



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

## Rules of Procedure

Applications under the  
*Human Rights Code*

Part IV

R.S.O. 1990, c.H.19 as amended

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# HUMAN RIGHTS TRIBUNAL OF ONTARIO

## RULES OF PROCEDURE

(effective July 1, 2010)

Disponible en français

### INTRODUCTION

The Tribunal has the authority to make rules to govern its practices and procedures under the Ontario *Human Rights Code* (“Code”).

The purpose of these Rules of Procedure (“Rules”) is to enable the Tribunal to fulfill its mandate under the *Code* by providing:

1. a fair, open and accessible process to deal with applications made under the *Code*, and
2. the opportunity for fair, just and expeditious proceedings for the resolution of applications made under the *Code*.

### RULE 1 GENERAL RULES

#### Application and Interpretation of Rules

1.1. These Rules apply to all proceedings before the Tribunal under Part IV of the *Code* and will be liberally interpreted and applied by the Tribunal to facilitate an accessible process and to ensure the fair, just and expeditious resolution of the merits of the matters before it.

1.2. The Chair of the Tribunal may also issue Practice Directions to provide further information about the Tribunal’s practices or procedures.

#### Forms

1.3. The Tribunal may establish forms to be used in its proceedings. In these Rules, where a form is referred to by number, the reference is to the form with that number that is described in the List of Forms (“Forms”) at the end of these Rules. The Forms are not part of these Rules.

## **Definitions**

1.4. In these Rules:

“affected person” means a person, organization, trade union or other occupational or professional association identified in an Application or Response as being affected by a proceeding and entitled to notice of the proceeding;

“case conference” means an in-person, telephone conference call or electronic meeting of all the parties to an application, convened by the Tribunal;

“Code” means the Ontario *Human Rights Code*;

“Commission” means the Ontario Human Rights Commission;

“Confirmation of Hearing” means a notice sent by the Tribunal to the parties setting out dates for the parties to complete a step in the hearing process;

“file” means file with the Tribunal and a “filing” is anything that is filed;

“holiday” means any Saturday, Sunday, or other day on which the Tribunal’s offices are closed;

“Legal Support Centre” means the Human Rights Legal Support Centre established under Part IV.1 of the *Code*;

“member” means a member of the Tribunal;

“party” means any person or organization entitled to participate in a proceeding as a party under s. 36 of the *Code* and the Commission if added with the consent of the Applicant under s. 37(2), and includes any other person or organization added by the Tribunal as a party or intervenor, with or without terms, including the Commission under s. 37(1).

“proceedings” before the Tribunal include all processes of the Tribunal at any time following the filing of an Application until the Application is finally determined;

“Tribunal” means the Human Rights Tribunal of Ontario; and

“vice-chair” means a vice-chair of the Tribunal.

## **Powers of the Tribunal**

1.5. The Tribunal may exercise any of its powers under these Rules at the request of a party or on its own initiative, except where the Rules provide otherwise.

1.6. The Tribunal will determine how a matter will be dealt with and may use procedures other than traditional adjudicative or adversarial procedures.

1.7. In order to provide for the fair, just and expeditious resolution of any matter before it the Tribunal may:

- a) lengthen or shorten any time limit in these Rules;
- b) add or remove a party;
- c) allow any filing to be amended;
- d) consolidate or hear Applications together;
- e) direct that Applications be heard separately;
- f) direct that notice of a proceeding be given to any person or organization, including the Commission;
- g) determine and direct the order in which issues in a proceeding, including issues considered by a party or the parties to be preliminary, will be considered and determined;
- h) define and narrow the issues in order to decide an Application;
- i) make or cause to be made an examination of records or other inquiries, as it considers necessary;
- j) determine and direct the order in which evidence will be presented;
- k) on the request of a party, direct another party to adduce evidence or produce a witness when that person is reasonably within that party's control;
- l) permit a party to give a narrative before questioning commences;
- m) question a witness;
- n) limit the evidence or submissions on any issue;
- o) advise when additional evidence or witnesses may assist the Tribunal;
- p) require a party or other person to produce any document, information or thing and to provide such assistance as is reasonably necessary, including using any data storage,

processing or retrieval device or system, to produce the information in any form;

- q) on the request of a party, require another party or other person to provide a report, statement, or oral or affidavit evidence;
- r) direct that the deponent of an affidavit be cross-examined before the Tribunal or an official examiner;
- s) make such further orders as are necessary to give effect to an order or direction under these Rules;
- t) attach terms or conditions to any order or direction;
- u) consider public interest remedies, at the request of a party or on its own initiative, after providing the parties an opportunity to make submissions;
- v) notify parties of policies approved by the Commission under s. 30 of the Code, and receive submissions on the policies;
- v.1) make such orders or give such directions as are necessary to prevent abuse of its processes and ensure that the conduct of participants in Tribunal proceedings is courteous and respectful of the Tribunal and other participants; and
- w) take any other action that the Tribunal determines is appropriate.

### **Calculation of Time**

1.8. Where an order of the Tribunal or a Rule refers to a number of days, the reference is to calendar days.

1.9. Where an action is to be done within a specified number of days, the days are counted by excluding the first day and including the last day.

1.10. When the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **Communications with the Tribunal and other Parties**

1.11. Individuals are entitled to communicate with the Tribunal in either English or French.

1.12. All written communications with the Tribunal, including e-mail correspondence, must be addressed to the Registrar, with a copy delivered to all other parties.

1.12.1 All materials filed with the Tribunal must be courteous and respectful of the Tribunal and other participants.

1.13. A party and a party's representative must notify the Tribunal and all parties and their representatives, in writing, of any change in their contact information, as soon as possible.

### **Representatives**

1.14. Parties may be self-represented, represented by a person licensed by the Law Society of Upper Canada or by a person authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws.

1.15. A representative who ceases to represent a party in a proceeding before the Tribunal must notify the Tribunal and all parties, in writing, immediately.

### **Filing Documents with the Tribunal**

1.16. When filing any document with the Tribunal, except for documents filed with an Application (Form 1), a Response (Form 2) or a Reply (Form 3), a party or any other person must include the following information:

- a) name of the Applicant and Respondent in the Application;
- b) name of the person filing the document and, if applicable, his/her representative's name;
- c) mailing address, telephone number and, if available, e-mail address and facsimile number of the person filing the document or his/her representative; and
- d) Application file number, if available.

1.17. Documents may be filed with the Tribunal by:

- a) facsimile transmission (fax) to the Tribunal's fax number;
- b) hand delivery, courier, or regular, registered or certified mail to the Human Rights Tribunal of Ontario at its mailing address;
- c) e-mail – [HRTO.Registrar@ontario.ca](mailto:HRTO.Registrar@ontario.ca), with attachments not greater than 10mb in one e-mail;
- d) as directed by the Tribunal.

1.18. Notwithstanding Rule 1.17, Applications filed by the Commission or by the Legal Support Centre must be filed electronically in accordance with the Practice Directions of the Tribunal.

1.19. Documents received after 5 p.m. by fax or e-mail will be deemed to have been received on the next business day.

1.19.1 A party must file at least two hard copies, at least one of which must be unbound, of any document greater than 20 pages.

1.20. A party filing any document, other than an Application (Form 1) or a Response (Form 2) under ss. 34(1) or 34(5) of the *Code*, including by e-mail, must deliver a copy of the document to all other parties to the Application and must verify that s/he has done so by filing a Statement of Delivery in Form 23 or by confirming the delivery to the other parties on the cover letter or e-mail.

### **Delivery of Documents to Parties or other Persons**

1.21. Documents must be delivered in one of the following ways:

- a) hand delivery;
- b) regular, registered or certified mail;
- c) courier;
- d) fax, but only if the document is less than 20 pages in length or, if longer, with consent;
- e) e-mail where the person or parties receiving the document has consented to e-mail delivery; or
- f) any other way agreed upon by the parties or directed by the Tribunal.

1.21.1 When a party has a representative, documents must be delivered to the representative.

1.22. Where a document is delivered by a party or sent by the Tribunal, receipt is deemed to have occurred when delivered or sent:

- a) by mail, on the fifth day after the postmark date;
- b) by fax, when the person sending the document receives a fax confirmation receipt, but if the fax confirmation receipt indicates a

- c) by courier, on the second day after it was given to the courier;
- d) by e-mail, on the day sent or if sent after 5 p.m., delivery will be deemed to have occurred the next day;
- e) by hand, when given to the party or when left with a person at the party's last known address.

### **Verifying delivery**

1.23. A party responsible for delivering a document under these Rules must file a Statement of Delivery in Form 23 with the Tribunal. The Statement of Delivery must be filed:

- a) with the document, when the document is filed with the Tribunal; or
- b) no later than two days after the deemed date of delivery, if the document is not being filed with the Tribunal.

## **RULE 2 ACCOMMODATION OF HUMAN RIGHTS CODE-RELATED NEEDS**

2.1. Parties, representatives and witnesses are entitled to accommodation of Code-related needs by the Tribunal and should notify the Registrar as soon as possible if accommodation is required. The provisions of these Rules will be interpreted and applied in a manner that is consistent with the *Human Rights Code*.

## **RULE 3 TRIBUNAL PROCEEDINGS**

### **Summonses**

3.1 On the request of a party, the Tribunal will provide a summons to witness in blank form, dated and signed by the Tribunal adjudicator, and the party may complete the summons and insert the name of the witness.

3.2 Delivery of a summons to a witness and payment of the attendance money is the responsibility of the party who obtained the summons.

### **Confidentiality of Documents Disclosed Under These Rules**

3.3 Parties and their representatives may not use documents obtained under these Rules for any purpose other than in the proceeding before the Tribunal.

## **Setting Dates in a Proceeding**

3.4 The Tribunal may schedule hearing dates, or other dates in a proceeding, with or without consultation with the parties, as the Tribunal considers appropriate.

## **Form of Proceedings**

3.5 The Tribunal may conduct hearings in person, in writing, by telephone, or by other electronic means, as it considers appropriate. However, no Application that is within the jurisdiction of the Tribunal will be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with these Rules.

3.5.1 An Application will not be finally disposed of without written reasons.

3.6 The location of in-person hearings will be determined by the Registrar, in accordance with the Tribunal's policies.

## **Recording of Proceedings**

3.7 The Tribunal does not normally record or transcribe its proceedings. Where a hearing is recorded the recording does not form part of the Tribunal's record of proceedings including any record filed in respect of an application made under the *Judicial Review Procedures Act*.

## **Language of Proceedings**

3.8 Tribunal proceedings may be conducted in English, in French or bilingually and, where requested, with interpretation in American Sign Language (ASL) or Quebec Sign Language (QSL). A party wishing all or part of a proceeding be conducted in French or requiring interpretation in ASL or QSL must notify the Registrar as soon as possible.

3.9 An individual who requires interpretation services in a language other than English, French, ASL, or QSL in order to participate at the mediation or hearing may request that the Tribunal provide appropriate interpretation services. The Registrar must be notified as soon as possible of such requests.

## **Public Proceedings**

3.10 The Tribunal's hearings are open to the public, except when the Tribunal determines otherwise.

3.11 The Tribunal may make an order to protect the confidentiality of personal or sensitive information where it considers it appropriate to do so.

3.11.1 Unless otherwise ordered, the Tribunal will use initials in its decisions to identify children under age 18 and the next friend of children under 18. It may use initials to identify other participants in the proceeding if necessary to protect the identity of children.

3.12 All written decisions of the Tribunal are available to the public.

### **Non-Attendance at a Hearing**

3.13 Where a party has been notified of a hearing and fails to attend, the Tribunal may:

- a) proceed in the party's absence;
- b) determine that the party is not entitled to further notice of the proceedings;
- c) determine that the party is not entitled to present evidence or make submissions to the Tribunal;
- d) decide the Application based solely on the materials before it;
- e) take any other action it considers appropriate.

### **Participation of Affected Persons or Organizations**

3.14 Where a person or organization is identified in an Application or in a Response as an affected person as defined in these Rules, that person or organization may file a Request to Intervene under Rule 11 within 35 days of delivery of the Application or the Response, failing which the Tribunal may proceed without further notice to the person or organization.

## **RULE 4 NOTICE OF CONSTITUTIONAL QUESTION**

4.1. Where a party intends to question the constitutional validity or applicability of any law, regulation, by-law or rule or where a party claims a remedy under s. 24(1) of the *Charter of Rights and Freedoms*, in relation to an act or omission of the Government of Canada or the Government of Ontario, a Notice of Constitutional Question must be delivered to the Attorneys General of Canada and Ontario and all other parties and filed with the Tribunal as soon as the circumstances requiring the notice become known and, in any event, at least 15 days before the question is to be argued.

## **RULE 5 NON-COMPLIANCE WITH THE RULES**

5.1. A technical defect or irregularity is not a breach of these Rules. Where a party or other person fails to comply with these Rules, the Tribunal may relieve

against the failure to comply, with or without terms, as the Tribunal considers appropriate in accordance with Rule 1.1.

5.2. The Tribunal may vary or waive the application of these Rules at any time on its own initiative or on the request of a party, with or without terms as the Tribunal considers appropriate in accordance with Rule 1.1.

5.3. The Tribunal may decide not to deal with an Application that is not filed in compliance with these Rules.

5.4. The Tribunal may finally determine an Application without further notice to any person who cannot be contacted by the Tribunal according to the contact information provided to the Tribunal by that person.

5.5. Where an Application is delivered to a Respondent who does not respond to the Application, the Tribunal may:

- a) deem the Respondent to have accepted all of the allegations in the Application;
- b) proceed to deal with the Application without further notice to the Respondent;
- c) deem the Respondent to have waived all rights with respect to further notice or participation in the proceeding;
- d) decide the matter based only on the material before the Tribunal.

5.6. Where a party fails to deliver material to another party or person as required by these Rules, the Tribunal may refuse to consider the material, or may take any other action it considers appropriate.

5.7. Where a party seeks to present evidence or make submissions with respect to a fact or issue that was not raised in the Application, Response, Reply, or in the materials filed under Rule 17.2 or 18.2, the Tribunal may refuse to allow the party to present evidence or make submissions about the fact or issue unless satisfied that there would be no substantial prejudice and no undue delay to the proceedings

## **RULE 6 APPLICATIONS: SECTIONS 34(1) or 34(5) OF THE CODE**

6.1. An Application under ss. 34(1) or 34(5) of the *Code* must be filed in Form 1, Application, must include the related supplemental form(s) and Form 4, Notice of Application on Behalf of Another Person, if applicable, and must be complete. These documents need not be delivered to the other parties.

6.2. A complete Application must provide the information requested in every section of the Application form and the related supplemental form(s) and Form 4

(if applicable), and must set out all the facts that form the substance of the allegations of discrimination including the circumstances of what happened, where and when it happened, and the names of person(s) or organization(s) alleged to have violated the Applicant's rights under the *Code*.

6.3. An Applicant who has commenced a civil proceeding in a court seeking an order under s. 46.1 with respect to any of the allegations in the Application must include a copy of the statement of claim with the Application.

6.4. Upon receiving an Application, the Tribunal will determine whether it complies sufficiently with these Rules to allow it to be processed. An Application filed under Rule 6.1 that is not sufficiently complete:

- a) may be sent back to the Applicant with an explanation as to how the Application is incomplete;
- b) may be re-submitted not later than 20 days after the date that the Application was sent back; and
- c) may be closed as not accepted, pursuant to Rule 5.3, if it is not completed.

6.5. If the Tribunal determines a re-submitted Application can be processed, it will be dealt with as if complete on the day it was originally filed with the Tribunal for the purposes of s. 34(1).

6.6. An Application accepted by the Tribunal for processing:

- a) will be sent by the Tribunal to the Respondent(s), and to any trade union, occupational or professional organization identified in the Application, at the addresses provided in the Application; or
- b) will not be dealt with in respect of a Respondent or a trade union, occupational or professional organization that cannot be contacted in accordance with paragraph (a) above, and the Applicant will be so advised; or
- c) will be dealt with according to Rule 13, where the Tribunal determines that the Application is arguably outside of the Tribunal's jurisdiction.

6.7. The Application sent by the Tribunal to the Respondent and to any trade union or occupational or professional organization, will not include the confidential list of witnesses and the related witness information provided in that part of the Application Form.

6.8. An Application filed on behalf of another person under s. 34(5) of the *Code* must be filed together with the signed Consent in Form 4 of the person on whose

behalf the Application is brought.

## **RULE 7 APPLICATION WITH REQUEST TO DEFER CONSIDERATION**

7.1. An Applicant may file an Application under Rule 6.1 and, at the same time, ask the Tribunal to defer consideration of the Application in accordance with Rule 14 if there are other legal proceedings dealing with the subject-matter of the Application.

7.2. A request for deferral will only be considered by the Tribunal where the other legal proceeding does not fall within the scope of s. 34(11) of the *Code*.

7.3. Where an Application is filed with a request for a deferral, the Applicant must include the following additional information with the Form 1:

- a) identifying information about the other legal proceeding dealing with the subject matter of the Application; and
- b) a copy of the document that commenced the other legal proceeding.

7.4. The Tribunal will not defer consideration of an Application without first giving all the parties, and any affected persons or organizations identified in the Application or Response, an opportunity to make submissions on the request for deferral.

7.5. Where an Applicant wants the Tribunal to proceed with an Application that was deferred pending completion of another legal proceeding, the Applicant must make a request, in accordance with Rules 14.3 and 14.4, no later than 60 days after completion of the other proceeding.

## **RULE 8 RESPONSE TO APPLICATION UNDER SECTIONS 34(1) OR 34(5) OF THE CODE**

8.1 To respond to an Application under ss. 34(1) or 34(5) of the *Code*, a Respondent must file a complete Response in Form 2 not later than 35 days after a copy of the Application was sent to the Respondent by the Tribunal. The Response need not be delivered to the other parties.

8.2 A complete Response must provide the information requested in each section of the Form 2, respond to each allegation set out in the Application and must also include any additional facts and allegations on which the Respondent relies. Where a Respondent alleges the issues in dispute in the Application are the subject of:

- a) a full and final signed release between the parties; or

- b) a civil court proceeding requesting a remedy based on the alleged human rights infringement; or
- c) a complaint filed with the Ontario Human Rights Commission; or
- d) exclusive federal jurisdiction,

the Respondent need not respond to the allegations in the Application, but must attach a copy of the applicable release, or statement of claim or court decision, or complaint filed with the Ontario Human Rights Commission or its decision and must include with the Response complete argument in support of its position that the Application should be dismissed. Notwithstanding anything else in Rule 8.2, the Tribunal may direct a Respondent to file a complete Response where the Tribunal considers it appropriate.

8.3 A Response that is not complete:

- a) may be sent back to the Respondent with an explanation of how the Response is incomplete; and
- b) may be re-submitted no later than 20 days after the Response was sent back.

8.4 A Response that is accepted by the Tribunal for processing, including a Response that is accepted after being re-submitted in accordance with Rule 8.3(b), will be sent by the Tribunal to:

- a) the Applicant;
- b) any trade union, occupational or professional association identified in the Application; and,
- c) any other Respondent or affected person identified in the Response, at the addresses identified.

8.5 A Response that has been re-submitted in accordance with Rule 8.3(b) will be dealt with as if complete on the day that it was originally filed with the Tribunal.

8.6 The Response sent by the Tribunal to the Applicant and to any other person or organization will not include the confidential list of witnesses and any related witness information included in that part of the Response.

## **RULE 9 REPLY**

9.1. An Applicant who intends to prove a version of the facts different from those set out in a Response must deliver and file a Reply in Form 3 setting out

the different version, unless it is already contained in the Application. An Applicant may also reply to any other matter raised in the Response.

9.2. The Reply must deal only with new matters that are raised in the Response.

9.3 The Applicant must deliver a copy of the Reply to the other parties and any trade union or occupational or professional organization and other person or organization identified as an affected person in the Application or Response and file it with the Tribunal not later than 14 days after the Response was sent to the Applicant.

## **RULE 10 WITHDRAWAL OF AN APPLICATION**

10.1 Except where the withdrawal forms part of the terms of a settlement of an Application, an Applicant wishing to withdraw an Application must deliver a completed Request to Withdraw in Form 9 to:

- a) all other parties;
- b) any trade union or occupational or professional organization identified in the Application; and
- c) any other person or organization identified as an affected person before filing it with the Tribunal.

10.2 Where the Application was filed on behalf of another person under s. 34(5) of the *Code*, the Request to Withdraw must also include a completed Consent.

10.3 Where a Respondent or other person or organization receiving notice under Rule 10.1 wishes to respond to a Request to Withdraw, the response must be in Form 11, Response to Request, and must be filed no later than two days after the Request to Withdraw was delivered.

10.4 A copy of the Response to Request under Rule 10.3, if any, must be delivered to the other parties and any other person or organization that received notice under Rule 10.1, before it is filed with the Tribunal.

10.5 Where a Response to the Application has already been filed, an Application may be withdrawn only with the permission of the Tribunal and upon such terms as the Tribunal may determine.

## **RULE 11 REQUEST TO INTERVENE**

11.1 The Tribunal may allow a person or organization to intervene in any case at any time on such terms as the Tribunal may determine. The Tribunal will determine the extent to which an intervenor will be permitted to participate in a proceeding.

## **Intervention by a Person or Organization other than the Commission**

11.2 A request to intervene by a person or organization, other than a request by the Commission, must be made in Form 5, Request to Intervene, and must be delivered to all parties and any affected persons or organizations identified in the Application or the Response and filed with the Tribunal.

11.3 A Request to Intervene must include an answer to each question in Form 5 and must:

- a) describe the issue(s) that the person or organization wants to address;
- b) explain the proposed intervenor's interest in the issue(s) and its expertise, if any, regarding the issue(s);
- c) set out the proposed intervenor's position, if any, on each of the issues raised in the Application and the Response; and
- d) set out all the material facts upon which the proposed intervenor will rely.

11.4 Where a party wishes to respond to a Request to Intervene, the response must be in Form 11, Response to Request, and must be filed with the Tribunal no later than 21 days after the Request to Intervene was delivered.

11.5 A copy of the Response to Request under Rule 11.4, if any, must be delivered to the proposed intervenor, all other parties and any identified affected persons or organizations and filed with the Tribunal.

## **Intervention by Commission Without Consent of Applicant**

11.6 The Commission may, in accordance with s. 37(1) of the *Code*, intervene in an Application under s. 34 of the *Code* on such terms as the Tribunal considers appropriate.

11.7 Where the Applicant has not consented to the Commission intervening in the Application, the Commission shall complete a Request to Intervene in Form 5 and deliver it to the other parties and to any identified affected persons and file it with the Tribunal.

11.8 A Commission Request to Intervene filed under Rule 11.6 must:

- a) include a statement of the issues that the Commission wants to address;
- b) explain how the issues relate to the Commission's role, mandate

and the public interest;

- c) set out the Commission's position, if any, on each of the issues raised in the Application and the Response;
- d) set out all of the material facts upon which the Commission will rely;
- e) set out the remedies that the Commission is seeking; and,
- f) set out the terms on which the Commission seeks to intervene.

11.9 A response to a Commission Request to Intervene must be in Form 11, Response to Request, and must be filed with the Tribunal no later than 21 days after the Request to Intervene was delivered.

11.10 A copy of the Response to Request under Rule 11.9, if any, must be delivered to the Commission and to all the other parties and to any identified affected person, and filed with the Tribunal.

### **Intervention by Commission with Consent of Applicant**

11.11 The Commission may intervene in an Application with the consent of the Applicant by filing a Notice of Commission Intervention in Form 6, with a Consent completed by the Applicant.

11.12 The Commission must deliver copies of the Form 6 with the completed Consent, to the other parties and to any identified affected persons, before filing with the Tribunal.

11.13 A Notice of Commission Intervention in Form 6 must be complete and must:

- a) include a statement of the issues that the Commission wants to address;
- b) set out the Commission's position, if any, on each of the issues raised in the Application and the Response;
- c) set out all of the material facts upon which the Commission will rely;
- d) set out the remedies that the Commission is seeking; and
- e) set out the terms on which the Commission seeks to intervene.

## **RULE 12 COMMISSION APPLICATIONS UNDER SECTION 35 OF THE CODE**

## **Commission Application**

12.1 A Commission Application under s. 35 of the *Code* must be in Form 7, Application by Commission and must be complete. The Application must be delivered to the Respondents and any affected persons identified in Form 7 and filed with the Tribunal.

12.2 A complete Commission Application under s. 35 of the *Code* must:

- a) include a statement why, in the opinion of the Commission, the Application is in the public interest;
- b) set out the issues the Commission wants to address;
- c) set out all the material facts upon which the Commission intends to rely; and
- d) set out the remedies the Commission is seeking.

## **Response of Respondents and Affected Persons Identified in the Commission Application**

12.3 A Respondent or an identified affected person who wishes to respond to the Commission Application must deliver a completed Response to Commission Application in Form 8 to the Commission and any other party or identified affected person named in the Commission Application, and file the Response with the Tribunal, not later than 60 days after delivery of the Form 7.

12.4 A complete Response to a Commission Application must:

- a) include a statement setting out the position of the Respondent or affected person in respect of each of the issues and material facts set out in the Commission Application;
- b) set out all of the material facts upon which the Respondent or affected person intends to rely; and,
- c) include a response to the remedies requested by the Commission.

## **Case Conference**

12.5 Within 45 days of filing the Response(s) the Tribunal will convene a Case Conference with all the parties and affected persons to discuss the conduct of the proceeding under s. 35 of the *Code*.

## **RULE 13 DISMISSAL OF AN APPLICATION OUTSIDE THE TRIBUNAL'S JURISDICTION**

13.1 The Tribunal may, on its own initiative or at the request of a Respondent, filed under Rule 19, dismiss part or all of an Application that is outside the jurisdiction of the Tribunal.

### **Tribunal-Initiated Preliminary Consideration of Jurisdiction**

13.2 Where it appears to the Tribunal that an Application is outside the jurisdiction of the Tribunal, the Tribunal shall, prior to sending the Application to the Respondent(s), issue a Notice of Intention to Dismiss the Application. The Notice will:

- a) be sent to the Applicant only;
- b) set out reasons for the intended dismissal; and,
- c) require the Applicant to file written submissions within 30 days.

13.3 Where the Tribunal dismisses the Application under Rule 13.1 the decision will be sent to the Applicant. At the same time the Tribunal will send the decision to the Respondent(s), and any trade union or occupational or professional organization identified in the Application, at the addresses provided in the Application, and include a copy of the Application, the Applicant's submissions and all correspondence between the Tribunal and the Applicant on the jurisdictional issue.

13.4 Where, after considering the Applicant's Rule 13.2 submissions, the Tribunal decides to continue to deal with an Application, the Tribunal will send the Application to Respondent(s), and any trade union or occupational or professional organization identified in the Application, at the addresses provided in the Application, and include a copy of the Application, its Rule 13.1 decision, the Applicant's Rule 13.2 submissions and all correspondence between the Tribunal and the Applicant on the jurisdictional issue.

13.5 A decision by the Tribunal under Rule 13.4 to continue to deal with an Application is not a final decision regarding the Tribunal's jurisdiction in respect of the Application.

## **RULE 14 DEFERRAL OF AN APPLICATION BY THE TRIBUNAL**

14.1 The Tribunal may defer consideration of an Application, on such terms as it may determine, on its own initiative, at the request of an Applicant under Rule 7, or at the request of any party.

14.2 Where the Tribunal intends to defer consideration of an Application under Rule 14.1, it will first give the parties, any identified trade union or occupational or professional organization and any identified affected persons, notice of its intention to consider deferral of the Application and an opportunity to make submissions.

14.3 Where a party wishes the Tribunal to proceed with an Application which has been deferred the request must be made in accordance with Rule 19.

14.4 Where an Application was deferred pending the outcome of another legal proceeding, a request to proceed under Rule 14.3 must be filed no later than 60 days after the conclusion of the other proceeding, must set out the date the other legal proceeding concluded and include a copy of the decision or order in the other proceeding, if any.

14.5 The Tribunal may, on its own motion, require a deferred Application to proceed in appropriate circumstances.

## **RULE 15 MEDIATION**

15.1 At any time after an Application is filed, mediation assistance may be offered by the Tribunal or requested by a party.

15.2 Parties and their representatives who participate in mediation under Rule 15.1 must sign a confidentiality agreement before the mediation commences.

15.3 The Tribunal may direct that a party or a person with authority to settle on the party's behalf be present at the mediation.

15.4 All matters disclosed during mediation are confidential and may not be raised before the Tribunal or in other proceedings, except with the permission of the person who gave the information.

15.5 The Tribunal may determine that affected persons or organizations should receive notice of mediation and should be entitled to participate.

15.6 Where the terms of any settlement are in writing and signed by the parties the parties may request that the Tribunal dispose of the matter in accordance with their agreement by filing a confirmation of settlement using Form 25 (Settlement). Parties may also ask the Tribunal to issue a consent order in

accordance with s. 45.9 of the *Code*. A completed Form 25 must be filed within ten (10) days of the date of the agreement.

## **RULE 15A MEDIATION-ADJUDICATION WITH AGREEMENT OF THE PARTIES**

15A.1 With the agreement of the parties, the Tribunal member hearing an Application may act as mediator. In such circumstances, the mediator may continue to hear the matter as adjudicator.

15A.2 Where the parties agree to mediation-adjudication, they must sign a mediation-adjudication agreement before the mediation commences.

## **RULE 16 DISCLOSURE OF DOCUMENTS**

16.1 Not later than 21 days after the Tribunal sends a Confirmation of Hearing to the parties, each party must deliver to every other party (and file a Statement of Delivery):

- a) a list of all arguably relevant documents in their possession. Where a privilege is claimed over any document the party must describe the nature of the document and the reason for making the claim; and,
- b) a copy of each document contained on the list, excluding any documents for which privilege is claimed.

16.2 Unless otherwise ordered by the Tribunal, not later than 45 days prior to the first scheduled day of hearing, each party must deliver to every other party (and file a Statement of Delivery):

- a) a list of documents upon which the party intends to rely; and
- b) a copy of each document on the list or confirmation that each document has already been provided to the other parties in accordance with Rule 16.1.

16.3 Unless otherwise ordered by the Tribunal, not later than 45 days prior to the first scheduled day of hearing, each party must file with the Tribunal:

- a) a list of documents upon which the party intends to rely; and
- b) a copy of each document contained on the list.

16.4 No party may rely on or present any document not included on a document list and provided to other parties in accordance with Rule 16.1 and 16.2, and filed with the Tribunal under Rule 16.3, except with the permission of the Tribunal.

## **RULE 17 DISCLOSURE OF WITNESSES**

17.1 Unless otherwise ordered by the Tribunal, not later than 45 days prior to the first scheduled day of hearing, each party must deliver a witness list to every other party and file it with the Tribunal, along with a Statement of Delivery. The witness list must include the name of every witness, including expert witnesses, the party intends to present to the Tribunal.

17.2 The witness list must include a brief statement summarizing each witness' expected evidence.

17.3 A copy of an expert witness' written report, or full summary of proposed evidence, and curriculum vitae must accompany the witness list.

17.4 No party may present a witness whose name and summary of evidence was not included in a witness list and delivered and filed in accordance with Rules 17.1 and 17.2 or present an expert witness if material has not been delivered and filed in accordance with Rule 17.3, except with the permission of the Tribunal.

## **RULE 18 CASE ASSESSMENT DIRECTION**

18.1 The Tribunal may prepare and send the parties a Case Assessment Direction where it considers it appropriate. The Case Assessment Direction may address any matter that, in the opinion of the Tribunal, will facilitate the fair, just and expeditious resolution of the Application and may include directions made in accordance with any of its powers in Rule 1.6 and 1.7.

18.2 At the hearing parties must be prepared to respond to any issues identified in the Case Assessment Direction and to proceed in accordance with the directions set out in the Case Assessment Direction.

## **RULE 19 REQUEST FOR AN ORDER DURING PROCEEDINGS**

19.1 A party may request that the Tribunal make an order at any time during a proceeding by oral submission in the course of the hearing or by written request.

19.2 Where a request is made in writing, it must be made in Form 10, Request for Order during Proceedings ("Request for Order") and must be delivered to all parties and any person or organization who may have an interest in the request and filed with the Tribunal.

19.3 A request for an order that a non-party provide a report, statement or oral or affidavit evidence in accordance with Rule 1.7(r), must be in writing and must be delivered to the non-party in addition to the other parties to the proceeding.

19.4 A Request for Order (Form 10) must:

- a) describe the order requested;
- b) contain reasons for the request, including any facts relied on and submissions in support of the request;
- c) where the order requested is for production of a document(s) a copy of the party's written request for the document(s) and the responding party's response, if any, must be attached to the Form 10;
- d) include the documents relied on in support of the request, if any;
- e) indicate whether the requesting party wishes the Tribunal to deal with the matter in writing, in person, or electronically; and,
- f) indicate whether the consent of another party has been obtained as to any term of the order sought or as to the manner in which the request should be dealt with.

19.5 If the requesting party wants the Request for Order dealt with on an urgent basis, it must provide supporting reasons.

19.6 Unless the Tribunal directs otherwise, parties responding to the written Request for Order, must complete the Response to Request for Order ("Response to Request") in Form 11 and deliver a copy to all other parties and file it with the Tribunal not later than 14 days after the Request for Order was delivered. The Response to Request must include:

- a) the responding party's position on the order(s) requested and the whether the Request for Order should be dealt with in writing, in person, or electronically;
- b) identify which facts in the Request for Order are accepted and which are disputed. Where the order requested is for production of documents the responding party must attach the written response to the request, if any;
- c) reasons and any submissions in support of the responding party's position;
- d) any additional facts relied on by the responding party; and,
- e) include any documents not included in the Request for Order upon which the responding party intends to rely.

19.7 The Tribunal will determine whether a Request for Order will be heard in writing, in person, or electronically and, where necessary, will set a date for the hearing of the Request.

## **RULE 19A SUMMARY HEARINGS**

19A.1 The Tribunal may hold a summary hearing, on its own initiative or at the request of a party, on the question of whether an Application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application or part of the Application will succeed.

19A.2 Rules 16 and 17 do not apply to summary hearings. The Tribunal may give directions about steps the parties must take prior to the summary hearing, including disclosure or witness statements.

19A.3 When a party requests that an Application be dismissed pursuant to this Rule, it shall deliver to the other parties and file with the Tribunal a Request for Summary Hearing (Form 26), which includes full argument in support of the Request that the Application be dismissed. The party making the Request shall also deliver to the other parties a copy of the Practice Direction: Summary Hearing Requests.

19A.4 A party may respond to the Request for Summary Hearing by completing Form 11, delivering a copy to all parties and filing it with the Tribunal not later than 14 days after the Request for Summary Hearing was delivered.

19A.5 Upon review of the Request and any Response to the Request, the Tribunal will determine whether to hold a summary hearing on the question of whether the Application should be dismissed, in whole or in part, on the basis that there is no reasonable prospect that the Application will succeed. The Tribunal need not give reasons for a decision to hold or not to hold a summary hearing following a party's request.

19A.6 Where the Tribunal decides not to dismiss an Application following a summary hearing, it need not give reasons.

## **RULE 20 TRIBUNAL-ORDERED INQUIRIES**

20.1 A party may request an Order from the Tribunal to appoint a person to conduct an inquiry under s. 44(1) of the *Code*. A Request for a Tribunal-Ordered Inquiry must be made in Form 12, delivered to the other parties and filed with the Tribunal. The Request must be made promptly after the party becomes aware of the need for an inquiry.

20.2 A Request for Tribunal-Ordered Inquiry under Rule 20.1 must:

- a) describe the evidence or nature of the evidence to be obtained;
- b) explain why the evidence is necessary to achieve a fair, just and expeditious resolution of the Application;

- c) describe the efforts already made to obtain the evidence;
- d) provide reasons why an inquiry is necessary to obtain the evidence;  
and,
- e) propose terms of reference for the inquiry.

20.3 The other parties must deliver their response, if any, in Form 13, Response to Request for Inquiry, to all other parties and file it with the Tribunal not later than 14 days after the request was delivered.

20.4 A Response to Request for Inquiry must include complete submissions in support of the party's position.

20.5 An order made under s. 44(1) of the *Code* will include terms of reference for the inquiry.

20.6 A person conducting an inquiry will prepare a written report and submit it to the Tribunal and the parties in accordance with the terms of reference established by the Tribunal.

20.7 A report submitted to the Tribunal under s. 44(14) of the *Code* is not evidence in a proceeding, unless:

- a) its author testifies in the proceeding and the parties are given an opportunity to question him or her;
- b) the parties otherwise agree to the admission of the report as evidence in the proceeding; or,
- c) the Tribunal otherwise directs.

## **RULE 21 EXPEDITED PROCEEDINGS**

21.1 An Applicant may request that the Tribunal deal with an Application on an expedited basis in circumstances which require an urgent resolution of the issues in dispute. A Request to Expedite an Application must be made in Form 14 and filed with the Application in accordance with Rule 6.1 or 24.1.

21.2 A Request to Expedite an Application made under Rule 21.1 must include:

- a) a detailed description of the requested changes to the Tribunal's normal process, including timelines;
- b) one or more declarations signed by persons with direct first-hand knowledge detailing all the facts upon which the Applicant relies in support of the request to expedite; and

- c) submissions that explain:
  - i. why there are urgent circumstances that may affect the fair and just resolution of the merits of the Application if the Application proceeds in accordance with the Tribunal's regular process;
  - ii. the harm that would result if the Request is denied; and,
  - iii. why the Application should be given priority for Tribunal resources over other matters.

21.2.1 Where the Tribunal denies a Request to Expedite, it need not give reasons.

21.3 A response to a Request to Expedite an Application must be in Form 15, Response to Request to Expedite an Application, delivered to all other parties and any affected persons identified in the Application and filed with the Tribunal not later than seven days after the request was sent or as the Tribunal directs.

## **RULE 22 WHERE THE SUBSTANCE OF AN APPLICATION HAS BEEN DEALT WITH IN ANOTHER PROCEEDING**

22.1 The Tribunal may dismiss part or all of the Application where it determines, under s. 45.1 of the *Code*, that another proceeding has appropriately dealt with the substance of part or all of an Application.

22.2 The parties will have the opportunity to make oral submissions before the Tribunal dismisses an Application under Rule 22.1.

## **RULE 23 INTERIM REMEDIES**

23.1 An Applicant may request that the Tribunal order an interim remedy in an Application. A Request for an Interim Remedy must be made in Form 16. If the Request is made at the same time the Application is filed, it need not be delivered to the other parties. If it is made at a later stage, it must be delivered to the other parties and filed with the Tribunal.

23.2 The Tribunal may grant an interim remedy where it is satisfied that:

- a) the Application appears to have merit;
- b) the balance of harm or convenience favours granting the interim remedy requested; and,
- c) it is just and appropriate in the circumstances to do so.

23.3 A Request for an Interim Remedy must include:

- a) a detailed description of the order sought;
- b) one or more declarations signed by persons with direct first-hand knowledge detailing all of the facts upon which the Applicant relies; and,
- c) submissions with respect to the merits of the Application, the balance of harm or convenience and why an interim remedy would be just and appropriate in the circumstances, in accordance with the Rule 23.2.

23.4 The other parties must file their response, if any, in Form 17, Response to Request for Interim Remedy, not later than seven days after the Form 16 was delivered. The Form 17 must be delivered to the other parties and any affected persons identified in the Application and filed with the Tribunal not later than seven days after the request was sent or as the Tribunal directs.

23.5 A Response to Request for Interim Remedy must be delivered to all other parties and filed with the Tribunal and must include:

- a) one or more declarations signed by persons with direct first-hand knowledge detailing all of the facts upon which the Respondent relies; and,
- b) submissions with respect to the merits of the Application, the balance of harm or convenience and why an interim remedy would not be just and appropriate in the circumstances, in accordance with the Rule 23.2.

## **RULE 24 CONTRAVENTION OF SETTLEMENTS**

24.1 An application under s. 45.9(3) of the *Code* alleging contravention of a settlement must be filed in Form 18, Application for Contravention of Settlement, delivered to the other parties to the settlement and filed with the Tribunal.

24.2 The Application for Contravention of Settlement must include an answer to each question in Form 18 and include a copy of the settlement alleged to have been contravened.

24.3 The other parties must deliver and file their response, if any, in Form 19, Response to Application for Contravention of Settlement, not later than 14 days after the Form 18 was delivered.

## **RULE 25 REQUEST TO AMEND CLERICAL ERRORS**

25.1 Within 30 days from the date of a decision or order, a party may request that the Tribunal correct a typographical error, error of calculation, or similar error made in the decision or order. The Tribunal may, at any time, make similar corrections.

25.2 The request shall be considered by the same panel that rendered the original decision or order, unless the Tribunal Chair determines otherwise.

## **RULE 26 REQUEST FOR RECONSIDERATION**

26.1 Any party may request reconsideration of a final decision of the Tribunal within 30 days from the date of the decision.

26.2 A Request for Reconsideration must be made in Form 20 and be delivered to all parties and filed with the Tribunal.

26.3 A Request for Reconsideration must include:

- a) reasons for the request, including the basis upon which the Tribunal is asked to grant the request for reconsideration;
- b) submissions in support of the request; and,
- c) remedy or relief sought.

26.4 A party who has been served with a Request for Reconsideration need not file a response with the Tribunal unless the Tribunal directs that a response is required. Where a party is directed to file a response to the request, it must be in Form 21, Response to Request for Reconsideration, and must include complete written submissions in support of its position.

26.5 A Request for Reconsideration will not be granted unless the Tribunal is satisfied that:

- a) there are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier; or
- b) the party seeking reconsideration was entitled to but, through no fault of its own, did not receive notice of the proceeding or a hearing; or
- c) the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance; or

- d) other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions.

26.5.1 A Request for Reconsideration made more than 30 days following the Decision will not be granted unless the Tribunal determines that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

26.6 The Tribunal shall not grant a Request for Reconsideration without providing the parties an opportunity to make submissions.

26.7 The determination of the Request for Reconsideration shall be conducted by written submissions unless the Tribunal decides otherwise.

26.7.1 Where a Request for Reconsideration has been determined, the Tribunal will not consider a subsequent Request for Reconsideration of the same decision, absent exceptional circumstances. The Tribunal need not give reasons for a decision not to consider a subsequent Request.

#### **Where Reconsideration Request Granted**

26.8 Where the Tribunal considers it appropriate to reconsider its decision it may:

- a) make a decision on the substance of the Request without further submissions from the parties, or
- b) determine a procedure for rehearing all or part of the matter.

#### **Reconsideration at the Initiative of the Tribunal**

26.9 The Tribunal may reconsider a decision on its own initiative where it considers it advisable and appropriate to do so.

26.10 Where the Tribunal decides to reconsider a decision on its own initiative, it will determine a procedure for rehearing all or part of the matter, which will include an opportunity for the parties to make submissions.

### **RULE 27 STATED CASE TO DIVISIONAL COURT**

27.1 Where the Tribunal has made a final decision or order in a proceeding in which the Commission was a party or intervenor, the Commission may, under s. 45.6 of the *Code*, apply to the Tribunal to have the Tribunal state a case to the Divisional Court.

27.2 An application under Rule 27.1 shall be delivered to all the parties to the proceeding in which the decision or order was issued and filed with the Tribunal

no later than 60 days after the date of the decision or order. The application shall be in Form 22, Commission Application to Request Stated Case and shall:

- a) identify the Commission policy, approved under s. 30 of the *Code*, that is the subject of the application under Rule 27.1;
- b) include a statement setting out the reasons why the Commission believes that the decision or order is not consistent with the Commission-approved policy; and,
- c) state why the Commission believes that the application under Rule 27.1 relates to a question of law and that it would be appropriate for the Tribunal to state a case for the opinion of the Divisional Court on the question of law.

27.3 Any party who supports the Commission Application to Request Stated Case may, not later than 20 days after the Form 22 was delivered, deliver their submissions to all other parties and the Commission and file the submissions at the Tribunal.

27.4 Any party who opposes the Application to Request Stated Case may, not later than 30 days after the Form 22 was delivered, deliver submissions to all other parties and the Commission and file their submissions at the Tribunal.

27.5 The Commission may, not later than ten (10) days from delivery of opposing submissions, if any, deliver reply submissions to all other parties and file them at the Tribunal.

27.6 A Commission Application to Request Stated Case does not operate as a stay of the final decision or order at issue, unless otherwise ordered by the Tribunal or the Court.

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