduct a Case Management Conference**

A Case Management Conference will normally be conducted by the Chair or Vice-Chair assigned to the matter, but may, at the discretion of the Chair or Vice-Chair, be conducted by an Officer of the Board, or another Vice-Chair, or by the entire panel assigned to the matter.

#### **10.04 Failure of Party to Attend Case Management Conference**

Where a party fails to make himself or herself reasonably available for the scheduling of a Case Management Conference, or fails to participate in a

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<sup>1</sup><https://novascotia.ca/lae/labourboard/procedures/>

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scheduled Case Management Conference, the Board member or officer conducting the conference may establish any necessary timelines or dates for the hearing in consultation with the parties who are present.

### **10.05 Matters Which May be Dealt With During a Case Management Conference**

Any of the following matters may be dealt with during a Case Management Conference, in addition to other necessary or appropriate matters:

- (a) whether any person should be added as a party or granted intervener status;
- (b) confirmation as to the parties who intend to participate in the hearing and their respective representatives;
- (c) any issues concerning service of documents on the parties, including any request for substituted service;
- (d) identification and clarification of the legal and factual issues arising out of the application or any response, including whether the application raises issues that are within the jurisdiction of the Board;
- (e) determination as to whether an agreed statement of facts will be provided by the parties and timelines for filing such a statement;
- (f) establishing timelines for the pre-hearing exchange and filing of evidence and submissions, and any other issues pertaining to disclosure of particulars, documents or things;
- (g) in the case of an appeal, to the extent possible, facilitating the parties' access to the documents which form the record before the decision-maker under appeal;
- (h) where an investigation has been conducted by the Board, whether the parties wish to rely upon the transcript and report in relation to the investigation for purposes of the hearing;
- (i) whether evidence from a previous proceeding is sought to be introduced into evidence and relied upon in the proceeding before the Board;

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- (j) identification of the witnesses for each party, the estimated length of each witness's testimony, whether "will say" statements should be exchanged, and the identification of intended experts, if any;
- (k) any requirement for the issuance of a subpoena for a witness and, if applicable, the scheduling of a Production Hearing;
- (l) identifying the location for the hearing and setting hearing dates, where the matter is to be heard entirely or in part in oral or electronic form;
- (m) any physical accommodation of parties or witnesses, or issues concerning the requirement for interpreters;
- (n) whether certain matters should be heard at a preliminary hearing;
- (o) whether additional Case Management Conferences are necessary;
- (p) whether a panel of one (1) (sole adjudication) or a panel of three (3) will sit, for matters arising under the *Labour Standards Code*. Consent of all parties is required for sole adjudication under the *Labour Standards Code*; and
- (q) whether the parties are interested in attempting to resolve the matter via mediation or some other alternative dispute resolution method, with the assistance of the Chair, a Vice-Chair or a Board Officer, in which case the Board will arrange for such facilitated meetings or discussions as are required.

### **10.06 Case Management Conference Minutes**

Following a Case Management Conference, the participating Board Officer will prepare and circulate Minutes of the Case Management Conference, setting out the determinations made at the Conference. Parties will be invited to comment on the minutes and in the absence of any comment, or following any approved changes or corrections, the minutes shall be deemed to be accurate and have the effect of an interlocutory or procedural order of the Board.

## **Rule 11 - Alternative Dispute Resolution (ADR)**

### **11.01 Board Promotes Alternative Dispute Resolution**

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It is the policy of the Board to promote, where appropriate, the timely and orderly settlement of matters in dispute by the parties themselves. As such, the Board may utilize Alternative Dispute Resolution (ADR) to assist in the resolution of a matter before the Board, where all parties are in agreement that such an approach is desirable.

### **11.02 Alternative Mechanisms**

The Board may employ any useful ADR mechanism to assist in the resolution of the proceedings without a hearing on the merits, including but not limited to mediation by a Board Officer, Chair or Vice-Chair.

Where the Chair or a Vice-Chair takes on the role of mediator, in the event settlement is not achieved, unless the parties agree otherwise, they may continue to case manage the matter, and, if the parties agree, also may be scheduled to hear the matter.

### **11.03 Without Prejudice Process**

All ADR processes shall be considered to be subject to settlement privilege. This means that documents submitted, or statements made, by the parties or generated by the Board during an ADR process are treated as privileged and without prejudice. Such documents shall not be disclosed or publicized to anyone (including other parties) not involved in the ADR process.

In the event an ADR process fails to achieve settlement, the documents used or statements made during the ADR process shall not become part of the Board's Record without the consent of all parties and the approval of the Chair or Officer conducting the ADR process.

Nothing in this Rule shall prevent a party from relying on documents generated or statements made during an ADR process where the party seeks to enforce the terms of a settlement that it says was reached during an ADR process.

## **PART V - HEARING PROCEDURES**

### **Rule 12 - Expedited Hearings**

#### **12.01 Expedited Proceedings**

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The Board recognizes that there are circumstances which mandate that matters be dealt with expeditiously to prevent a failure of justice. In balancing the interests of the parties, the Board will endeavour to recognize this fact and adapt its procedures accordingly.

### **12.02 Circumstances in Which Expedited Hearing May be Held**

An expedited hearing is a hearing, whether final or on a preliminary point, which is held on an urgent basis, due to:

- (a) the subject matter of the proceeding, including the need for expedition in labour relations matters, including but not limited to a matter involving an allegation of an Unfair Practice as defined by the *Trade Union Act*;
- (b) the circumstances of one or more of the parties to the proceeding; or
- (c) an immediate danger to public health, safety or welfare that requires immediate action by the Board to prevent or avoid the danger.

### **12.03 Priority Attention for Expedited Matters**

In order to expedite the resolution of a matter which, in the opinion of the Board, merits expedition, the Board may on such terms as it considers advisable, consult with the parties, conduct a pre-hearing conference, issue any memorandum or direction, shorten or lengthen any time period, change any filing or delivery requirement, schedule a hearing, if any, on short notice, cancel such hearing, or make or cause to be made such examination of records or other inquiries as it considers necessary in the circumstances. Where the Board is satisfied that, having regard to the need for expedition in labour relations matters, a case can be decided on the basis of the material before it, the Board may decide an application by limiting the parties' opportunities to present their evidence or to make their submissions, or may dispense with the need for a hearing, or any further hearings.

## **Rule 13 - Submissions and Evidence**

### **13.01 Documentary Evidence**

All parties shall produce to all other parties, by such date as is directed by the Board at the Case Management Conference, all documents that such party intends to introduce at the hearing.



## **13.02 Introduction of New Documentary Evidence**

A party who seeks to introduce documents at a hearing that have not been produced in advance may only do so with leave of the Board on such terms as the Board may direct.

## **13.03 Oral Testimony**

All oral testimony may, at the Board's discretion, be delivered in person, via telephone, or via electronic means (including, where the circumstances permit, video conferencing), in a hearing, before all parties. The Chief Administrator will provide notice of hearing to the parties including all relevant particulars including date, time and location.

## **13.04 Submissions on Matters of Law**

All submissions on a matter of law shall, if the Board so directs, be accompanied by a brief outline of the party's position and any relevant cases or other documentary evidence in support thereof. Sufficient copies must be made available for all parties and the Board.

## **13.05 Copies of Evidence Required**

The party relying on any documentary evidence must submit sufficient copies of same at the hearing. Sufficient copies will be two (2) copies, if the matter is heard by sole adjudication, or four (4) copies, if heard by a panel, plus one (1) copy for every other party at the hearing of any documents that have not already been supplied to that party in advance. The Board will not make copies for parties. Copies are not required for interveners or other interested parties (such as observers) who are not fully participating in the hearing, unless otherwise directed by the Board in advance. Where an intervener or other interested party wishes to receive copies of the evidence, it is their responsibility to request same as far in advance of the hearing as is practical.

## **Rule 14 - Adjournment of Oral or Electronic Hearing**

### **14.01 Adjournment Demonstrably Required**

Any party may move to adjourn a hearing if:

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- (a) new evidence, undiscovered evidence, or some other evidentiary issue requires more time for preparation prior to a scheduled hearing;
- (b) illness, absence, or other unforeseen circumstances prevent a necessary party or essential witness from attending a hearing in any format; or
- (c) the Board otherwise deems that the circumstances warrant an adjournment.

Any moving party should be prepared to demonstrate why an adjournment is necessary to maintain the fairness of the proceeding, and should attempt to obtain the consent of other parties before informing the Board of the request. The prior consent of all other parties will be an important factor in the Board's decision whether or not to grant the adjournment.

### **14.02 Rescheduling**

The Board will endeavour to reschedule the hearing at the time of the adjournment or as quickly thereafter as possible, to ensure timely handling of issues.

### **14.03 Board Adjournment**

The Board may, on its own motion, adjourn a hearing if it deems it necessary.

## **Rule 15 - Failure to Attend or Participate in Hearing**

### **15.01 Notice of Inability to Attend**

A party who becomes unable to attend a hearing has the responsibility of notifying the Board at the earliest possible time.

### **15.02 Consequences of Failure to Attend**

A party that fails to attend or participate fully in a hearing may suffer one or more of the following consequences:

- (a) A summary order or decision may be granted on the matter, against that party.

- (b) The hearing may proceed without submissions or evidence from that party, and a decision may be made based only on the evidence and submissions heard.
- (c) Where the party failing to attend or participate is the party that initiated the proceeding, the matter may be summarily dismissed.

### **15.03 Extenuating Circumstances Affecting Attendance**

If an order has been made in the absence of a party and that party can establish that they were absent due to a legitimate reason, and also that they were unable to notify the Board of such impending absence, they may move to have the matter reopened and a new hearing scheduled.

## **Rule 16 - Combining Proceedings or Hearing Cases Together**

### **16.01 Combining Proceedings**

Where, in the opinion of the Board, two or more matters would be better heard together, either due to expediency, to conserve resources, or because of an overlapping issue raised by the separate matters, these hearings may be combined or heard together, or heard one after the other by the same panel.

### **16.02 Objection to Combining Proceedings or Hearing Cases Together**

If a party objects to combining proceedings they may make submissions on this to the Board. The Board will consider matters of disclosure, timeliness, expediency, or any other concerns raised by the party.

### **16.03 Mutual Objection to Combining Proceedings**

Where all parties object, the Board will consider the actual benefits of combining the proceedings in light of the wishes of the parties.

### **16.04 Severable Issues Combined**

To ensure clear and comprehensive decision-making, certain severable aspects of multiple hearings may be combined into a single hearing. Submissions on the viability of this or any other concerns may be made by parties as in Rule 17.02.

## **Rule 17 - Recording of Board Proceedings**

### **17.01 Request for Recording of Proceedings**

Where requested by a party or parties, with legitimate reason, proceedings before the Board may be audio-recorded. The recording remains the property of the Board, but will be distributed to all parties. Such a request should be made in writing or in person during a Case Management Conference. Where such a request is made, the request may be refused if the party does not agree in advance to respect Rule 18.03 regarding the content of the Board's record, and Rule 18.04 regarding the production of a transcript.

### **17.02 Allocation of Recording Costs**

All costs, if any, associated with recording (such as the cost of providing recording equipment at a hearing location other than the Board's primary location in Halifax), shall be borne by the party or parties requesting. The Board will not under any circumstances be responsible for any costs associated with recording. Where multiple parties request that a proceeding be recorded, the allocation of cost shall be decided between them.

### **17.03 Audio Recording Becomes Part of Record of the Board**

Audio recording is the only form of recording that will be done by the Board and does not include the production of a transcript. The official Record of the Board, for purposes of any court application or other proceeding, would include the audio recording of the hearing, but does not include any transcript that may be prepared from the recording, whether prepared during the course of the hearing or at some later date.

### **17.04 Transcripts of Hearings**

Any transcription of recorded proceedings remains the sole responsibility of the party or parties who have requested recording. A party who has a transcript of a Board proceeding prepared, whether by a formal transcription service or informally, shall provide a copy thereof at a nominal charge, at most reflecting only the cost of photocopying, to every other party and – if requested – at no cost to the Board.

## **Rule 18 - Conduct of Hearing**

### **18.01 Orderly Conduct**

Hearings shall be conducted in an orderly and polite fashion under the direction of the Chair, without an excess of formality. The Chair may give such directions as they see fit, to ensure the procedures are efficient and fair to all parties.

### **18.02 Role of the Chair and Order of Proceeding**

The Chair will call the hearing to order and will direct the parties as to the order of proceeding as decided at the Case Management Conference or, if undecided, as suits the matter.

### **18.03 Variation in Proceedings**

Prior to or during a hearing, the Chair may propose a change in the usual structure of the hearing if it is clear that this is necessary or will benefit the parties in presenting their case. Any objections to such a move will be considered.

### **18.04 Opening Statements**

All parties will have the opportunity to make opening statements at the hearing to set out their position.

### **18.05 Presentation of Evidence**

Each party will have an opportunity to present evidence, both via witnesses and documents. After each witness testifies in chief, all other parties will have the opportunity to cross-examine the witness. After all cross-examinations have occurred, the party calling the witness may ask questions on re-direct to clarify any matters raised during cross-examination.

### **18.06 Closing Statements or Presentations**

Once all evidence has been presented by all parties, closing statements or presentations may be made by all parties. There is no set order as to the sequence in which such closing statements are presented (unlike Rule 51.05 of the *Civil Procedure Rules*). The order of closing statements shall be under the direction of the Chair, who shall consider the parties' opinions and give directions appropriate to the particulars of the case.

## **18.07 Decorum Surrounding Witnesses**

The Chair may direct on the tenor or form of questions from parties in line with regular court decorum and to avoid badgering, attacking, or intimidating witnesses.

## **18.08 Direction for Written Submissions**

In appropriate cases, parties may be directed to supply the Board with written submissions on an issue or issues.

## **Rule 19 - Expert Evidence and Board Investigations or Site Visits**

### **19.01 Presentation of Expert Evidence**

Where necessary, and upon reasonable advance notice to the Board and to the other parties, a party may present expert evidence at a hearing. The Board prefers to receive expert evidence through direct examination, subject to cross-examination. In appropriate circumstances, the Board may accept expert evidence in documentary form, such as by written report, blue print, or scientific report. In all such cases, the Board will determine the weight, if any, to be given to such evidence.

### **19.02 Qualifying Experts**

When presenting expert evidence, the presenting party has the responsibility to qualify, to the satisfaction of the Board, the individual or report relied upon.

### **19.03 Investigatory Visits**

Where deemed necessary or useful, site visits or onsite investigations by a Chair, Board Officer or a panel of the Board, may be conducted to achieve a fair and accurate assessment of an issue. In such cases, the procedure and requirements therefor shall be discussed with all parties, and the Board shall be given access to all relevant materials or places.

## **Rule 20 - Evidence at a Hearing**

## **20.01 Forms of Evidence**

The Board may receive and accept any evidence and information on oath, affidavit or otherwise as in its discretion it may deem fit and proper, whether admissible as evidence in a court of law or not. All issues concerning the admissibility of evidence, or the weight to be given such evidence, shall be determined by the Chair or panel, as the circumstances may dictate.

For greater clarity, evidence presented before the Board may take the form of documents, drawings, models, witness testimony, video or audio recordings, or in such other form as has been recognized by courts or other boards as a reliable type of evidence. Hearsay and other forms of replicated evidence are admissible before the Board, which will determine the weight to be given to such evidence.

Affidavits may be received by the Board at a hearing without the necessity of the person swearing the affidavit appearing to testify, on uncontroversial or technical matters only. Where the facts attested to are in dispute, and the person is not available to be cross-examined, the affidavit may be admitted in the same way as hearsay, and its weight may be discounted by the Board.

## **20.02 New or Innovative Forms of Evidence**

The Board may entertain new or innovative forms of evidence, or methods of adducing evidence, but reserves the right to test, question, examine, and reject all such forms or methods if not previously accepted by a Court in Nova Scotia or another labour board in Canada.

## **Rule 21 - Decisions and Orders**

### **21.01 Who May Sign Decisions and Orders**

A decision or order of the Board may be signed by the Chief Administrator of the Board, or by the Chair or a Vice-Chair.

### **21.02 Public and Accessible Decisions**

All decisions and orders of the Board shall be made public, except where an exception has been granted to maintain privacy, and will be delivered to the parties if handed down at a later date.

### **21.03 Disclosure of Names and Personal Information**

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Individuals who are parties, intervenors, or witnesses in proceedings before the Labour Board are generally identified by name at various stages of the Board's processes, including in Board decisions, and in print and online reporting services that publish the Board's decisions. Those decisions may include information of a personal nature that the Board considers relevant to the matter and decision. At its discretion, and subject to any applicable legislative requirements, the Board may, of its own motion or upon request, grant exceptions to this general practice in cases where sensitive personal information will be disclosed. Individuals wishing to have their names or personal information withheld from public disclosure may ask the Board for an exception. Such applications should set out the information parties wish to have withheld, and provide the reasons why they are seeking to have the information protected.

### **Rule 22 - Correcting Errors and Reconsidering Decisions (*Trade Union Act*)**

#### **22.01 Clerical or Inadvertent Errors May be Corrected**

A panel may at any time correct a clerical or inadvertent error in its order or decision in any matter within the jurisdiction of the Board. A clerical or inadvertent error is a typographical error, an error in calculation, or any analogous error that suggests that it was unintentional on the part of the panel, and does not reflect the panel's true intention. Such a correction may be made at the request of a party or by the panel on its own motion.

Requests for reconsideration affecting the substance of the decision or order may only be made in matters arising under the *Trade Union Act*, as provided in Section 19(1) of that *Act* and Section 8 of the *Trade Union Procedure Regulations*.

#### **22.02 Persons Who May File a Request for Reconsideration**

Any party to the original proceeding, including an intervener who actively participated in the original proceeding, may request leave to have the order or decision made under the *Trade Union Act* reconsidered within twelve (12) months of the order or decision being rendered.

### **Rule 23 - Hearing Venue (other than Halifax or Sydney)**



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The Board normally holds its hearings in Halifax, but may also hold hearings in Sydney or other locations in Nova Scotia, where the balance of convenience favours such location and it is practical to hold such a hearing in that location outside of Halifax.

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Document Revision History				
Relevant Section(s) or pages	Change Type*	Description	Changed By	Effective date
		Rules of Procedure in effect March 2015		2015, March
Page 50	am	Document amended to include a table track revisions	D. Hartley	2017, Sept. 6
All pages	am	Footer information changed to include page numbers.	D. Hartley	2017, Sept. 6
10.04, 11.04(k)	am	“Notional Hearing” amended and replaced with “Production Hearing”.	D. Hartley	2017, Sept. 6
22.03	new	Rule “Disclosure of Names and Personal Information”	D. Hartley	2017, Sept. 6
Various	am	Chief Executive Officer replaced with Chief Administrator	D. Hartley	2018, Nov 19
1.07	del	Delete 2 <sup>nd</sup> paragraph	D. Hartley	2020, Feb 12
1.15	del	Delete last sentence in first paragraph	D. Hartley	2020, Feb 12
8.25	del	Delete entire rule	D. Hartley	2020, Feb 12
Various	various	Various edits throughout	J. Walsh / D. Hartley	2023, Nov 10

### Change Notations\*

- am – text amended or changed
- del – text deleted
- rep – rule repealed
- new – new rule added