

BC Human Rights Tribunal
Rules of Practice and Procedure

Effective January 15, 2016

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PART 1 – General

Rule 1 – Purpose of Rules

- (1) The purpose of these rules is to facilitate the just and timely resolution of complaints filed with the tribunal under the *Human Rights Code* (the “Code”).
- (2) To further the purpose of these rules, the tribunal may use procedures other than traditional adjudicative or adversarial procedures.
- (3) The tribunal may issue practice directions to provide information or set requirements for tribunal practice and procedure.

Rule 2 – Tribunal Powers

- (1) The tribunal may exercise any power under these rules at the request of a participant or on its own initiative.
- (2) The tribunal may waive or vary these rules and may shorten or lengthen any time limits in these rules, as it considers appropriate in the circumstances.

Rule 3 – Definitions

In these rules:

“application” means a request for an order from the tribunal made under rule 28;

“complaint” means a complaint filed under rule 12;

“complainant” means a person or a group of persons that files a complaint;

“member” means a member of the tribunal appointed under the *Code*, and includes the member designated as chair and a panel of members;

“participant” means:

- (a) a complainant;
- (b) a respondent;
- (c) a person or group of persons allowed by order of the tribunal to intervene in a complaint;
- (d) a person or group of persons who makes an application; and
- (e) a person or group of persons who may be affected by an application;

“party” means a complainant or a respondent;

“respondent” means a person or persons against whom a complaint is made and any person that the tribunal adds as a respondent;

“tribunal” means the British Columbia Human Rights Tribunal established under section 31 of the *Code*.

Rule 4 – Obligation to Comply with these Rules

Participants must comply

- (1) Participants must comply with these rules and any practice directions issued under rule 1(3), unless the tribunal orders or directs otherwise.

Effect of non-compliance

- (2) If a participant fails to comply with these rules, or with a decision, order, or direction made under these rules, the tribunal may:
 - (a) order costs under section 37(4) of the *Code*, if the participant failing to comply is a complainant or respondent; and/or
 - (b) make any other decision or order the tribunal considers appropriate in the circumstances.

Application for costs

- (3) An application for costs against another party must state:
 - (a) how the other party engaged in improper conduct during the course of the complaint; and/or
 - (b) how that party contravened a rule, decision, order or direction of the tribunal.

Costs payable immediately

- (4) Costs awarded are payable immediately unless the tribunal orders otherwise.

Failure to pursue a complaint

- (5) If a complainant fails to respond to communications from the tribunal or otherwise fails to pursue a complaint, the tribunal will notify the complainant that:
 - (a) the complainant must diligently pursue the complaint; and
 - (b) the tribunal may dismiss the complaint under section 27.5 of the *Code* if the complainant does not respond to the notice within the time allowed by the tribunal.

Technical defects

- (6) A technical defect or irregularity in form will not invalidate the tribunal’s proceedings and does not constitute non-compliance with these rules.

Rule 5 – Public Access to Complaint File and Proceedings

Hearings

- (1) A hearing of a complaint is open to the public.
- (2) The tribunal may order that the public is excluded from all or part of the hearing if doing so would outweigh the public interest in access to the hearing.

Hearing list

- (3) Hearings scheduled within 90 days are published on a hearing list, which includes the parties’ names, case number, area(s) and ground(s) of discrimination, and place and date of hearing.
- (4) A participant involved in settlement discussions may request that the tribunal delay adding a complaint to the hearing list by notifying the tribunal.

Decisions

- (5) Tribunal decisions are available to the public, and may be published, including on the tribunal’s website.

Limiting publication of personal information

- (6) An application for an order limiting public disclosure of personal information must state why privacy interests outweigh the public interest in access to the tribunal’s proceedings.

Complaints about minors

- (7) In an application to limit public disclosure of information that would identify a minor, the tribunal will presume that the minor’s privacy interests outweigh the public interest in access to the tribunal’s proceedings.

Public access to complaint file restricted

- (8) For the purpose of this rule, “complaint file” means the record of communications maintained by the tribunal regarding a complaint, including all communications filed or delivered by the tribunal to the participants.
- (9) A complaint file is not available to the public unless:
 - (a) a person makes a successful request under the *Freedom of Information and Protection of Privacy Act*; or

- (b) the tribunal permits access under rule 5(10).
- (10) If a complaint is listed on the hearing list, the following parts of the complaint file, except participants' addresses, phone numbers and fax numbers, will be available to the public:
- (a) the complaint form;
 - (b) the response to complaint form;
 - (c) any amendment forms;
 - (d) tribunal notices regarding the hearing of the complaint; and
 - (e) preliminary decisions regarding the complaint.
- (11) A complaint file is not available to the public under rule 5(10) if a complaint is settled, withdrawn, or otherwise removed from the hearing list.

Rule 6 – Interpreters and Other Accommodations

- (1) A participant must notify the tribunal if that participant or their representative requires an interpreter or any other accommodation.
- (2) A request for accommodation for a settlement meeting, case conference or hearing must be made at least 21 days before the date set for the meeting, conference or hearing.

PART 2 – Representation, Filing and Delivery of Communications

Rule 7 – Representation before the Tribunal

How participants may be represented

- (1) A participant may be represented by a lawyer or other person, or may be self-represented.
- (2) The representative may be:
 - (a) lawyer or other person authorized to practice law in British Columbia under the Legal Profession Act, or
 - (b) a person who acts as a representative with no expectation of a fee, gain or reward, direct or indirect, from the participant they represent, except for persons identified in s. 15(3) of the Legal Profession Act.

Withdrawal of representative

- (3) A representative who ceases to represent a participant must file notice of the withdrawal.

Responsibilities of participants and representatives

- (4) Participants and representatives must treat all persons in the course of a complaint with courtesy and respect.
- (5) Participants and representatives must participate in the complaint process with appropriate consideration for all persons without discrimination.
- (6) Participants and representatives must conduct themselves with honesty and integrity, and must not act in a manner that would undermine the tribunal's process.

Consequences for failure to comply

- (7) Without limiting rule 4, if the tribunal determines that a representative has not complied with this rule, the tribunal may impose restrictions on the representative's continued participation in, or attendance at, a proceeding, or may exclude the representative from further participation in a proceeding.

Rule 8 – Address for Delivery

Definition

- (1) "Address for delivery" means a current postal address, and may include a fax number and/or an email address.

Requirement to provide address for delivery

- (2) A participant must notify the tribunal and other participants of an address for delivery.

Address if represented

- (3) If a participant is represented by a lawyer or other person, the representative's address is the participant's address for delivery.

Change of address

- (4) A participant must notify the tribunal and other participants of a change of address for delivery.
- (5) Unless the tribunal is notified of a new address for delivery, a participant's most recent address for delivery will be treated as the address for delivery.

Deemed notice if communication delivered to address for delivery

- (6) A participant is deemed to have notice of a communication if it is delivered to the participant's address for delivery.

Rule 9 – Time for Filing and Delivery

Definition of day and business day

- (1) “Day” means a calendar day.
- (2) “Business day” means between 8:30 and 4:30 from Monday to Friday, excluding holidays.

Filing or delivery after business day

- (3) A communication received after a business day is deemed to be filed or delivered on the next business day.

Calculation of time

- (4) Days are counted by excluding the first day and including the last day.
- (5) If the date on which a participant must file or deliver a communication falls on a day that is not a business day, the participant may file or deliver the communication on the next business day.

Rule 10 – Communications with the Tribunal

Definition of filing

- (1) Filing a communication means effective delivery of it to the tribunal.

Accepted methods of filing communications with the tribunal

- (2) A communication may be filed with the tribunal by:
 - (a) mail, fax, email, hand, courier, or process server, or
 - (b) submitting a form online, where the tribunal permits,unless the tribunal directs otherwise.

Complaint name and case number

- (3) A communication filed with the tribunal must include:
 - (a) the complaint name and case number in the subject line; and
 - (b) the names of the participants to whom a copy of the communication will be delivered.

Communications addressed to registrar or case manager

- (4) A communication must be addressed to the registrar or case manager.

Requirement to deliver a copy to participants

- (5) A participant who files a communication with the tribunal must deliver a copy of the communication to the other participants:
 - (a) within the time allowed by the tribunal; or
 - (b) if the tribunal has not set a time, by sending a copy of the communication by a method of delivery permitted in rule 11(1), on the same day as the communication is filed.

Communications between participants

- (6) A participant must not provide a copy of a communication between participants to the tribunal, unless the communication is filed in support of an application.

Notifying the tribunal

- (7) Notifying the tribunal means notifying the case manager by phone or by filing a communication.

Rule 11 – Delivering Communications to Participants

Delivery of communications

- (1) A communication may be delivered to a participant by:
 - (a) mail, fax, email, hand, courier, or process server, or
 - (b) notifying a participant by email that the communication was submitted online, where the tribunal permits.

Alternative methods of delivery

- (2) If ordinary methods of delivery have not been, or are not likely to be effective, the tribunal may permit or require an alternative method of delivery.

Deemed date of delivery by mail

- (3) A communication sent by mail to a participant's address for delivery is deemed to be delivered 7 days after it was mailed, subject to rule 11(5).

Proof of delivery

- (4) Delivery may be proved by:
 - (a) an affidavit from the deliverer setting out the time, date and method of delivery;
 - (b) a copy of "Canada Post's Certificate of Delivery Confirmation – Registered Mail";

- (c) a fax transmittal record;
- (d) email confirmation or a copy of the sent email; or
- (e) testimony from the deliverer at a hearing as to the time, date, and method of delivery.

If participant does not receive communication

- (5) If a communication has been delivered in accordance with this rule, but a participant can show that it did not come to their notice or was received after the deemed date of delivery, the participant may:
 - (a) apply for an extension of time, an adjournment, or to set aside any order, decision, or direction made as a result of the lack of notice; or
 - (b) request an extension of time to file a submission or other communication for which these rules do not require an application.

PART 3 – Starting the Complaint Process

Rule 12 – Making a Complaint

Making a complaint

- (1) To make a complaint, a person must complete and file:
 - (a) Form 1.1 – Individual Complaint Form, if filing a complaint alleging discrimination against an individual;
 - (b) Form 1.2 – Authorization Form, if filing a complaint for another person, as required by Form 1.1 or 1.4;
 - (c) Form 1.3 – Complaint for Group or Class, if filing a complaint alleging discrimination against a group or class of persons; and
 - (d) Form 1.4 – Retaliation Complaint, if filing a complaint alleging retaliation against a person.

Complaint must allege possible contravention of *Code*

- (2) A complaint must allege facts that, if proven, could be a contravention of the *Code* against each person named as a respondent.

Time limit for filing

- (3) A complaint must:

- (a) be filed within the time limit under section 22(1) or (2) of the *Code*; or
- (b) provide reasons why the tribunal should accept all or part of a complaint filed after the time limit under section 22(3) of the *Code*.

Further or clarifying information

- (4) Before it decides whether to proceed with a complaint, the tribunal may provide the complainant with an opportunity to file further or clarifying information.
- (5) If the tribunal provides an opportunity to file further or clarifying information, and the complainant files an amendment within the time allowed by the tribunal, the tribunal will treat the amended complaint as filed on the day the complaint was first filed.

Time limit submissions

- (6) If the tribunal provides an opportunity to file submissions regarding the time limit for filing the complaint, the participants must, within the time allowed by the tribunal, file and deliver to the other participants:
 - (a) in the case of a respondent, a completed Form 4 – Time Limit Response;
 - (b) in the case of a complainant, a completed Form 5 – Time Limit Reply.
- (7) Rules 28(3) to (6) apply to time limit submissions.

Decision to proceed with complaint

- (8) Subject to rule 12(9), if the tribunal decides to proceed with a complaint, this does not preclude a respondent from applying to dismiss the complaint without a hearing.
- (9) If the tribunal accepts a complaint for filing under section 22(3) of the *Code*, a respondent may not apply to dismiss the complaint under section 27(1)(g) of the *Code* on the ground that all or part of the complaint is filed after the time limit.

Rule 13 – Participants

Notification of parties

- (1) If the tribunal accepts a complaint for filing, the tribunal will notify the parties.

Affected persons or organizations

- (2) The tribunal may notify a person of a complaint if it appears to the tribunal that the person may be affected by the remedy sought under section 37 of the *Code*.

Intervenors

- (3) A person who may be affected by the remedy sought under section 37 of the *Code* and who wants to participate in the complaint process must apply to intervene in the complaint and state:
 - (a) how they may be affected by the remedy sought; and
 - (b) how they want to participate.
- (4) Any other person or group of persons who wants to participate in the complaint process must apply to intervene in the complaint and state in the application:
 - (a) their interest in and any expertise regarding the issues they want to address;
 - (b) how they want to participate; and
 - (c) how their participation will be useful to the tribunal.
- (5) The Human Rights Commissioner may intervene by notifying the tribunal in writing:
 - (a) that the Commissioner is exercising their right under s. 22.1 of the *Code* to intervene in the complaint; and
 - (b) setting out the proposed terms for the intervention.

Part 4 – Complaint Process Options

Rule 14 – Mediation

Mediation

- (1) The tribunal offers mediation for the purpose of assisting the parties to achieve resolution of all or part of the complaint.

Request for mediation

- (2) A party may request a mediation at any time by notifying the tribunal.

Mediator

- (3) A mediator may be a member or other person retained by the tribunal.
- (4) A member who conducts a mediation will not hear the complaint, unless the parties agree in writing.

Confidentiality of settlement discussions

- (5) Any information received by any person in the course of attempting to settle a complaint, including at a mediation, is confidential and may not be disclosed or admitted in evidence, unless the person who gave the information consents.

Mediation agreement

- (6) Before a mediation, all participants must agree to the terms of an agreement to participate in mediation, confirming that:
 - (a) the parties are willing to participate in the mediation;
 - (b) any representative of a party has authority to settle the complaint; and
 - (c) any information exchanged during a mediation will be kept confidential.

Rule 15 – Settlement and Withdrawal of a Complaint

Withdrawal of a complaint

- (1) To withdraw all or part of a complaint for any reason, including settlement, a complainant must file notice of the settlement or withdrawal, and may use a Form 6 – Complaint Withdrawal.

Tribunal will dismiss withdrawn complaint

- (2) When a complainant files a notice of the settlement or withdrawal, the tribunal will order that all of the complaint, or that part of the complaint specified, is dismissed under section 17 of the *Administrative Tribunals Act*.

Rule 16 – Deferral of Complaint

Requirements for deferral

- (1) The tribunal may defer consideration of a complaint until the outcome of another proceeding or a date set by the tribunal, if it determines that:
 - (a) another proceeding is capable of appropriately dealing with the substance of the complaint; or
 - (b) it is fair and reasonable in all of the circumstances to do so.

Tribunal may request submissions

- (2) If a complaint states that another proceeding has been commenced that is capable of appropriately dealing with the substance of the complaint, the tribunal may request submissions from the parties on whether to defer the complaint.

Application for deferral

- (3) An application for an order deferring further consideration of a complaint must:
 - (a) state how another proceeding is capable of appropriately dealing with the substance of the complaint or why it is fair and reasonable in all of the circumstances to defer the complaint; and
 - (b) attach a copy of the document commencing the other proceeding and/or any other supporting material.

Rule 17 – Fast-Track or Alternate Process

- (1) The tribunal may deal with a complaint using alternate processes or timelines to those set out in these rules to facilitate the just and timely resolution of the complaint.
- (2) An application for an alternate process or timelines must state:
 - (a) the reason for the request;
 - (b) a description of the requested changes to the tribunal's process and timelines; and
 - (c) how granting the request will further the just and timely resolution of the complaint.

Part 5 - Responding to a Complaint

Rule 18 – Responding to a Complaint

Responding to a complaint

- (1) To respond to a complaint a respondent must complete and file a Form 2 – Complaint Response and deliver a copy to the other participants.

Further or clarifying information

- (2) If the tribunal provides an opportunity to file further or clarifying information, and a respondent files an amendment within the time allowed by the tribunal, the tribunal will treat the amended response as filed on the day the response was first filed.

Time limit to respond

- (3) A respondent must respond to a complaint within the time allowed in the tribunal's notice that it has accepted the complaint for filing.

Time limit extended for settlement meeting

- (4) The tribunal may extend the time for responding to a complaint if:

- (a) the parties advise the tribunal of their interest in a settlement meeting within the time allowed by the tribunal; and
 - (b) the tribunal has confirmed a date for the settlement meeting.
- (5) If the conditions in rule 18(4) are met, a respondent must respond to the complaint by:
- (a) the earliest of:
 - (i) 35 days from the date that the settlement meeting is cancelled; or
 - (ii) 35 days from the date the tribunal is advised that the settlement meeting did not result in resolution of the complaint; or
 - (b) a later time as may be permitted at the end of the settlement meeting.

Time limit extended if deferral application

- (6) If a respondent applies, at least 14 days before its response is due, for an order deferring the complaint under rule 16(3), the time for responding to the complaint is extended to:
- (a) 21 days from the date of a decision denying the application; or
 - (b) if the tribunal orders deferral, 21 days from the date the deferral ends.

Extending time to respond

- (7) To request an extension of time to respond to a complaint, a respondent must notify the tribunal of the length of the extension requested and either that the other parties consent or the reasons for the request.
- (8) Despite rule 18(7), the tribunal may require a respondent to apply for an order extending the time to respond to a complaint, if a hearing date has been set or the tribunal determines that the complainant should be given an opportunity to make a submission.
- (9) An order extending the time to respond to a complaint may include terms or conditions the tribunal considers appropriate in the circumstances, including that:
- (a) the hearing will proceed on dates set by the tribunal;
 - (b) no dismissal application will be considered without permission of the tribunal.

Failure to respond

- (10) If a respondent does not respond to a complaint within the time allowed:
- (a) the address at which the tribunal notified the respondent of the complaint will be deemed to be the respondent's address for delivery;

- (b) without consulting the respondent, the tribunal will determine whether the hearing will be by affidavit, in person, or in any other format, and any dates in relation to the hearing;
- (c) the tribunal may:
 - (i) order the respondent to pay the costs incurred by any other participant as a result of the failure to respond within the time allowed; and
 - (ii) make any other decision or order the tribunal considers appropriate in the circumstances.

Rule 19 – Application to Dismiss Complaint without a Hearing

Limitation

A respondent may make only one application to dismiss a complaint, unless new information or circumstances, that form the basis of a further application, come to that party's attention.

Time limit

- (1) A respondent must apply to dismiss a complaint within 70 days of filing a response to the complaint.
- (2) Subject to rule 19(4), a respondent must apply to dismiss a complaint within 35 days from the date on which the new information or circumstances that form the basis of the application came to the respondent's attention.
- (3) A respondent must apply at least four months before the date set for the hearing if the basis of an application to dismiss a complaint is the complainant's refusal to accept a reasonable with prejudice offer to settle the complaint.

Extension of time

- (4) To request an extension of the time to file an application, the respondent must:
 - (a) obtain the consent of the other parties and file a notice that the other parties consent and the date on which they will file the application; or
 - (b) apply for an order extending the time in Form 7.2 – Dismissal Application.

Part 6 - Disclosure

Rule 20 – Document Disclosure Requirements

Definition of document

- (1) “Document” includes any form of recorded or stored information.

Complainant’s document disclosure

- (2) Within 35 days after a response to the complaint is filed, a complainant must:
- (a) complete and file Form 9.1 – Complainant Document Disclosure, listing all documents in the complainant’s possession or control that may be relevant to the complaint or response to the complaint; and
 - (b) deliver to any other party a copy of the completed Form 9.1 and each document listed on Form 9.1, excluding documents for which privilege is claimed.

Respondent’s document disclosure

- (3) Within 70 days after a response to the complaint is filed, or upon filing an application to dismiss the complaint without a hearing, a respondent must:
- (a) complete and file Form 9.2 – Respondent Document Disclosure, listing all documents in the respondent’s possession or control that may be relevant to the complaint or response to the complaint; and
 - (b) deliver to any other party a copy of the completed Form 9.2 and each document listed on Form 9.2, excluding documents for which privilege is claimed.

Consequences for missing due date

- (4) If a complainant does not comply with rule 20(2), the time for the respondent’s document disclosure under rule 20(3) and for the respondent to file an application to dismiss the complaint under rule 19(2) is extended by:
- (a) the number of days the Form 9.1 is late filed; or
 - (b) another time set by the tribunal.
- (5) Despite rule 20(4), upon filing an application to dismiss the complaint without a hearing, a respondent must comply with rule 20(3).
- (6) If a respondent does not comply with rule 20(3), the respondent may not apply to dismiss the complaint without a hearing without permission of the tribunal.

Rule 20.1 – Witness and Remedy Disclosure

Complainant’s witness and remedy disclosure

- (1) Within 21 days after the tribunal issues a Notice of Hearing, a complainant must:
 - (a) complete and file:
 - (i) Form 9.3 – Witness List, listing the witnesses the complainant intends to call at the hearing;
 - (ii) Form 9.4 – Remedy Sought, setting out the details of the remedy sought under section 37 of the *Code*;
 - (iii) Form 9.5 – Complainant Document Disclosure Regarding Remedy, listing all documents in the complainant’s possession or control that may be relevant to the remedy sought; and
 - (b) deliver to any other party a copy of the completed Forms 9.3, 9.4 and 9.5 and each document listed on Form 9.5, excluding documents for which privilege is claimed.

Respondent’s witness and remedy disclosure

- (2) Within 14 days of receiving the complainant’s Witness List, a respondent must:
 - (a) complete and file Form 9.3 – Witness List, listing the witnesses the respondent intends to call at the hearing; and
 - (b) deliver to any other party a copy of the completed Form 9.3.
- (3) Within 14 days of receiving the complainant’s Remedy Sought, a respondent must:
 - (a) complete and file Form 9.6 – Response to Remedy Sought, responding to the remedy sought by the complainant; and
 - (b) deliver to any other party a copy of the completed Form 9.6.
- (4) Within 14 days of receiving the complainant’s Document Disclosure regarding Remedy and documents under rule 20.1(1)(b), a respondent must:
 - (a) complete and file Form 9.7 – Respondent Document Disclosure Regarding Remedy, listing all documents in the respondent’s possession or control that may be relevant to the remedy sought; and
 - (b) deliver to any other party a copy of the completed Form 9.7 and each document listed on Form 9.7, excluding documents for which privilege is claimed.

Rule 20.2 – General Rules Regarding Disclosure

On-going obligation to disclose

- (1) Disclosure under rules 20 and 20.1 is an on-going obligation and each party must promptly:
 - (a) deliver to the others a copy of any documents that may be relevant to the complaint, response to the complaint, or remedy sought that are subsequently acquired; and
 - (b) file with the tribunal and deliver to the others any change to a witness list, details of the remedy sought, or a response to the details of the remedy sought.

Changing disclosure dates by agreement

- (2) As long as they will be prepared to proceed on all the dates scheduled for a settlement meeting, case conference, and hearing of the complaint, the parties may, by agreement:
 - (a) change the dates under rule 20 and 20.1; and/or
 - (b) exchange lists of documents under rule 20 and/or 20.1 to determine what copies must be delivered.
- (3) The parties must notify the tribunal of the dates on which they have agreed to:
 - (a) file and deliver completed forms under rule 20 and/or 20.1; and/or
 - (b) deliver documents under rule 20 and/or 20.1.

Application to delay or limit disclosure

- (4) An application for an order limiting the scope of disclosure or extending the time for disclosure must state why the request is reasonable and fair in the circumstances.

Cost of copies

- (5) Each party bears their own cost of copying documents for another party.

Rule 21 – Requirement to Disclose Expert Evidence

Expert witness

- (1) A participant who wants to call an expert witness to give opinion evidence at a hearing must deliver a written summary of the opinion to the other participants no later than 90 days before the start of the hearing.

Expert report

- (2) A participant who wants to introduce a report stating an expert opinion at a hearing must deliver a copy of the report to the other participants no later than 90 days before the start of the hearing.

Response

- (3) No later than 30 days from receipt of a summary or report under rule 21(1) or (2), another participant may deliver a written summary of an expert opinion or a report stating an expert opinion to all participants, in response to the summary or report delivered.

Reply

- (4) To request directions from the tribunal regarding the timing for delivery of a reply summary or report, a participant must promptly notify the tribunal.

If participant wants expert to testify

- (5) To require another participant's expert to testify, a participant must, within 30 days of receipt of the report, deliver notice to the other participant that the participant requires the expert to testify at the hearing.
- (6) If an expert is required to testify at the hearing under rule 21(5) and the expert's evidence does not materially add to the expert report, a member may order costs against the participant who required the testimony.

Proving an expert's qualifications

- (7) A written statement of an expert's qualifications is proof that the expert has those qualifications, unless there is evidence to the contrary and a member finds otherwise.

Participants may change dates

- (8) The participants may, by agreement, change the dates for delivery of a report or summary under this rule, as long as they will be prepared to proceed on the dates scheduled for the hearing.

Rule 22 – Failure to Comply with Disclosure Requirements

Without limiting rule 4(2), if a participant fails to disclose any document, witness list, witness statement, expert report, or summary of an expert opinion as required by these rules, or by decision, order or direction of the tribunal:

- (a) the participant may not introduce the document or report as evidence without permission of the tribunal;

- (b) the participant may not call as a witness a person whose name, witness statement, expert report or summary of an expert opinion was not disclosed as required, without permission of the tribunal;
- (c) the tribunal may make any decision or order it considers appropriate in the circumstances, including:
 - (i) adjourning a settlement meeting, case conference or hearing; and
 - (ii) if the participant is a complainant or respondent, ordering that party to pay the costs incurred by any other participant as a result of the adjournment.

Rule 23 – Application for Document Disclosure

Application for disclosure

- (1) An application for an order that a person deliver a copy of a document must state:
 - (a) how disclosure of the document requested will further the just and timely resolution of the complaint;
 - (b) how the document requested may be relevant to an issue in the complaint, response to the complaint, or remedy sought; and
 - (c) the participant’s efforts to obtain a copy of the document.

Application for disclosure from a non-party

- (2) In addition to complying with rule 23(1), a participant applying for an order that a person who is not a party deliver a copy of a document in that person’s possession or control must:
 - (a) state in the application that:
 - (i) no party has control over the document; or
 - (ii) the participant first sought and obtained an order under rule 23(1) that another party obtain and deliver the document and that party has not complied with the order; and
 - (b) file a completed Order to Produce Document Form.
- (3) If the tribunal issues an order requiring the person to deliver a copy of a document under s. 34(3)(b) of the *Administrative Tribunals Act*, then the person who applied for the order must promptly provide the person with:
 - (a) a copy of the order; and

- (b) a notice that the person may object to the order by requesting that the tribunal set aside the order and their reasons for the request within 14 days of the date of the order.

Rule 23.1 – Confidentiality of Disclosed Documents

- (1) Documents that a participant obtains through the disclosure process in Part 6 of these Rules are confidential.
- (2) A participant must not use a document obtained through the disclosure process in Part 6 of these Rules for any purpose other than the complaint process in which they were disclosed, except:
 - (a) with the consent of the party who disclosed the document;
 - (b) by order of the tribunal;
 - (c) after the document is entered as evidence in a hearing.

Part 7 – Amending a Complaint or Response to Complaint

Rule 24 – Amending a Complaint

Adding details to complaint

- (1) A complainant may add details to the allegations made in a complaint at any time by filing a Form 3 – Amendment and delivering a copy to the other participants.

Adding allegations to complaint

- (2) Subject to rule 24(4), a complainant may add an allegation to a complaint by filing a Form 3 – Amendment and delivering a copy to the other participants.
- (3) A new allegation must allege facts that, if proven, could establish a contravention of the *Code*.

Application to amend complaint may be required

- (4) A complainant must apply to amend a complaint if:
 - (a) the amendment adds an allegation that occurred outside of the time limit for filing the complaint under section 22 of the *Code*;
 - (b) there is an outstanding application to dismiss the complaint; or
 - (c) the hearing date is less than four months from the date the amendment is filed.

Time limit to respond to amended complaint

- (5) A respondent may respond to an amended complaint by filing a Form 3 – Amendment within 21 days from the tribunal’s letter advising that it has accepted the amended complaint for filing.
- (6) If a respondent does not respond to an amended complaint within the time allowed by the tribunal, the respondent’s response to the complaint will be deemed to be the response to the amended complaint.

Rule 25 – Adding a Party to a Complaint

Adding a complainant

- (1) To be added as a complainant to a complaint, a person must file a separate complaint and apply to have the complaints joined under section 21(6) of the *Code* and state in the application why joining the complaints is fair and reasonable in the circumstances.

Adding a respondent

- (2) To add a respondent to a complaint, a person must apply and must state in the application:
 - (a) why adding the proposed respondent will further the just and timely resolution of the complaint;
 - (b) the facts that, if proven, could establish a contravention of the *Code* by the proposed respondent;
 - (c) if the application is filed after the time limit for filing a complaint in section 22 of the *Code* in respect of the allegation against the proposed respondent, why it is in the public interest to add the proposed respondent to the complaint and why no substantial prejudice will result to any person because of the delay; and
 - (d) an address at which the tribunal can notify the proposed respondent of the complaint.

If proposed respondent does not respond

- (3) If the tribunal is satisfied that the proposed respondent received notice of the application and did not respond to the application within the time allowed by the tribunal, the tribunal:
 - (a) may decide whether to add that person as a respondent without hearing from that person; and
 - (b) will treat the address at which notification was given as that participant’s address for delivery.

Rule 26 – Amending a Response to Complaint

Amending response to complaint

- (1) A respondent may amend the response to a complaint by filing a Form 3 – Amendment and delivering a copy to the other participants.

Application to amend may be required

- (2) A respondent must apply to amend a response to a complaint if the hearing date is less than four months from the date the amendment is filed.

Part 8 – Case Conferences and Applications

Rule 27 – Case Conferences

- (1) The tribunal may schedule a case conference at any time.
- (2) A participant may request a case conference by notifying the tribunal of the reason for the request.
- (3) If it is satisfied that the participant received notice of the case conference, the tribunal may proceed in a participant’s absence.
- (4) During a case conference, the tribunal may give any direction to facilitate the just and timely resolution of a complaint, and a member may hear and decide an application.

Rule 28 – Applications

Making an application

- (1) To apply for an order from the tribunal, a participant must:
 - (a) file a completed application:
 - (i) in Form 7.1 – General Application, for any order sought except an order sought in an application to dismiss a complaint; or
 - (ii) in Form 7.2 – Dismissal Application, for an order dismissing all or part of a complaint without a hearing, including an order extending the time to file a dismissal application;
 - (b) attach any supporting material to the application; and
 - (c) deliver a copy of the application and supporting material to the other participants, unless the participant is applying to intervene in the complaint.

Tribunal may request submissions

- (2) When an application is filed, the tribunal may:
 - (a) set a schedule for filing a response to the application and a reply; or
 - (b) schedule a case conference to hear oral submissions.

Extension of time to file submission

- (3) To request an extension of the time to file a submission, a participant must notify the tribunal of the length of the extension requested and either that the other participants consent or the reasons for the request.

Submissions limited

- (4) The tribunal will not consider submissions other than those permitted in a schedule for submissions, unless it allows an application under rule 28(5) or (6).

Application for further submissions

- (5) To request that the tribunal consider a further submission to address a new issue raised in a reply submission, a participant must:
 - (a) immediately notify the tribunal and other participants of their intention to apply to file a further submission;
 - (b) apply within one week of receiving the reply submission;
 - (c) state in the application the new issue raised in the reply submission and why fairness requires that the tribunal consider the further submission; and
 - (d) attach the further submission to the application.
- (6) To request that the tribunal consider a further submission to address new information not available to the participant when they filed their submission, a participant must:
 - (a) immediately notify the tribunal and the other participants of their intention to apply to file a further submission;
 - (b) apply within one week of receiving the new information;
 - (c) state in the application when the new information came to the participant's attention and why fairness requires that the tribunal consider the submission and new information; and
 - (d) attach the submission and new information to the application.

Part 9 – Hearing Process

Rule 29 – Setting of Hearing Date

The tribunal may set a hearing date:

- (a) if no response to the complaint is filed within the time limit for doing so;
- (b) if no dismissal application is filed within the time limit for doing so; or
- (c) if the tribunal issues a decision denying a dismissal application in full or in part.

Rule 30 – Adjournment of Hearing

Required information in adjournment application

- (1) An application for an order adjourning a hearing must state:
 - (a) why the request is reasonable; and
 - (b) why granting the request will not unduly prejudice the other participants.

Time limit for filing adjournment application

- (2) An application for an adjournment must be filed at least two full business days before the date set for the hearing, unless the information or circumstances that form the basis of the application have not come to the participant's attention by that time.

Rule 31 – Requiring Witnesses to Attend a Hearing

Order to Attend

- (1) To request an order from the tribunal requiring a person to give evidence at a hearing, a participant must file a completed Form 8 – Order to Attend Hearing setting out:
 - (a) the name and British Columbia address of the person for whom the request is made;
 - (b) if required, a list of the particular documents or other things the person must bring with them to the hearing.

Participant must serve the Order to Attend within a reasonable time

- (2) The participant who requests an Order to Attend Hearing must serve it on the person named by leaving it with that person or by leaving it at the person's usual residence within a reasonable time before the date the person is required to appear.

Request to set aside an Order to Attend

- (3) To request that the tribunal set aside an Order to Attend Hearing, the person served with the order must file a request stating:
 - (a) why the evidence sought is not relevant or admissible; or
 - (b) why compliance with the order would result in hardship for the person.

Rule 31.1 – Participation by Phone or Video

A participant who wants to attend the hearing by phone or video, or who wants a witness to attend the hearing by phone or video, must apply at least six weeks before the hearing.

Rule 32 – Hearings

If participant does not appear

- (1) If the member hearing the complaint is satisfied that a participant received notice of the hearing, the member may proceed in the participant's absence.

Hearings are recorded

- (2) A hearing of a complaint is recorded by the tribunal.
- (3) A participant must apply to request a copy of the audio recording, as an accommodation or for other reasons.
- (4) Any unofficial transcript made from an audio recording does not form part of the tribunal's record of the proceedings.

Transcript of hearing

- (5) A participant who wants a certified transcript of all or part of a hearing must notify the tribunal to request directions.
- (6) A participant bears the cost of obtaining a certified transcript of all or part of a hearing.
- (7) A certified transcript forms part of the tribunal's record of the proceedings.

Solemn affirmation or oath

- (8) Every witness is required to make a solemn affirmation except as provided in rule 32(9).
- (9) If a witness wants to swear an oath involving a religious text, the participant calling that witness to give evidence must provide the religious text.

Copies of documents and authorities

(10) A participant who intends to put a document in evidence at a hearing must, in addition to the original document, provide a copy for the witness and every other participant.

(11) A participant who intends to rely on a legal authority must provide a copy for the member hearing the complaint and for every other participant.

Member presides

(12) A member hearing the complaint will determine how the hearing is conducted and may:

- (a) ask questions of the participants and witnesses;
- (b) give any directions or make any orders the member considers necessary for the just and timely resolution of the complaint; and
- (c) give any directions or make any orders the member considers necessary for the maintenance of order at the hearing.

Part 10 – Decisions and Orders

Rule 33 – Effective Date of Decisions and Orders

A decision or order is effective on the date on which it is issued, unless otherwise specified by the tribunal.

Rule 34 – Certified Copy of an Order

To obtain a certified copy of a final order of the tribunal, a party must file a request.

Rule 35 – Correcting Decisions and Orders

To request that the tribunal correct a technical error in a written decision or order, a participant must file a request stating the correction sought.

Rule 36 – Reconsideration of Decisions

Limited power to reconsider

(1) The tribunal may reconsider a decision only if it is satisfied that the interests of fairness and justice require the tribunal to reconsider the decision.

Time limit

(2) A party must apply to reconsider a decision within 14 days of the date on which the circumstances that form the basis of the application came to the party's attention or could

have come to the party's attention if the party exercised reasonable diligence, whichever is earlier.

Required information in reconsideration application

- (3) An application to reconsider a decision must state:
 - (a) the circumstances that form the basis of the application;
 - (b) when the circumstances came to the party's attention;
 - (c) why the interests of fairness and justice require reconsideration; and,
 - (d) the change to the decision that the participant seeks.

Information not permitted in reconsideration application

- (4) A reconsideration application must not restate submissions already made, except to the extent that the new circumstances affect the submissions.

Reconsideration application does not extend time for judicial review

- (5) An application for reconsideration does not affect the time limit in s. 57 of the *Administrative Tribunals Act* for filing an application for judicial review in respect of a final decision.