

PAY EQUITY HEARINGS TRIBUNAL

RULES OF PRACTICE

JANUARY 2024

How to Use These Rules

Subsection 29(2)(b) of the *Pay Equity Act* provides the Tribunal with the authority to make rules governing the conduct and management of its affairs and the practice and procedure to be observed in matters before it. These Rules are effective January 1, 2024 and replace the previous version dated June 30, 2019.

The Table of Contents lists the Rules by subject. Check there first to make sure you have identified all the Rules which may be applicable to your case. In addition, some words used in these Rules have specialized meanings. Before beginning you should review the list of definitions given in the first section of the Rules. For parties unfamiliar with the Tribunal, we have prepared a series of Information Bulletins (see below) which give step by step instructions and background information on our practices and procedures. Finally, copies of the Tribunal's Forms are included at the end of this document.

Information Bulletins

- #1 Making An Application to the Pay Equity Hearings Tribunal
- #2 Responding to an Application to the Pay Equity Hearings Tribunal
- #3 So You Want to Remain Anonymous
- #4 The Pre-Hearing Conference
- #5 What to Expect at the Hearing
- #6 Research and Resources for Parties Before the Pay Equity Hearings Tribunal
- #7 Requests for Reconsideration

The Tribunal's Rules, Forms, and Information Bulletins are available free of charge from the Tribunal at the address and telephone numbers provided below or may be downloaded from the Tribunal's website at <https://www.peht.gov.on.ca/>.

Pay Equity Hearings Tribunal
505 University Avenue
2nd Floor
Toronto, ON M5G 2P1

Telephone: 416-326-7500
Toll Free: 1-877-339-3335
TTY: 416-212-7036
TTY Toll Free: 1-877-339-3335

Tribunal de l'équité salariale
505, avenue University,
2e étage
Toronto, ON M5G 2P1

Téléphone: 416-326-7500
Sans frais: 1-8077-339-3335

Téléimprimeur: 416-212-7036
Téléimprimeur sans frais: 1-877-339-3335

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Forms for Use Before the Tribunal

Application (Form 1)

Response (Form 2)

Certificate of Delivery (Form 3) Statement of Posting (Form 4)

Certificate of Appointment as Agent on Behalf of Anonymous Employee(s) (Form 5)

Request for Reconsideration (Form 6)

Electronic Submissions Form

Intervention (Form 7)

Notice of Constitutional Question (Form 8)

Definitions

“Act” means the *Pay Equity Act*;

“Applicant” means any person making an Application to the Tribunal;

“Application” means any Application filed in accordance with these Rules;

“Chair” means the Presiding Officer of the Tribunal;

“day” means working day and excludes Saturday, Sunday, a statutory holiday and any other day the Tribunal is closed;

“effective date of service” means the day on which service is deemed to have occurred as defined in these Rules;

“electronic hearing” means a part of the proceeding before the Tribunal which is conducted by video hearing or by some other form of electronic technology allowing persons to hear one another and the Tribunal;

“filing” means to file anything with the Tribunal;

“electronic filing” or “e-filing” means filing submitting the electronic form(s) through the Tribunal’s e-filing system. This does not include sending a form or other communication to the Tribunal by “e-mail”;

“panel” is the Chair or a Vice-Chair and one Member representative of employees and one Member representative of employers assigned to decide all or a part of the Application;

“party” includes the Applicant(s), Respondent(s), an Agent appointed to act on behalf of a group of anonymous employees, any person named as an Affected Party who files a Response to the Application, and an Intervener but does not include a person whom the Tribunal has decided is not a party;

“proceeding” means the proceeding before the Tribunal and commences with the filing of the Application;

“Registrar” means the Registrar of the Tribunal and includes the Deputy Registrar;

“representative” includes counsel, agent or any person representing a party in a proceeding;

“Response” means a Response to an Application filed in accordance with these Rules;

“service” means the delivery of any document which is required to be served under these Rules or by order of the Tribunal on a person or upon his/her representative .

“Tribunal” means the Pay Equity Hearings Tribunal;

“Vice-Chair” means a Deputy Presiding Officer of the Tribunal.

Part 1 – General Matters

General

1. The Tribunal may exercise any of its powers under these Rules on its own initiative or at the request of a party. The Tribunal may relieve against the strict application of these Rules.
2. All filings with the Tribunal must be made in accordance with these Rules, but a defect or other irregularity in form shall not render the proceeding invalid.
3. Where matters are not covered by these Rules, the practice will be decided in a manner the Tribunal determines to be appropriate.
4. In emergencies or other circumstances, the Tribunal may post a Notice to Community on its website. Where the requirement in that Notice conflicts with these rules the requirements in the Notice to Community will prevail for as long as the Notice of Community is in effect.

Powers of the Tribunal

5. 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 notice of a proceeding be given to any person or organization, including the Pay Equity Office;
 - f) 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;
 - g) define and narrow the issues in order to decide an Application;
 - h) make or cause to be made an examination of records or other inquiries, as it considers necessary;
 - i) determine and direct the order in which evidence will be presented;
 - j) 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;
 - k) question a witness;

- l) advise when additional evidence or witnesses may assist the Tribunal;
- m) 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;
- n) require a party or other person to provide a report, statement, or oral or affidavit evidence;
- o) make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes, and to alleviate against prejudice incurred by parties in the proceeding.
- p) make such further orders as are necessary to give effect to an order or direction under these Rules;
- q) attach terms or conditions to any order or direction;
- r) take any other action that the Tribunal determines is appropriate.

Notice of Constitutional Question

6. Where a party intends to raise a question about the constitutional validity or applicability of legislation, a rule of common law, or where a party claims a remedy only available pursuant to subsection 24(1) of the Charter of Rights and Freedoms, the party must serve formal Notice of Constitutional Question (Form 8) on the other parties and the Attorneys General for Ontario and Canada, and file it with the Tribunal, as soon as the circumstances requiring the Notice become known and, in any event, at least fifteen (15) days before the question is to be argued.

Calculating Time

7. In calculating time periods under these Rules:

- (a) where there is a reference to a number of days between two events, the count shall exclude the day on which the first event occurs;
- (b) where the time for doing anything required by the Rules of the Tribunal expires on a day which is not a working day as defined by these Rules, the act may be done on the next working day.

Extending or Abridging Time

8. The Tribunal may, upon such terms as it considers advisable, extend, or abridge the time periods set out in these Rules. A request to extend the time for filing any document or form with the Tribunal, of no less than one calendar month, that is on consent of every party to a proceeding

shall be considered deemed approved by the Tribunal, unless the Tribunal declares otherwise.

Representative Withdrawing from the Proceeding

9. When a representative ceases to act on behalf of a party, the representative or the party must immediately notify the Tribunal and all other parties in writing providing the name, address, phone and facsimile numbers of the representative's replacement or, where there is no replacement, confirm the name, address, phone and facsimile numbers of a contact person for the party.

French Language Services

10. The Tribunal provides services in both French and English. The presumption is that applications will be processed and the hearing will be conducted in English, unless either party indicates in the application or response that they require some or all of the services to be conducted in French.

Accommodation Services

11. Any party seeking services in languages other than French or English must notify the Registrar as soon as possible. Where a party intends to call a witness to testify in a language other than French or English, the party must arrange for a translator acceptable to the Tribunal to attend at the hearing. Payment for the translator's services is the responsibility of the party.

12. The Registrar must be notified as soon as possible where services to accommodate the disability of a party, its representative, or a witness are required.

Part 2 – Service and Filing

Service and Filing

13. Except for the Application, and unless directed otherwise by the Tribunal, service of all documents is to be made on the party's representative. Where a party is not represented, service is to be made on the individual Applicant(s) and Respondent(s) or the contact person named in the Application or Response.

14. Documents may be served on a party in any of the following ways:

- (a) by hand;
- (b) by registered mail;
- (c) by courier;

- (d) by email to an email address that is known to be used by the party or their representative; or
- (e) any other way agreed upon by the parties.

15. Documents must be filed electronically with the Tribunal unless the party receives permission from the Tribunal to file a document in another manner.

16. If a document is delivered before 5 p.m., the effective date for service of documents delivered by hand is the date of delivery. If delivered after 5 p.m., the effective date of service is the next day.

17. The effective date of service for documents delivered by registered mail is five (5) days after mailing.

18. The effective date of service for documents delivered by courier is the day after the documents are given to the courier, unless a party serving indicates that next day courier delivery to that location is unavailable. In that case, the effective date of service is two (2) days after the documents are given to the courier.

19. The effective date of service for documents delivered by email is the day the email was sent as confirmed on the Certificate of Delivery, in consideration of Rule 20.

20. A Certificate of Delivery (Form 3) must be completed for each person on whom a document was served. The Certificate of Delivery must be filed with the Tribunal and a copy sent to each person served.

Notice

21. The Registrar may require any employer to post notices in its workplace, and may specify the extent, form, place of posting, and the length of time the notices must remain posted. The Registrar may further direct that notice be posted in the languages of the workplace.

22. The Registrar may require any person to mail or give notice in any other form (other than that specified in Rule 21) to employees or former employees who may be affected by the proceeding.

23. The person directed to give notice under Rules 21 or 22 shall inform the Tribunal of the date on which such notice was given by immediately completing and filing a Statement of Posting (Form 6).

Part 3 – Applications

Applications

24. Any person wishing to confirm, vary, or revoke a Review Officer's Order or seeking a hearing pursuant to a Notice of Decision must complete an Application (Form 1) containing all the information required in Rule 26.

25. Where the Pay Equity Office refers a Review Officer's Order to the Tribunal pursuant to ss.24(5) of the Act, it must complete an Application (Form 1). The Referral will be treated as an Application.

26. A completed Application must:

- (a) provide the full name of the Applicant, name of a contact person, address, e-mail, and telephone of the Applicant and all Respondent(s) named in the Review Services Order or Notice of Decision;
- (b) provide the name, address, e-mail and telephone numbers of any representative of the Applicant and Respondent(s);
- (c) identify any other person(s) the Applicant thinks may be affected by the proceeding and provide their address, e-mail address, and telephone numbers, the name of a contact person and the name, address, e-mail address and, telephone number of their representative, if any;
- (d) in consecutively numbered paragraphs set out the issues in dispute, the reasons for making the Application, identify the sections of the Act which relate to the Application, and provide a clear and concise statement of the facts and events upon which the Applicant relies;
- (e) describe the remedy or order which the Applicant wishes from the Tribunal; and
- (f) provide a copy of the Review Services Order or Notice of Decision.

27. Except with the Tribunal's permission, no Applicant will be allowed to raise any issue, fact, or event which the Tribunal considers was not set out in the Application, or any issue that was not raised before Review Services in the Order or Notice of Decision giving rise to the Application.

28. The completed Application must be served on all Respondents.

29. One copy of the Application, together with a Certificate of Delivery (Form 3), must be filed with the Tribunal no later than five (5) days after the effective date of service on the Respondent(s).

Anonymous Employees

30. An employee or employees wishing to remain anonymous pursuant to subsection 32(4) of the Act must appoint an Agent. The Agent becomes a party to the proceeding, is named in the style of cause, and assumes the rights and responsibilities of the employee or employees under the Act and these Rules.

31. The Agent must complete a Certificate of Appointment as Agent on Behalf of Anonymous Employee(s) (Form 5) which provides the following:

- a) confirming the Agent is authorized to act on behalf of the anonymous employee(s) and to enter into binding settlements;

- b) confirming the Agent has provided the anonymous employee(s) with a copy of the Application and the Tribunal's Information Bulletin # 3 "So You Want To Remain Anonymous"; and
- c) providing the name, address, e-mail and telephone number of the anonymous employee or employees as Appendix A to the Certificate.

The Certificate, not including Appendix A, must be served with the Application or, where the Agent is a Respondent to an Application, served on all parties to an Application as soon as possible and, in any event, no later than five (5) days after the Agent is appointed.

32. The Certificate, including Appendix A, and Certificate of Delivery (Form 3) must be filed with the Application. Where the Agent is a Respondent the Certificate, including Appendix A, and Certificate of Delivery (Form 3) must be filed Tribunal as soon as possible and, in any event, no later than five (5) days after the date of effective service of the Certificate. Appendix A will be sealed by the Registrar and will not be disclosed to the parties except with the consent of the Agent or by Order of the Tribunal.

Part 4 – Responses

Responses

33. Any person served with and wishing to respond to an Application must complete a Response (Form 2) containing all the information required in Rule 34.

34. The completed Response must:

- (a) confirm the Respondent's address, e-mail address, and telephone number and provide the name of a contact person and the name, address, e-mail address, and telephone number of the Respondent's representative, if any;
- (b) identify any person not already named in the Application whom the Respondent believes has rights or interests which may be affected by the Application and provide the address, e-mail, and telephone of a contact person for that person;
- (c) in consecutively numbered paragraphs indicate those facts contained in the Application with which the Respondent agrees and, where the Respondent disagrees or relies on facts which are different from those set out in the Application, provide a concise summary of those facts; and
- (d) describe the Respondent's position with respect to the remedy sought by the Applicant.

35. Except with the Tribunal's permission, no Respondent will be permitted to raise any issue, fact, or event which the Tribunal considers was not set out in the Response.

36. The completed Response must be served on all parties within 10 days of the effective

date of service of the Application.

37. One copy of the completed Response must be filed with the Tribunal, together with a Certificate of Delivery (Form 3), no later than five (5) days after the effective date of service of the Response.

Interveners

38. Any person may, with leave of the Tribunal, intervene in all or part of the proceeding on such conditions as the Tribunal considers appropriate.

39. An intervention must be made on Form 7 and must include a description of the grounds on which intervention is sought and the role the intervener proposes to play in the proceeding, Affidavits (if any) and any legal decisions relied upon must be served on all parties to the Application and filed with a Certificate of Delivery (Form 3) with the Tribunal as soon as possible after the intervener becomes aware of the Application. One copy of the intervention and supporting materials must be filed, with a Certificate of Delivery (Form 3), with the Tribunal.

40. Any party served with the intervention may respond in writing to support or oppose it. The response, any supporting documents, and any legal decisions relied upon must be served on the intervener and all other parties to the Application. One copy of the response and supporting materials must be filed, with a Certificate of Delivery (Form 3), with the Tribunal within seven (7) days after the effective date of service of the intervention. Three copies of the legal decisions must be filed but need not include copies of decisions already filed by the intervener.

41. Any reply to the response must be served on all parties. One copy of the reply must be filed with a Certificate of Delivery (Form 3) with the Tribunal within five (5) days after the effective date of service of the response.

42. The Tribunal will ordinarily decide interventions in writing. Where the Tribunal decides to hear the intervention, the Registrar will set the date for hearing.

Part 5 – Reply

Reply

43. Any party may file a Reply addressing new facts, issues, or events raised in a Response. No Form is required. A Reply must be served on the Applicant(s) and all parties who have filed a Response within five (5) days of the effective date of service of the Response.

44. One copy of any Reply must be filed with the Tribunal, together with a Certificate of Delivery (Form 3), within five (5) days of the effective date of service of the Response.

Part 6 – Pre-Hearing Conferences and Mediation

Pre-Hearing Conferences

45. The Tribunal may direct the parties to attend one or more Pre-Hearing Conferences prior to or during the proceeding. A Pre-Hearing Conference is intended to assist the parties to prepare for the hearing and to address any case management issues. All discussions which occur during the Pre-Hearing Conference are considered “off the record” and they may not be referred to or relied upon in the hearing unless reduced to writing in the form of a Pre-Hearing Conference Memorandum or contained in a decision of the Tribunal arising from the Pre-Hearing Conference.

46. During a Pre-Hearing Conference, parties may agree to engage in a mediation process to discuss settlement of some or all the issues in dispute.

47. The Chair/Vice-Chair who presides at a Pre-Hearing Conference where settlement is discussed shall not preside at the hearing unless all parties consent. The Chair/Vice-Chair cannot be compelled to give testimony or produce documents in the proceeding before the Tribunal or in a civil proceeding with respect to matters that come to his/her knowledge when conducting or facilitating settlement discussions at the Pre-Hearing Conference. Notes or records made by the Chair/Vice-Chair while conducting or facilitating settlement discussions during the Pre-Hearing Conference are not admissible in any proceeding.

48. The Tribunal may direct that a party which fails to attend a Pre-Hearing Conference after receiving proper notice and without an explanation acceptable to the Tribunal:

- (i) is not entitled to further notice of the hearing or any other steps in the proceeding;
- (ii) will not be permitted to request an adjournment of the hearing except on consent or in an emergency.

49. Once a date has been set for a Pre-Hearing Conference, it may not be adjourned without the Tribunal’s permission. Except in the event of an unexpected medical or other emergency where the provisions of Rule 80 applies, a party seeking to adjourn the Pre-Hearing Conference must comply with the requirements of Rules 76 - 77.

50. Where a party opposes the adjournment, they must provide their reasons to the Registrar in accordance with Rule 78. In deciding whether to grant or refuse the adjournment the Tribunal may consider any of the alternatives set out in Rule 79.

Pre-Hearing Production

51. No later than thirty (30) days before the Pre-Hearing Conference or the commencement of the hearing, whichever is earlier, every party shall serve on all other parties, a list (there is no Form) identifying all documents or things in their custody or control which are arguably relevant to the issues in dispute on the Application and identifying those documents or things for which privilege is claimed.

52. Where a party fails to comply with Rule 51, the Tribunal may take any action it considers appropriate. This may include refusing to allow the party to rely on the document or thing in the proceeding.

53. Where a written request is made, the party with custody or control of the requested document(s) or thing(s) shall, within ten (10) days, produce a copy(ies) to the requesting party or,

if it cannot be copied, make it available for inspection.

54. No later than ten (10) days before the commencement of the hearing on the merits the parties shall exchange lists of all documents upon which they intend to rely before the Tribunal.

55. At any time before or during the hearing the Tribunal may require a party to disclose or produce further information, documents, or things that, in the opinion of the Tribunal, are arguably relevant to the issues in dispute.

Mediation

56. The Chair may appoint a mediator to assist the parties in attempting to settle some, or all issues in dispute, and/or attempt to resolve any new issues that may arise in advance of a hearing date.

57. At any time, on consent of the parties, a Chair, Vice-Chair, or other appointed mediator may convene a mediation session for the purpose of attempting to resolve some, or all the issues in dispute. This may include having members of a panel discuss some or all of the issues in dispute with parties in attempt to settle the dispute. All discussions that occur during a mediation session are considered as settlement privileged communications and are not admissible in any proceeding.

58. No person conducting a mediation shall be compelled to give testimony or produce documents in the proceeding before the Tribunal or in any proceeding with respect to matters that come to his/her knowledge while exercising his/her duties as a mediator. Notes or records kept by the mediator are not admissible in any proceeding.

Part 7 – Hearing Procedure

Hearings

59. The Registrar shall set the time and place of hearing. Hearings before the Tribunal will presumptively be conducted by video hearing (by Zoom or another video conferencing platform that is acceptable to the Tribunal). The Tribunal may conduct all or any part(s) of the proceeding in person where it considers it appropriate in the circumstances. In determining appropriateness, the Tribunal will consider all relevant factors to the request, including whether an electronic hearing is likely to cause significant prejudice to a party.

60. Where any party properly served with a Notice of Hearing fails to attend the hearing, the Tribunal may proceed in that party's absence without further notice and, where appropriate, may dispose of the Application.

61. A hearing shall be open to the public unless otherwise directed by the Tribunal.

62. Where appropriate, the Tribunal may direct the parties to exchange lists of the legal decisions and authorities on which they intend to rely.

63. The Registrar may combine two or more Applications for hearing together where the

requirements of subsection 22(3) of the Act are met.

64. The Tribunal may conduct the part of the proceeding where it determines procedural issues as a written hearing.

65. The Tribunal may conduct all or any other part(s) of the proceeding as a written hearing where it considers it appropriate in the circumstances. In determining appropriateness, the Tribunal will consider whether any party asserts a good reason for not holding a written hearing.

66. Any party objecting to a written or electronic hearing must advise the Tribunal and all other parties of its reasons for objecting as soon as possible and, in any event, within five (5) of receiving notice of the written or electronic hearing.

67. Where a written hearing is held, the Tribunal will set deadlines for the exchange of submissions and any documents between the parties as are appropriate in the circumstances.

Summonses

68. The Tribunal will provide a signed Summons to Witness in blank to any party upon request to the Registrar. A party may require a witness to bring any documents or other things listed on the Summons to the hearing.

69. The party is responsible for ensuring that the Summons is served properly. An Affidavit of Personal Service must be sworn by the individual who served the Summons. The Tribunal may require the Affidavit to be filed at the hearing.

70. The Summons must be served in person together with the correct amount of conduct money no later than five (5) days before the date when the witness is required to testify. Conduct money must be paid in cash (which may include electronic transfer) or by certified cheque. The amount of conduct money is equivalent to the personal allowance paid to a witness for attendance in the Superior Court of Justice as set out in Tariff A of the *Rules of Civil Procedure*.

Witnesses

71. The Tribunal may order a party to serve a list of witnesses and/or witness statements (signed or unsigned) on all other parties to the Application.

72. A party which intends to rely on an expert witness must serve a statement containing the expert's name, address, *curriculum vitae*, and a summary of the expert's proposed evidence on all other parties not less than fourteen (14) days before the commencement of the hearing on the merits of the Application. One copy of the Statement must be filed with the Tribunal together with a Certificate of Delivery (Form 3).

73. Except with the Tribunal's permission, a party will not be permitted to introduce expert evidence at the hearing without having complied with Rule 72.

74. A party which intends to rely on a formal expert's report must serve the report on all other parties and file one copy, together with a Certificate of Delivery (Form 3), with the Tribunal as

soon as possible and, in any event, no later than twenty (20) days before the expert is scheduled to testify.

75. Except with the Tribunal's permission, a party will not be permitted to introduce an expert's report without having complied with Rule 74.

Adjournments

76. Once a date has been set for a hearing, it may not be adjourned except with the Tribunal's permission.

77. Upon becoming aware that an adjournment is required, a party must seek the consent of the other parties and advise the Tribunal in writing of the request and the positions of the other parties.

78. Where a party objects to a request for an adjournment, it shall provide written reasons to the Tribunal as soon as possible and in any event no later than two (2) days after receiving the request for the adjournment.

79. In deciding whether to grant or refuse the adjournment the Tribunal may:

- (a) set peremptory dates against one or all parties;
- (b) grant a shorter adjournment than requested;
- (c) set conditions on the adjournment;
- (d) convert the scheduled hearing to a Pre-Hearing Conference; and
- (e) make any other order or impose any other condition that it considers appropriate.

80. In the event that an unexpected medical or other emergency arises for a party or representative, the Tribunal may grant an adjournment without seeking the positions of the other parties or requiring compliance with Rule 77.

Adjournments Sine Die

81. Where the Tribunal adjourns a matter *sine die* (without a set hearing date) on the agreement of the parties, the matter will be dismissed after the expiry of nine (9) months from the date on which the adjournment is granted without further notice to the parties, unless one of the parties requests that the matter be scheduled for hearing within that period.

Part 8 – Requests for Reconsideration

Requests for Reconsideration

82. The Tribunal may, at any time if it considers it advisable to do so, reconsider any decision

or order made by it and vary or revoke the decision or order.

83. A party seeking reconsideration shall complete a Request for Reconsideration (Form 6) setting out the reasons for the Request and serve it on all other parties. One copy of the Request and a Certificate of Delivery (Form 3) must be filed with the Tribunal.

84. Except with the permission of the Tribunal, a Request for Reconsideration must be filed no later than twenty (20) days after the decision or order which is the subject of the request was issued by the Tribunal.

85. Any party may respond to the request for reconsideration by serving its written submissions on all parties (there is no Form). One copy of the submissions, together with a Certificate of Delivery (Form 3), must be filed with the Tribunal no later than ten (10) days after the date of effective service of the Request for Reconsideration.

86. Ordinarily, the Tribunal will decide the Request for Reconsideration based on written submissions. Where the Tribunal decides that a hearing is required, the Registrar will set the date for hearing.

Part 9 – Enforcement

Enforcement of Decisions

87. Any party may request the Registrar to provide a certified copy of a decision or order of the Tribunal for filing with the Registrar of the Superior Court of Justice to be enforced as an order of the Court in accordance with the *Statutory Powers Procedure Act*.

Consent to Prosecute

88. An Application for Consent to Institute Prosecution (using Form 1) for an offence under the Act must be personally served on the Respondent(s) together with a list of all documents or things in the Applicant's custody and control which are arguably relevant to the proceeding and identifying those documents and things over which privilege is claimed, and a list of all documents upon which the Applicant intends to rely before the Tribunal. One copy of the Application and accompanying materials must be filed with the Tribunal together with a completed Certificate of Delivery (Form 3).

89. A Respondent shall serve its Response (Form 2) and list of all documents or things in its custody and control which are arguably relevant to the proceeding and identifying those documents and things over which privilege is claimed, and a list of all documents upon which it intends to rely before the Tribunal on the Applicant and any other Respondents. One copy of the Response and accompanying materials must be filed, together with a Certificate of Delivery (Form 3), with the Tribunal within seven (7) days of the date of effective service of the Application.

90. The Registrar will set the date for the hearing on a peremptory basis. The hearing will ordinarily commence within fourteen (14) days of the effective date of service of the Application.

Part 10 – Access to Adjudicative Records

Tribunal Adjudicative Records Act, 2019 (“TARA”)

Definitions

91. In Rules 91 to 100,

“adjudicative record” means:

- (a) an application or other document by which a proceeding before the Tribunal is commenced.
- (b) a notice of a hearing before the Tribunal.
- (c) a written submission filed with the Tribunal in respect of a proceeding before the Tribunal.
- (d) a document that has been admitted as evidence at a hearing of the Tribunal or otherwise relied upon by the Tribunal in making a decision or an order.
- (e) any other record that relates to a proceeding before the Tribunal and that is prescribed by the regulations made under TARA.

“party” includes the parties to the Tribunal File affected by a request, the person making the request, and persons who could be affected by a confidentiality order or the disclosure of adjudicative records.

Requests for Access

92. A request for access to an adjudicative record under TARA must be made in writing to the Registrar, using one of the methods for filing permitted by Rules 6.8 and 6.9. E-mailed requests will not be processed or responded to.

93. The request must

- (a) describe the adjudicative record(s) being sought and identify the relevant Tribunal proceeding.
- (b) provide the requester’s mailing address, email address, and telephone number; and
- (c) wherever possible, provide an email address to which records will be sent if the request is granted.

94. If the Tribunal determines that notice is required to be given to another party or parties, the Tribunal will make the appropriate directions concerning notice, submissions and any other matters required to be addressed.

Requests for Confidentiality Orders

95. Confidentiality orders may be sought by parties to a Tribunal file and persons who would be affected by disclosure of an adjudicative record. They may also be made by the Tribunal of its own motion.

96. Other than where the request arises in the course of a hearing, a request for a confidentiality order under TARA must be made in writing to the Registrar, using one of the methods for filing permitted by Rule 24.1. E-mailed requests will not be processed or responded to.

97. The request must:

- (a) provide the requester's mailing address, telephone number, fax number (if any) and email address (if any);
- (b) describe the adjudicative record(s) in respect of which the confidentiality order is sought and identify the relevant Tribunal proceeding; and
- (c) provide complete written representations in support of the order requested.

98. Where a request for a confidentiality order arises during a hearing, the Tribunal may seek submissions from the parties in the hearing or may direct those submissions be made in writing.

99. If the Tribunal determines that notice is required to be given to another party or parties, the Tribunal will make the appropriate directions concerning notice, submissions and any other matters required to be addressed.

100. Unless a party can satisfy the Tribunal that there is good reason for not doing so, the Board will determine requests for access and requests for confidentiality orders based only on the parties' written submissions.