

Pay Equity Hearings Tribunal

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Tribunal de l'équité salariale

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**TRIBUNAL ADJUDICATIVE RECORDS ACT, 2019**

The *Tribunal Adjudicative Records Act, 2019* (“TARA”) came into force June 30, 2019. The Tribunal’s procedures for making a request for documents pursuant to TARA are set out in the Tribunal’s Rules of Procedure (and an excerpt is provided below).

TARA provides that adjudicative records (as defined in the statute) are presumptively available to the public. Certain records are also expressly excluded by the statute [s. 1(3)]. It also provides that parties and affected persons may apply for, and the Tribunal itself may make, confidentiality orders in certain circumstances.

TARA will apply to adjudicative records in all proceedings before the Tribunal that are commenced on or after TARA comes into force. The Tribunal will its Procedures on Access to Documents and Exhibits Contained in Tribunal Adjudication Files to requests in respect of proceedings commenced before that date.

Statutory provisions governing the secrecy or confidentiality of certain records will prevail over TARA. Such records will include membership evidence or evidence of employee wishes.

Upon receiving a request for documents pursuant to TARA where no confidentiality order has been issued, the Tribunal may make the document available to the requester **without notice to the parties to the proceeding** or, in its discretion, the Tribunal may advise the parties in the Tribunal file of the request (including the identity of the requester) and may provide an opportunity for those parties to provide submissions.

While the Tribunal retains discretion to seek submissions on any request, the Tribunal generally regards the following as adjudicative records within the meaning of TARA and will typically make the following documents available to the requester without notice to the parties

- application forms and attached schedules/ statement of facts;
- response and/or intervention forms and attached schedules/ statement of facts;
- documents which are required to be attached to an application;
- notices of hearing;
- written legal submissions; and
- documents which have been made an exhibit in a Tribunal hearing.

The Tribunal typically does not produce copies of decisions, as they are publicly available at www.canlii.org, a free legal information database.

Part VIII of the Tribunal's Rules addresses requests for adjudicative records and requests for confidentiality orders.

The text of the *Tribunal Adjudicative Records Act, 2019* is available here: <https://www.ontario.ca/laws/statute/19t07>.

The text of the Regulation providing that certain statutes prevail over TARA is available here: <https://www.ontario.ca/laws/regulation/r19211>.

PAY EQUITY HEARINGS TRIBUNAL – RULES OF PROCEDURE

(excerpt re: Tribunal Adjudicative Records Act)

PART VIII – TRIBUNAL ADJUDICATIVE RECORDS ACT, 2019

Tribunal Adjudicative Records Act, 2019 (“TARA”)

Definitions

87. In Rules 87 to 96, “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

88. 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.

89. The request must

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

request is granted.

90. 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

91. 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.

92. 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.

93. 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.

94. Where a request for a confidentiality order arises in the course of a hearing, the Tribunal may seek submissions from the parties in the hearing or may direct that submissions be made in writing.

95. 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.

General

96. 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.