Obligation to provide advance disclosure of evidence in grievance arbitration: first ruling on section 100.3.1 of the Labour Code

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On October 28, 2025, the government passed *An Act to improve certain labour laws*,[1] also referred to as Bill 101. The reform has the stated objective of improving efficiency in grievance arbitration, in particular by reducing processing times, implementing a more structured case management system, and ensuring more thorough case preparation. The explanatory notes expressly state the intention to "determin[e] the rules relating to the communication of evidence before the hearing of the grievance."[2] In this context, the *Labour Code*[3] was amended to introduce, among other things, section 100.3.1, which now requires parties to disclose in advance the evidence they intend to present, as well as the list of witnesses:

> **100.3.1.** The party that intends to produce an exhibit or other evidence at the hearing must provide a copy of it to the other parties and the arbitrator within the time agreed upon at the pre-hearing conference or at least 30 days before the beginning of the hearing, except in an urgent situation or unless otherwise decided to ensure the proper administration of justice.
> The party must, in the same manner, provide a list of the witnesses it intends to call and a list of those whose testimony it intends to present in the form of affidavits, unless there is valid cause not to disclose their identities.
> The party must also file with the arbitrator proof that the copy has been provided to the other parties.

This change has significant practical implications. For decades, the issue of advance disclosure of evidence in grievance arbitration has given rise to conflicting jurisprudence. A majority view held that the arbitrator could not require a full exchange of evidence outside the hearing, while a minority view recognized a broader scope for intervention in the interest of fairness and the proper administration of justice.[4] Several authors have criticized the role of surprise in arbitration. They found that a lack of advance disclosure leads to unnecessary debates, causes delays and adjournments, and contributes to making the process more cumbersome. Author and arbitrator Marc Mancini aptly summarizes the issue. He points out that the fact that rules governing the advance disclosure of evidence in grievance arbitration are virtually nonexistent can, in certain cases, encourage games of hide-and-seek between the parties.[5]

Section 100.3.1 is therefore triggering a cultural shift. Advance disclosure is no longer merely a cooperative practice that takes place only when the parties consent to it. It is a legislative obligation, subject to only two exemptions: an urgent situation or when a decision is otherwise rendered to ensure the proper administration of justice.

Under this new framework, an initial interlocutory judgment—eagerly awaited by legal practitioners—has clarified the scope of the obligation and, above all, how strictly the exemption for the proper administration of justice is enforced. It was rendered by arbitrator Isabelle Leblanc on June 22, 2026, in *Syndicat des professeures et professeurs du Cégep Marie-Victorin* and *Cégep Marie-Victorin*.[7]

Background on the ruling

The dispute arose in the context of workplace disciplinary measures that included a dismissal. The employer requested an exemption from the requirement to disclose certain documents in advance—primarily messages exchanged on social media and via text—which it preferred to disclose either during or after the complainant's testimony. The union opposed the exemption, citing the very rationale behind the reform.

In her ruling, the arbitrator first notes that advance disclosure is now the rule and that parties can no longer treat it as a matter of procedural discretion. Advance disclosure, she states, is a strict procedural duty that may be waived only in urgent situations or for the proper administration of justice.

She frames the duty within Bill 101, stating that the reform aims to reduce processing times, enable the parties to better prepare their cases, and promote the resolution of disputes based on evidence known to both sides.

A ruling that's open to interpretation, yet still sends a clear message

This ruling should be interpreted carefully. The arbitrator herself highlights the unique aspects of the case, in particular that the complainant was either the sender or the recipient of the messages the employer sought to use. The complainant was therefore already aware of the messages, even though he claimed to have deleted them and no longer to have them in his physical possession prior to his testimony.

From a practical standpoint, the arbitrator highlights the risks that inefficiency can entail. She notes that failure to provide advance disclosure may hinder the search for the truth, not because the facts are actually disputed, but because the normal limitations of memory may affect responses. She also notes that failure to provide advance disclosure impacts the efficiency of the hearing due to the time required to review the messages in the hearing room, especially given their volume.

From a legal standpoint, the arbitrator rejects the employer's argument, one based on having a full and complete defence. She deems the concept inapplicable in arbitration and shifts the focus to the concept of the right to be heard. In her view, withholding evidence in the name of the right to be heard would amount to encouraging a practice that undermines the other party's right to properly prepare and defend itself.

She specifies that the employer would have to demonstrate a real, concrete, and disproportionate infringement of his rights, constituting a heavy burden of proof that was not met in this case. She suggests that exemptions should not be viewed as merely a way out when advance disclosure is uncomfortable or strategically disadvantageous.

It is important to remember that each case is unique. Section 100.3.1 grants the arbitrator discretion based on the principle of the proper administration of justice, and it is possible that other arbitrators may reach different conclusions depending on the facts.

Rethinking disciplinary investigations and how we gather versions of the facts

A practical lesson emerges clearly from this ruling and is of direct interest to human resources and labour relations managers. The arbitrator points out that the employer already has a forum to assess the employee's credibility: the investigation conducted prior to imposing the disciplinary measure. She highlights that, while evidence is not generally disclosed during investigations, this is often a deliberate choice rather than a necessity. She adds that the employer is not precluded from challenging the employee's credibility and that it may do so during the investigation.[7]

Bill 101 and this ruling therefore call for a more rigorous structure for disciplinary investigations, not only to establish the facts but also to verify the consistency and reliability of the explanations before a decision is made. In many cases, this means the better planning of meetings aimed at gathering the versions of the facts. It is essential to ensure that the relevant questions are asked during the investigation, that the answers are accurately recorded, and that the person in question can clearly explain the allegations against them, especially when the employer intends to rely on this evidence. This way, there is less risk that a late review of evidence will slow down proceedings with delays and interruptions.

In light of these lessons, it appears that the following practices deserve consideration when conducting disciplinary investigations:

- Clarifying from the outset what the allegations are and what needs to be verified, and then adjusting the investigation as findings emerge;
- Preparing an agenda to gather the parties' versions of the facts and identify the documents to be discussed;
- Documenting responses accurately and completely, including nuances, corrections, and explanations;
- Submitting written materials during the investigation, when applicable, to obtain comprehensive and contemporaneous explanations;
- Addressing any contradictions or grey areas during the investigation, rather than letting them become more pronounced during the hearing; and
- Ensuring that the disciplinary decision reflects the facts known at the time it is made and that the investigation file provides a clear explanation of the decision.

We will closely monitor future rulings under section 100.3.1, as the jurisprudence will clarify, over time, the practical scope of the exemption for the proper administration of justice, as well as its limits in disciplinary matters. In this ever-changing environment, we remain available to assist employers from the investigation stage through to arbitration in order to minimize the risk of contestation and strengthen their case.

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1. SQ 2025, c. 28.
2. *Idem.*, Explanatory Notes.
3. CQLR, c. C-27.
4. Marc Mancini, Frédéric Poirier and Stéphanie Lalande, *La preuve et la procédure en arbitrage de griefs*, 3rd ed., Wilson & Lafleur, Montréal, 2026, pp. 117–127.
5. Marc Mancini, "Et si la Règle de Browne c. Dunn s'appliquait en arbitrage de griefs au Québec : analyse réflexive sur les enjeux de divulgation de la preuve", in Sébastien Beauregard et al., *50e anniversaire de la conférence des arbitres du Québec - Un demi-siècle de réflexion et d'évolution*, Wilson & Lafleur, Montréal, 2024, pp. 74–83, 93.
6. *Syndicat des professeures et professeurs du Cégep Marie-Victorin* and *Cégep Marie-Victorin*, 2026 QCTA 284 (Ms. Isabelle Leblanc).
7. *Idem.*, para. 58.