

PART VI ESSENTIAL SERVICES APPLICATIONS

INTRODUCTORY PROVISIONS

Definitions

29.6 The following definitions apply in this Part.

"determination application" means an application under subsection 94.3(4) of the Act to determine whether an essential services agreement is required.

"essential services agreement" means an agreement described in subsection 94.3(9) of the Act.

"essential services agreement application" means an application under subsection 94.3(12) of the Act to determine any question respecting an essential services agreement.

"review application" means an application under subsection 94.3(24) of the Act to review an agreement, determination or order made under section 94.3 of the Act.

"substantial interference application" means an application under section 94.5 of the Act for a finding that an order made under section 94.3 of the Act substantially interferes with meaningful collective bargaining.

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Application

29.7(1) This Part governs determination applications, essential services agreement applications, review applications and substantial interference applications.

Conflict

29.7(2) In the event of a conflict between a provision of this Part and any other provision of this regulation, the provision of this Part prevails.

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CONDUCT OF ESSENTIAL SERVICES APPLICATIONS

Rules governing various applications

29.8 Sections 29.9 to 29.15 apply to determination applications, essential services agreement applications and review applications.

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Applications

29.9(1) Any party may make an application on a form approved by the board or in a format that is acceptable to the board.

Application contents

29.9(2) The application must include

- (a) all information and documents required by the application form, in the format specified on the application form; and
- (b) any additional information and documents specified by the board.

Service on respondent

29.9(3) The applicant must serve their application on the respondent before filing it with the board.

Filing confirmation of service

29.9(4) The applicant must file confirmation that the application has been served on the respondent when the application is filed.

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Review of application

29.10(1) The board or a board representative must review an application to determine if

- (a) the application meets the requirements of section 29.9;
- (b) the application provides sufficient particulars of the applicant's position to enable the board or a board representative and the respondent to determine the substance of the application; and
- (c) any additional information or documents need to be filed with the application.

Rejecting application

- 29.10(2)** The board or a board representative must reject an application that
- (a) does not meet the requirements of section 29.9; or
 - (b) fails to provide sufficient particulars of the applicant's position on the application.

Rejection if additional materials required

29.10(3) The board or a board representative may reject an application if they determine that the applicant needs to file any additional information or documents with the application.

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Notice of review

29.11(1) The board must notify the applicant and respondent in writing whether the application is accepted or rejected.

Rejection details

29.11(2) If an application is rejected, the notice under subsection (1) must set out the reason for the rejection. If an application is rejected because additional information or documents are required, the notice must specify what additional information or documents need to be filed.

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Resubmitting application

29.12 An applicant may resubmit their application when they have addressed all issues set out in the notice of review that resulted in the rejection of the application. Subsections 29.9(3) and (4) and sections 29.10 and 29.11 apply to a resubmitted application.

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Reply

29.13(1) The respondent must file a reply to the application on a form approved by the board or in a format acceptable to the board not later than three days after the board notifies the parties that the application has been accepted.

Reply contents

29.13(2) The reply must include all information and documents required by the reply form, in the format specified on the application form.

Service

29.13(3) The respondent must serve their reply on the applicant before filing it with the board along with confirmation that the reply has been served on the applicant.

No material in response to reply

29.13(4) The applicant must not file any material in response to the reply.

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Review of reply

29.14(1) The board or a board representative must review a reply to determine if

- (a) the reply meets the requirements of section 29.13;
- (b) the reply provides sufficient particulars of the respondent's position on the application; and
- (c) the respondent will be required to file any additional information or documents.

Notice to respondent

29.14(2) The board must notify the respondent and the applicant if

- (a) the reply does not meet the requirements of section 29.13;
- (b) the reply fails to provide sufficient particulars of the respondent's position on the application; or
- (c) the board requires the respondent to file any additional information or documents.

The notice must set out what the respondent is required to do and the deadline to comply with the board's direction.

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Case management conference

29.15(1) The board must schedule a case management conference on the first day after the deadline for filing a reply.

Case management steps

29.15(2) The board may do one or more of the following at the case management conference:

- (a) set deadlines for the parties to file any additional information or documents before the hearing;
- (b) discuss possible consequences of the respondent's failure to comply with a notice under subsection 29.14(2);
- (c) discuss the possible settlement of the application;
- (d) attempt to narrow the issues in dispute between the parties;
- (e) determine how the hearing will be conducted, including how evidence will be presented and how the parties will make submissions.

Setting hearing date

29.15(3) The board must set a hearing date at the case management conference. The hearing must be scheduled to start not later than six days after the case management conference.

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Conduct of substantial interference applications

29.16(1) If a substantial interference application is filed during a strike or lockout, the application is to be conducted in accordance with sections 29.9 to 29.15, with any necessary changes specified by the board.

Exception

29.16(2) A substantial interference application that is not filed during a strike or lockout must be made on a form approved by the board or in a format that is acceptable to the board in accordance with the general process set out in sections 21 and 22, with any necessary changes specified by the board.

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Referral by minister

29.17 If the minister refers any matter under section 94.3 of the Act to the board, the board must

- (a) provide the parties with the minister's referral request; and
- (b) notify the parties in writing of the process to be followed respecting the conduct of the referral.

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HEARINGS

Restriction on submissions at hearing

29.18 A party may make submissions and introduce evidence only on issues raised in their application or reply, unless the board permits otherwise.

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Decisions

29.19(1) All board orders and decisions on essential services agreement applications must be made in writing in a form determined by the board.

Notice

29.19(2) The board must provide the parties with its order and decision and make them available for publication.

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MISCELLANEOUS PROVISIONS

Settlement

29.20 After the board notifies the parties that an application has been accepted, the board may appoint a board representative, member or other person under subsection 140(6) of the Act to narrow the issues in dispute or assist the parties in reaching a settlement.

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Adjournments and extensions of time

29.21 An adjournment or extension of time limits under this Part is to be granted only in exceptional circumstances. For clarity, the availability of a party or their counsel will not be considered to be an exceptional circumstance.