

(2) The special officer must promptly

- (a) deliver a copy of his or her order to the board, the employer and the trade union, and
- (b) take reasonable steps to communicate the provisions of his or her order to persons bound or affected by it.

Notice of appointment to be sent to board

- 113 The minister must send to the board a copy of every appointment of a special officer under section 106.

Other provisions to apply

- 114 The other provisions in this Part apply to matters arising under this Division.

PART 9 – LABOUR RELATIONS BOARD

Labour Relations Board

- 115
- (1) The Industrial Relations Council is continued as the Labour Relations Board.
 - (2) All business pending before the Industrial Relations Council before the coming into force of this subsection are to be continued before the Labour Relations Board and may be dealt with by the division of the board that the chair considers appropriate to that business.
 - (3) The board consists of a chair, vice chairs and as many other members equal in number representative of employers and employees respectively, as the Lieutenant Governor in Council considers proper, all of whom are to be appointed by the Lieutenant Governor in Council.
 - (4) The chair may designate one of the vice chairs to act in the chair's absence, and while acting the vice chair has the power and authority of the chair.

Divisions and officers of the Labour Relations Board

- 116
- (1) There are to be 2 divisions of the board called the Mediation Division and the Adjudication Division.
 - (2) The chair must designate one of the vice chairs as associate chair of the Mediation Division and one of the vice chairs as associate chair of the Adjudication Division, and must designate another vice chair as registrar of the board.
 - (3) If the associate chair of a division is absent or unable to act, or the office of an associate chair is vacant, the chair may act as associate chair or may assign a vice chair to act.
 - (4) The chair may change an assignment or designation under this section.

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- (d) make orders he or she considers necessary or advisable, including, without limitation, orders that the dispute or difference be submitted to a specified stage or step in the grievance procedure under the collective agreement, or
- (e) arbitrate the dispute or difference himself or herself.

Effect of order

- 107** An order made by a special officer is binding on all persons bound by the collective agreement and all parties to the dispute or difference.

Interim order

- 108** When a special officer makes an order on a matter not provided for by the collective agreement, or which differs from the provisions of the collective agreement, the order is binding on the parties to the dispute or difference for a period not exceeding 30 days.

Powers

- 109** For the purpose of investigating a dispute or difference or holding a hearing, a special officer has the powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act* and may enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where
- (a) work is or has been done or commenced by employees,
 - (b) an employer carries on business, or
 - (c) anything is taking place or has taken place concerning a matter referred to the special officer under this Code,
- and may inspect any work, material, appliance, machinery, equipment or thing in it, or interrogate any person in relation to it.

Evidence

- 110** For the purpose of a hearing, a special officer
- (a) may receive and accept the evidence and information on oath, affidavit or otherwise that, in his or her discretion, he or she considers advisable, whether or not admissible as evidence in a court of law, and
 - (b) must determine his or her own procedure, but must give an opportunity to an interested party to present evidence and make representations.

Frequency of appointment

- 111** The minister may not appoint a special officer more than twice in connection with the same dispute or difference.

Form of order

- 112** (1) An order of a special officer must be in writing signed by the special officer.

Consensual mediation-arbitration

- 105
- (1) Despite any grievance or arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 84 (3), the parties to the collective agreement may, at any time, agree to refer one or more grievances under the collective agreement to a single mediator-arbitrator for the purpose of resolving the grievances in an expeditious and informal manner.
 - (2) The parties must not refer a grievance to a mediator-arbitrator unless they have agreed on the nature of any issues in dispute.
 - (3) The parties may jointly request the director to appoint a mediator-arbitrator if they are unable to agree on one, and the director must make the appointment.
 - (4) Subject to subsection (5), a mediator-arbitrator appointed by the director must begin proceedings within 28 days after being appointed.
 - (5) The director may direct a mediator-arbitrator to begin proceedings on such date as the parties jointly request.
 - (6) The mediator-arbitrator must endeavour to assist the parties to settle the grievance by mediation.
 - (7) If the parties are unable to settle the grievance by mediation, the mediator-arbitrator must endeavour to assist the parties to agree on the material facts in dispute and then must determine the grievance by arbitration.
 - (8) When determining the grievance by arbitration, the mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as he or she considers appropriate.
 - (9) The mediator-arbitrator must give a succinct decision within 21 days after completing proceedings on the grievance submitted to arbitration.
 - (10) Sections 89 to 102 apply in respect of a mediator-arbitrator and a settlement, determination or decision under this section.

Division 5 – Special Officer**Special officer**

- 106
- (1) If during the term of a collective agreement there is or is a likelihood of a dispute or difference arising out of or relating to the agreement, the minister may in the interest of industrial peace appoint a special officer.
 - (2) On his or her appointment, the special officer must investigate the dispute or difference and may
 - (a) confer with the parties,
 - (b) hold hearings,
 - (c) make recommendations,

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- (a) must appoint an arbitrator to hear and determine the matter arising out of the difference,
 - (b) must set the date on which the hearing by the arbitrator will commence, which date must be within 28 days after the day on which the difference was referred to the director, and
 - (c) may, if a party so requests and the other party agrees, appoint a settlement officer to assist the parties in settling the grievance before the hearing.
- (5) If a settlement officer is appointed under subsection (4), the settlement officer must, within 5 days after the appointment or within such further time as the director may allow,
- (a) inquire into the difference,
 - (b) endeavour to assist the parties in settling the difference, and
 - (c) report to the director on the results of the inquiry and the success of the settlement effort.
- (6) If the parties are unable to settle the difference, the arbitrator appointed under subsection (4) must proceed to hear and determine the matter arising out of the difference and must, subject to subsection (7), issue a decision within 21 days after the conclusion of the hearing.
- (7) If jointly requested to do so by the parties to the difference, the arbitrator appointed under subsection (4) must, if possible, issue an oral decision within one day after the conclusion of the hearing and must issue written reasons within the time specified in subsection (6).
- (8) An arbitrator appointed under subsection (4) has all the power and jurisdiction of an arbitrator appointed under this Code or the collective agreement between the parties to the difference.
- (9) This section applies to every party to a collective agreement and every person bound by a collective agreement, despite any provision in the collective agreement.
- (10) The other provisions of this Part apply to an arbitration under this section, with the modifications necessary to accommodate appointments and expedited processes under this section.

Enforcement

102 (1) If a party or a person has failed or neglected to comply with the decision of an arbitration board, a party or person affected by the decision may, after the expiration of 14 days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file in the Supreme Court registry a copy of the decision in the prescribed form.

(2) A decision filed under subsection (1) must be entered as if it were a decision of the court, and on being entered is deemed, for all purposes except an appeal from it, to be an order of the Supreme Court and enforceable as an order of the court.

103 [Repealed 1997-27-24.]

Division 4 – Expedited Arbitration**Expedited arbitration**

104 (1) A party to a collective agreement may refer a difference respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable, to the director for resolution by expedited arbitration.

(2) No difference may be referred to the director under this section unless

(a) the grievance procedure under the collective agreement has been exhausted, and

(b) the application is made within 45 days of the completion of the steps of the grievance procedure preceding a reference to arbitration.

(3) No difference under a collective agreement may be referred to the director under this section if

(a) the difference has been referred to arbitration under the collective agreement by the party who wishes to refer it under this section, or

(b) the time, if any, stipulated in or permitted under the collective agreement for referring the difference to arbitration has expired.

(4) If a difference is referred to the director within the time periods specified in this section, the director

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- (d) on the employees who are bound by the collective agreement and who are affected by the decision,

and they must comply in all respects with the decision.

Filing decision

- 96 An arbitration board must, within 10 days of issuing an award, file a copy of it with the director who must make the award available for public inspection.

Act not to apply

- 97 The *Commercial Arbitration Act* does not apply to an arbitration under this Code.

Reference to Labour Relations Board

- 98 An arbitration board may, at any stage of an arbitration, refer to the board for a binding opinion and decision a question of labour relations policy or interpretation of this Code arising in the course of the arbitration.

Appeal jurisdiction of Labour Relations Board

- 99 (1) On application by a party affected by the decision or award of an arbitration board, the board may set aside the award, remit the matters referred to it back to the arbitration board, stay the proceedings before the arbitration board or substitute the decision or award of the board for the decision or award of the arbitration board, on the ground that
- (a) a party to the arbitration has been or is likely to be denied a fair hearing, or
 - (b) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Code or another Act dealing with labour relations.
- (2) An application to the board under subsection (1) must be made in accordance with the regulations.

Appeal jurisdiction of Court of Appeal

- 100 On application by a party affected by a decision or award of an arbitration board, the Court of Appeal may review the decision or award if the basis of the decision or award is a matter or issue of the general law not included in section 99 (1).

Decision final

- 101 Except as provided in this Part, the decision or award of an arbitration board under this Code is final and conclusive and is not open to question or review in a court on any grounds whatsoever, and proceedings by or before an arbitration board must not be restrained by injunction, prohibition or other process or proceeding in a court and are not removable by certiorari or otherwise into a court.

- (d) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where
 - (i) work is or has been done or commenced by employees,
 - (ii) an employer carries on business, or
 - (iii) anything is taking place or has taken place concerning a matter referred to the arbitration board under this Code,and may inspect any work, material, appliance, machinery, equipment or thing in it, and interrogate any person in relation to it, and
 - (e) authorize a person to do anything the arbitration board may do under paragraph (d) and report to the arbitration board in the presence of the parties or their representatives as a witness subject to cross examination by each party.
- (2) The jurisdiction of an arbitration board to hear and determine a difference does not cease until the matters in dispute have been finally resolved.

Summons to testify

- 93 (1) An arbitration board may, at the request of a party to the arbitration or on its own motion, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things it considers requisite to a full consideration of matters before the arbitration board, in the same manner as a court of record in civil cases.
- (2) If an arbitration board consists of more than one person, the chair of the arbitration board may exercise all the authority of the arbitration board under subsection (1).

Decision of arbitration board

- 94 If a collective agreement provides for submission of a difference to an arbitration board consisting of more than one arbitrator, the decision of a majority of the arbitrators is the decision of the arbitration board, but if there is no majority decision, the decision of the chair of the arbitration board is the decision of the arbitration board.

Effect of decision

- 95 The decision of an arbitration board is binding
- (a) on the parties,
 - (b) in the case of a collective agreement between a trade union and an employers' organization, on the employers who are bound by the agreement and who are affected by the decision,
 - (c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, on the council, the constituent trade unions in it and the employer or employers who are covered by the agreement and who are affected by the decision, and

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- (g) interpret and apply any Act intended to regulate the employment relationship of the persons bound by a collective agreement, even though the Act's provisions conflict with the terms of the collective agreement, and
- (h) encourage settlement of the dispute and, with the agreement of the parties, the arbitration board may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

Fees and costs

- 90 (1) Unless the provision required under section 84 or 85 provides otherwise, each party to an arbitration under section 84, 85, 104 or 105 must bear
- (a) its own fees, expenses and costs,
 - (b) the fees and expenses of a member of an arbitration board that is appointed by or on behalf of that party, and
 - (c) equally the fees and expenses of the chair of the arbitration board or a single arbitrator, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.
- (2) If the director appoints a single arbitrator or the chair of an arbitration board under section 86, each party must pay 1/2 the remuneration and expenses of the person appointed, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.
- (3) If the director appoints a member of an arbitration board under section 86 on the failure of one of the parties to make the appointment, that party must pay the remuneration and expenses of the person appointed.

Delay by arbitration board

- 91 If a difference has been submitted to arbitration and a party to the arbitration complains to the minister that the arbitration board has failed to render a decision in a reasonable time, the minister may, after consulting the parties and the arbitration board, issue an order the minister considers necessary to ensure a decision will be rendered without further undue delay.

Powers of arbitration board

- 92 (1) An arbitration board may
- (a) determine its own procedure,
 - (b) receive and accept evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law,
 - (c) determine prehearing matters and issue prehearing orders,

- (a) inquire into the difference,
 - (b) endeavour to assist the parties in settling the difference, and
 - (c) report to the director on the results of the inquiry and the success of the settlement effort.
- (3) When the director receives a report under subsection (2) and the parties have not settled the difference, the director may refer the difference back to the parties.

Action by Labour Relations Board

88 If a difference arises during the term of a collective agreement, and in the board's opinion delay has occurred in settling it or it is a source of industrial unrest between the parties, the board may, on application by either party to the difference, or on its own motion,

- (a) inquire into the difference and make recommendations for settlement, and
- (b) if the difference is arbitrable, order that it be immediately submitted to a specified stage or step in the grievance procedure under the collective agreement or, whether or not the difference is arbitrable, request the minister to appoint a special officer.

Authority of arbitration board

89 For the purposes set out in section 82, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limitation, may

- (a) make an order setting the monetary value of an injury or loss suffered by an employer, trade union or other person as a result of a contravention of a collective agreement, and directing a person to pay a person all or part of the amount of that monetary value,
- (b) order an employer to reinstate an employee dismissed in contravention of a collective agreement,
- (c) order an employer or trade union to rescind and rectify a disciplinary action that was taken in respect of an employee and that was imposed in contravention of a collective agreement,
- (d) determine that a dismissal or discipline is excessive in all circumstances of the case and substitute other measures that appear just and equitable,
- (e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement,
- (f) dismiss or reject an application or grievance or refuse to settle a difference, if in the arbitration board's opinion, there has been unreasonable delay by the person bringing the application or grievance or requesting the settlement, and the delay has operated to the prejudice or detriment of the other party to the difference,

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- (3) If a collective agreement does not contain a provision referred to in subsections (1) and (2), the collective agreement is deemed to contain those of the following provisions it does not contain:
- (a) the employer must not dismiss or discipline an employee bound by this agreement except for just and reasonable cause;
 - (b) if a difference arises between the parties relating to the dismissal or discipline of an employee, or to the interpretation, application, operation or alleged violation of this agreement, including a question as to whether a matter is arbitrable, either of the parties, without stoppage of work, may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference to arbitration, and the parties must agree on a single arbitrator, the arbitrator must hear and determine the difference and issue a decision, which is final and binding on the parties and any person affected by it.

Unworkable provision

- 85 (1) If in the minister's opinion a part of the arbitration provision in a collective agreement, including the method of appointing the arbitration board, is inadequate, or the provision set out in section 84 (3) (b) is alleged by either party to be unsuitable, the minister may at the request of either party modify the provision so long as it conforms with section 84 (1) and (2).
- (2) Until modified under subsection (1), the arbitration provision in the collective agreement, or in section 84 (3) (b), as the case may be, applies.

Failure to appoint arbitration board

- 86 (1) Despite section 85, if there is a failure to appoint or constitute an arbitration board under a collective agreement or under section 84 (3), the director, at the request of either party, must make the appointments necessary to constitute an arbitration board, and a person so appointed by the director is deemed to be appointed in accordance with the collective agreement, or under section 84 (3), as the case may be.
- (2) Nothing in a collective agreement is to be construed as requiring the director to constitute an arbitration board consisting of more than a single arbitrator.

Settlement officer

- 87 (1) Either party to the collective agreement, within 45 days of the completion of the steps of the grievance procedure preceding a reference to arbitration, may request the director in writing to appoint a settlement officer to confer with the parties to assist them to settle the difference, if the request is accompanied by a statement of the difference to be settled.
- (2) If a settlement officer is appointed under subsection (1), the settlement officer must, within 5 days of the appointment or within such further time as the director may allow,

Purpose of Part

- 82 (1) It is the purpose of this Part to constitute methods and procedures for determining grievances and resolving disputes under the provisions of a collective agreement without resort to stoppages of work.
- (2) An arbitration board, to further the purpose expressed in subsection (1), must have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and must apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.

Division 2 – Collective Agreement Arbitration Bureau**Collective Agreement Arbitration Bureau**

- 83 (1) The Collective Agreement Arbitration Bureau is continued consisting of a director and other employees appointed under the *Public Service Act*.
- (2) The director must establish and maintain a register of arbitrators.
- (3) The minister must appoint a joint advisory committee consisting of
- (a) 2 persons representative of trade unions,
 - (b) 2 persons representative of employers,
 - (c) 2 persons representative of arbitrators, and
 - (d) the director, who is the chair of the committee.
- (4) The joint advisory committee must advise the director on
- (a) the training and education of labour arbitrators and settlement officers,
 - (b) research and publication of information concerning labour arbitrations, and
 - (c) the establishment and maintenance of a register of arbitrators.

Division 3 – Collective Agreement Provisions**Dismissal or arbitration provision**

- 84 (1) Every collective agreement must contain a provision governing dismissal or discipline of an employee bound by the agreement, and that or another provision must require that the employer have a just and reasonable cause for dismissal or discipline of an employee, but this section does not prohibit the parties to a collective agreement from including in it a different provision for employment of certain employees on a probationary basis.
- (2) Every collective agreement must contain a provision for final and conclusive settlement without stoppage of work, by arbitration or another method agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable.

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is not effected in the meantime, must report the result of its inquiries and its recommendations to the minister within 14 days after its appointment or within a further time the minister specifies.

- (6) On receipt of a report of an industrial inquiry commission relating to a dispute between employers and employees, the minister must furnish a copy to each of the parties affected and must publish it in the manner considered advisable.
- (7) The members of an industrial inquiry commission have the power and authority of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.
- (8) If either before or after the report is made the parties agree in writing to accept the report in respect of the matters referred to the industrial inquiry commission, the parties are bound by the report in respect of those matters.

Industry advisory councils

- 80 The minister may, on application or on his or her own motion, establish industry advisory councils considered appropriate to examine labour management relations in those industries and recommend to the minister and other interested persons or groups measures that may contribute to the improvement of those relations, including measures to achieve more effective collective bargaining and procedures for settling disputes.

PART 8 – ARBITRATION PROCEDURES**Division 1 – Definitions and Purpose****Definitions**

- 81 In this Part:

“arbitration board” includes

- (a) a single arbitrator, or
- (b) another tribunal or body appointed or constituted under this Part or a collective agreement;

“arbitration bureau” means the Collective Agreement Arbitration Bureau continued under this Part;

“director” means the director of the arbitration bureau;

“issue” means, in respect of an award, to make and publish the award to the parties to the arbitration;

“settlement officer” means an employee appointed under the *Public Service Act* who is appointed as a settlement officer by the director.