

PRACTICE NOTE NO. 24

Issue Date:

1 July 2010

Pursuant to Section 185A of the *Industrial Relations Act* 1996 and Section 15 of the *Civil Procedure Act* 2005

PROCEDURES - POLICE HURT ON DUTY APPEALS

1. The Practice Note applies to proceedings before the Commission under section 186 of the *Police Act* 1990.
2. This Practice Note shall come into force on 1 July 2010
3. The purpose of this Practice Note is to facilitate the resolution of appeal matters brought before the Commission pursuant to section 186 of the *Police Act* 1990 (known as Hurt on Duty appeals) by ensuring that such proceedings are conducted in an efficient and expeditious manner and that all those who appear before the Commission do all they can to facilitate the just, quick and cost effective disposal of proceedings before the Commission.

HURT ON DUTY APPEALS

4. Procedure generally

- 4.1 The hearing of an appeal is to be formal.
- 4.2 A person who is entitled to be present at a formal hearing of the Commission is:
 - a) the appellant whose appeal is being heard,
 - b) the Commissioner of Police or delegate

and is entitled to representation in accordance with Section 166 of the *Industrial Relations Act* 1996.

- 4.3 In relation to the production of documents or the attendance of witnesses before the Commission the provisions of Section 165 of the *Industrial Relations Act* 1996 and Part 33 of the Uniform Civil Procedure Rules 2005 apply.

- 4.4 A formal hearing of the Commission is to be recorded.

5. Allocation of Listing Date

- 5.1 Upon filing of a Hurt on Duty appeal the Registrar shall cause, within a period of not more than seven days from when the time limited for lodging an appeal expires, a date to be fixed for the matter to be conciliated by the Commission and notify the parties accordingly. The standard or usual time from filing to the first listing for Conciliation and Directions shall be a period of 21 days.

- 5.2 At the time of fixing the date for Conciliation the Registrar shall also require the parties to lodge and serve a written case setting out the arguments on which the person relies in relation to the Conciliation hearing on a date being not less than one week prior to the date fixed for the Conciliation. All documents are to be numbered, tabulated and indexed.

6. Conciliation

- 6.1 Parties who appear before the Commission should do all they can to facilitate the fair and prompt disposal of matters before the Commission. Ways in which this should occur include:

- a) ready identification of the issues in dispute,
 - b) ensuring readiness for the conciliation hearing,
 - c) using their best endeavours to resolve the issues in dispute.
- 6.2 Ordinarily there should be only one conciliation; however, the Commission may permit a further conciliation.
- 6.3 If the appellant fails to appear at a conciliation conference, and has not provided a clear and compelling reason for non-attendance, this may result in the appeal being dismissed.
- 6.4 For the purposes of section 100E(2) of the *Industrial Relations Act* 1996 any objection to the member who conducted a conciliation pursuant to section 100E(1) sitting as a member to hear the appeal must be lodged within 7 days of the date of such conciliation.
- 6.5 For the purposes of section 100E(2) of the *Industrial Relations Act* 1996 a member of the commission is not taken to have commenced conciliation merely because:
- a) the member attempted conciliation after commencing the hearing; or
 - b) the member arranged or gave directions for a conference of the parties involved in the industrial dispute or other matter, or their representatives, to be presided over by the member, but the conference did not take place or was not presided over by the member; or
 - c) the member arranged or gave directions for those parties or their representative to confer among themselves at a conference at which the member was not present.

7. Preliminary issues

- 7.1 If a preliminary issue for example, a jurisdictional challenge is raised at the conciliation conference, the Member shall determine whether the matter shall be heard as a threshold issue or be dealt with after conciliation.
- 7.2 If the Member determines that the issue should be heard before conciliation then the matter shall be referred to the Registrar for allocation to a Member for hearing after appropriate directions are made and the Member has established the time required to hear the issue.
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- 7.4 In cases where the Member conducts conciliation and the conciliation fails the Member shall then forward the matter to the Industrial Registrar for allocation to a Member for hearing.
- 7.5 Directions will be made by the Member which may be a modified form of the usual directions if the matter is to be set down to hear a threshold issue.
- 7.6 The Registrar will subsequently advise the parties of a date or dates for hearing and the court location for the hearing of the matter.

8. Listed for Hearing

- 8.1 When conciliation before the Commission is unsuccessful, the usual directions in Paragraph 9 of this Practice Note shall operate unless, after application by a party to the appeal, the Commission considers that the "usual directions" should be modified or alternative directions made.

- 8.2 The Commission shall also ascertain a reasonable estimate of the time required for the hearing of the appeal, specify in the Commission's opinion the time required for hearing and make any other appropriate directions having regard to paragraphs 9 and 10 of this Practice Note.
- 8.3 The Commission shall, forthwith, refer the parties to the List Office of the Industrial Registry for the purpose of obtaining a hearing date(s) in accordance with the Commission's opinion of the time required for hearing and directions which are made.

9. Usual Directions

For the purpose of this Practice Note "usual directions" shall mean directions in the following terms or to the following effect:-

- 9.1 All evidence shall be in the form of signed written statements.
- 9.2 The respondent shall file and serve any material relevant to the employer's case (in addition to that previously served on the appellant pursuant to clause 5.2) upon which they will seek to rely within 21 days. The respondent's case shall include all signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness upon which they rely
- 9.3 The appellant shall file and serve signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness together with any other relevant documentation within 21 days of the date fixed for the filing and service of the respondent's documents.
- 9.4 The respondent shall file and serve any reply to the appellant's documents within 7 days of the date fixed for the filing and service of the appellant's documents.
- 9.5 The parties shall include in or with their written witness statements all matters and documents upon which they rely or they allege are relevant to the proceedings.
- 9.6 Parties shall file and serve at the same time as they file their written statements and any other relevant documentation - a short summary of their case.
- 9.7 Without leave of the Commission, written statements and other documentation filed and served later than the time specified by the Commission in its directions may not be relied upon by the party.
- 9.8 At the conclusion of any failed conciliation, the Commission shall determine any issues of leave having regard to the provisions of Part 7.3 of the *Uniform Civil Procedure Rules 2005* (issue of summons in certain circumstances requires leave) and make such directions as are necessary in that regard.
- 9.9 Summonses for production of documents may be made returnable before the Registrar upon any date that the Registrar conducts a list. Where orders are sought other than for photocopy access for both parties or if a claim for privilege or the like is made, those matters will be referred by the Registrar to the Commission to be dealt with on an interlocutory basis. Under these arrangements summonses will be returnable before the Registrar, not the Commission.
- 9.10 If, in the opinion of the Commission, the appeal is a matter that requires attendance by a person with specialised knowledge of issues relevant to the Hurt on Duty appeal, make such directions as are necessary in that respect or, alternatively, apply such provisions of *Practice Note 21* as may be appropriate to the proceedings

10. Other Directions

- 10.1 The Commission may make such other directions as it considers appropriate for the just resolution of the issues between the parties.

10.2 Such other directions may include directions that:

- a) without leave of the Commission, a party cannot rely on any matter that is not contained within the documentation filed and served by that party.
- b) proceedings shall be conducted on the written statements and other relevant documentation filed and served by a party except where reasonable notice is given to the other party that a witness is required for cross-examination.
- c) in the absence of any period of reasonable notice being fixed by the Commission, cross-examination of a witness shall not be allowed unless at least 7 days prior to the hearing notice has been given to the opposing party that a witness is required for cross-examination.

11. Compliance with Directions

11.1 Any directions made under paragraphs 5,7,9,10 of this Practice Note **must** be complied with and will apply unless:

- (a) an application is made after the completion of conciliation and prior to the hearing;
- (b) where applicable, the direction is varied during the course of the hearing of the matter;
- (c) any application to vary directions after the conciliation conference must be made as soon as possible, in writing and contain full supporting grounds (unless made during the course of the hearing of the matter).

12. Adjournment Policy

12.1 In accordance with the Commission's function to provide a forum for the resolution of Appeal matters in a fair and prompt manner, as a general rule, an adjournment of the date that is allocated for an Conciliation or Hearing will not be granted *unless* there are clear and compelling reasons for the adjournment to occur.

12.2 The time fixed for the hearing of an appeal is definite. Any applications for adjournment must be made in a timely way, be in writing and contain full grounds. Such applications will be considered and determined by the Commission. It should be understood that adjournment applications will be granted only on clear and compelling grounds.

12.3 An application for an adjournment during the course of an Appeal is a matter for the member hearing the matter in the proper exercise of his/her discretion. It should be clearly understood that such applications will be granted only on clear and compelling grounds.

12.4 In the event that a party fails to attend at an appeal hearing, the appeal may, in appropriate circumstances, be heard and determined in the absence of that party.

13. Lodgement of Appeals

13.1 A *Notice of Appeal* may be lodged personally or by post or by facsimile.

R. P. Boland *J*, President
30 June 2010