

**12th Annual C.A.L.L. Conference / 12ième conférence
de l'ACAMS**

Tribunal Independence Issues

Issues Which Threaten Labour Relations Board Independence

1. Adjudicator Tenure
2. Appointment and Re-appointment
3. Adjudicator Compensation
4. Fiscal Accountability and Resource Issues
5. Community Relationship Issues
6. Direct Government Interference

Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch), [2001] 2 S.C.R. 781 – Board members appointable “at pleasure” under terms of the statute, and in practice appointed for one year terms and serving on a part-time as-needed basis. Degree of independence required for tribunal members may, absent *Charter* considerations, be ousted by express statutory language, such as the explicit “at pleasure” language of the statute in question

Canadian Union of Public Employees et al. v. The Minister of Labour for Ontario (2000), 51 O.R. (3d) 417 (Ont. C.A.) – Court finds a reasonable apprehension of bias and an interference with the independence and impartiality of board of arbitration as a result of the provincial government having changed the process for appointment of the chairs of interest arbitration panels in the hospital sector so that such chairs were chosen from retired judges

Ontario (Management Board of Cabinet), [2001] O.L.R.D. 3934 (OLRB) – Board considers whether it’s interest in the outcome of a matter where the information technology policies of the Government were said to have been the vehicle of an unfair labour practice based on the fact that the Board itself and its adjudicators are affected by the same IT policies, disqualifies it from hearing the matter. Board also considers whether the technical ability of the government department that provides its IT services to gain access to adjudicator files compromises its institutional independence. Board determines that it is not disqualified on either basis.

Ontario (Premier), [2001] O.L.R.D. 3040. (OLRB) – Board rejecting argument that none of its adjudicators were sufficiently independent to adjudicate a complaint against, among others, the Premier of Ontario, owing to their dependence on the Government and in particular their dependence on the Government for re-appointment. However, Board recognised the legal uncertainty in this area, and indicated that it was appropriate for the Board to lean towards doing the job it was appointed to do, and leave the issue for the courts.

Ontario Realty Corp. (ORC) [1996] OLRB. Rep. Nov./Dec. 998 (OLRB) – Board finds that it lacks the structural independence and is that there is a reasonable apprehension of bias in the Board hearing a case with the Crown as a party in light of disclosure to Vice-Chairs of information as to the basis of the decision of the Crown to terminate certain vice-chairs and re-appoint others “at pleasure”.

Hewat v. Ontario (1998) 37 O.R. (3rd) 161 (O.C.A.) – Court finds that the Crown does not have the power to terminate the appointment of vice-chairs of the OLRB appointed for a fixed term part way through such term.