

*Interpretation Guidelines are intended to assist the parties in understanding the Board's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.*

The Board's authority to amend an order comes from section 21.1 of the *Statutory Powers Procedure Act*. It gives the Board authority to correct "a typographical error, error of calculation or similar error made in its order or decision." These are referred to as *clerical errors*.

The procedure for dealing with a request to amend an order can be found in Rule 28 of the Board's Rules of Practice.

### **WHAT IS A CLERICAL ERROR?**

A clerical error may be a Board error, or an error made by a party in documentation submitted to the Board that ends up being transcribed into an order or decision. A clerical error may include any of the following:

- An incorrect name or address. For example, if the name or address is incorrect on the order but correct on the application, the error is likely clerical. If the name or address is incorrect on the application but the respondent received it and had an opportunity to participate in the proceeding, the error is likely clerical.
- An incorrect date. The order sets a date for doing something that is impossible to comply with or is not what the Member intended.
- An incorrect amount. The Member made an arithmetic error or misplaced a decimal point.
- An omission. The member inadvertently failed to include an essential term or condition in the order.

An error is not clerical if, for example:

- The name or address on the application is incorrect and the respondent may not have received the application.
- The error is brought to light by new evidence, or by evidence that was presented at the hearing but overlooked.
- The member has changed his or her mind on an issue.
- The error is a serious error.

## **DETERMINING CLERICAL ERROR**

A party may request that an order be amended to correct a clerical error. The Member who issued the order will consider the request to amend unless the Member is on an extended absence: Rule 28.5. If the Member is on an extended absence, the Vice Chair will consider the request to amend: Rule 28.6.

### **Considering the Request to Amend**

The Member should review the request to amend and dispose of it in accordance with Rule 28.7. In considering the request to amend:

- If the Member determines there is no clerical error, the Member will send a letter to the party who made the request informing the party that the request has been denied.
- If the Member determines there is an obvious clerical error that should be corrected, and the amendment will not cause prejudice to the other party, the Member may decide to amend the order without seeking submissions.
- The Member can also make any consequential amendments without seeking submissions.
- Where a party may be prejudiced by the amendment, the Member should invite submissions or hold a hearing in accordance with Rule 28.7.

### **Seeking Submissions**

Submissions may be requested by way of a direction letter to the parties. The direction letter should:

- inform the other party that a request to amend the order has been received, and enclose the request;
- direct the parties to make submissions to the Board within a prescribed time. Generally a period of 10 to 15 days will be sufficient.

Where submissions are received, the Member may make a decision based solely on the submissions and the request to amend and without holding a hearing. If the request to amend is denied without holding a hearing, a denial letter should be sent to the parties.

### **Holding a Hearing**

The Member may hold a hearing to determine if the order contains a clerical error. If the request to amend is denied after holding a hearing, an order will be issued explaining why the request to amend has been denied. If the request to amend is granted, an amended order will be issued.

## **AMENDING THE ORDER**

If the Member determines that there is a clerical error in the order or decision and that it should be amended, an amended order will be issued that explains why the order is being changed and what the changes are, including any consequential amendments.

## **OTHER CONSIDERATIONS**

### **Consequential Amendments**

An amendment to one part of the order may require an amendment to another part. In some cases, it may also be necessary to “update” the order to reflect any amounts that have been paid or have become owing since the original order was issued.

### **Stays**

A party may ask that the order be stayed until a decision is made. The request should explain the prejudice that a party will suffer if the order is not stayed until a decision is made.

A Member may decide to issue a stay of the original order, whether or not it was requested and without seeking submissions or holding a hearing.

A stay will not always be necessary. However, where the request to amend concerns an alleged error in an eviction order, and the Member determines that it may be necessary to seek submissions or hold a hearing, a stay will generally be issued. A stay may also be issued if the request to amend is received close to the effective date of the order, and the Member needs time to consider the request before making a decision.

The stay will be issued in the form of an interim order. If the request to amend is denied and the order is not amended, an order must be issued lifting the stay. If the request to amend is granted and order is amended, the stay must be lifted in the amended order.

### **Serious Errors**

A member cannot amend an order to correct a serious error. A serious error can only be corrected by way of review under Rule 29 and Guideline 8.

If the Member determines that the order may contain a serious error, the Member may: a) deny the request to amend if the order does not contain a clerical error; or b) in exceptional cases, refer the matter to the Vice Chair who can initiate a review of the order.