



Labour Relations Board Guidelines for Consultation on Legislation

1. This statement sets out the procedures and approaches to be followed where consultation is sought with the Labour Relations Board over proposed legislation. It also covers procedures to be followed by Chairs and Vice Chairs of the Labour Relations Board when they are assigned to hear cases that involve the interpretation of legislation where they have had some involvement with the development of that legislation prior to its enactment. Legislation includes Regulations.
2. It is essential to the proper and successful functioning of the Labour Relations Board that it function in a manner that preserves and enhances its reputation within the labour relations community as an independent and impartial adjudicator of disputes between labour and management in both the public and private sectors.
3. It is recognized that some legislative initiatives may, or may be perceived to, alter the balance in collective bargaining or the allocation of collective bargaining rights between employer and unions or between different unions. This is particularly so where the bargaining rights or relationships in issue involve public or quasi public sector entities that are to a degree dependant on the Government of Alberta for their legislative mandate or funding.
4. Impartiality is enhanced by Chairs and Vice-Chairs who have had any pre-enactment involvement with the development of legislation disclosing the fact and extent of that involvement in advance of any adjudication where that legislation may be in issue in any proceeding. Such disclosure would afford the parties an opportunity to raise or waive any objection to the Chair or Vice-Chair's sitting on that case as a result of that involvement.
5. Where the Government is proposing legislative reforms that affect the Labour Relations Board and its jurisdiction, the Chair, in appropriate circumstances, may invite the Government to seek Board input, subsequent to its introduction in the legislature, on any potentially adverse and perhaps unintended consequences of the Bill's provisions. Such an invitation would lead to a non-confidential response, to the extent such a response is necessary or appropriate.
6. Where the Government seeks significant pre-enactment advice on a potential legislative initiative, the Chair may, in appropriate circumstances advise the Government of its ability to formally refer the matter to the Board pursuant to Section 12(5) of the Act.

12(5) In addition to the matters specified or referred to in this section, the Board has all necessary jurisdiction and power to perform any duties assigned to it by the Lieutenant Governor in Council.

7. When legislation is being considered for introduction which, due to its technical nature, may require consultation with the Board, the request should be made to the Board Chair. Where the Chair views the request for consultation to involve a proposal that is likely to be viewed by parties to proceedings before the Board as favouring labour over management or vice-versa, or one party over another, the Chair may advise the Government that it is not, in the view of the Chair, a consultation in which the Board should participate, or is one in which the Board should participate in a restricted manner such as through a single person who would, thereafter, be recused from adjudicating on the proposed legislation unless the parties consent.

8. Where consultation is sought on technical, including procedural and implementation issues such as:

- the Board's ability to implement or enforce proposed measures;
- the resources necessary to implement proposed measures;
- the impact of existing board jurisprudence and practices on proposed measures;
- statistical information on the cases or bargaining relations potentially impacted by such measures; or
- issues such as the mechanics of Board processes for testing employee support, defining bargaining units, investigating applications and other tasks customarily assigned to the Board under legislation;

then, confidential pre-introduction consultation may occur subject to the procedures and protections outlined in this statement.

9. Where a request is made by Government to consult the Board on technical, including procedural or implementation, issues being considered, the request will be made to the Chair. The Chair should undertake the consultation alone, or assign the responsibility to a responsible Vice-Chair, ensuring always that there remain within the Board's compliment, persons who have not participated in the consultation. That way, in the event of a Chair or Vice-Chair recusing themselves from a hearing, others would remain available for assignment in their stead.

10. In all such cases, the Board would ensure, in advance of the consultation, that there is a person, not from the Board, responsible for drafting the proposed legislation (whether outside counsel to the Department, or to Government, or a person from the Office of Legislative Counsel). In addition, the Board would ensure that there is an official, not from the Board, responsible for the presentation to Government of the policy choices involved in the proposed measures. In any consultation, it should be expressly understood that, as a condition of that consultation, the Board should not be put in the position of having to adopt, directly or indirectly, either of these roles.

11. In any case to which the Chair or a Vice Chair is assigned, where the case raises issues concerning the interpretation of a legislative provision that has been the subject of consultation in which the Chair or Vice-Chair participated, the Chair or Vice Chair shall, prior to hearing the case, disclose to the parties the fact that a consultation took place and the fact and extent, although not the substantive content, of that consultation.

12. In the event the Government retains outside counsel in the legislative drafting process and that counsel interacts with a Chair or Vice-Chair of the Board on a confidential basis, the Chair or Vice-Chair will recuse themselves from sitting on any case involving the interpretation of the legislation concerned upon which that outside counsel appears. The same rule will apply to persons in that outside counsel's firm unless the panel hearing the case is satisfied that an appropriate "Ethical Wall" mechanism has been used within the firm in respect of that consultation process.

DATED at the City of Edmonton in the province of Alberta this 29th day of March, 2007.

Mark L. Asbell

Nancy E. Schlesinger

J. Leslie Wallace

James T. Casey, Q.C.

Gerald A. Lucas, Q.C.

Andrew C.L. Sims, Q.C.

D. Sean Day
November 2, 2007

Lyle S. Kanee
August 5, 2008

Ian J. Smith
November 20, 2013

William J. Johnson, Q.C.
January 27, 2016

Gwen J. Gray, Q.C.
June 1, 2016

Bertha Greenstein
February 1, 2019

Ayla Akgungor
February 12, 2019

Gordon Nekolaichuk
August 1, 2021