

Yukon Human Rights Panel of Adjudicators

RULES OF PROCEDURE

(With attached Forms revised as of September 12, 2016)

PART I. General Rules

1 Definitions

“Act” means the *Yukon Human Rights Act*, R.S.Y. 2002, c. 116, as amended;

“affected person” means a person or organization that will be affected by the outcome of a complaint that has been referred to the Panel;

“Board” means those members of the Panel who have been appointed to hear a particular complaint;

“Board Chair” means the Panel member appointed to chair the Board hearing a particular complaint when the Chief Adjudicator is unable to do so;

“Chief Adjudicator” means the member of the Panel designated by the Yukon Legislature as the Chief Adjudicator of the Panel;

“Commission” means the Yukon Human Rights Commission established under s. 16 of the Act;

“complainant” means a person who makes a complaint;

“complaint” means a complaint referred by the Commission under section 21(c) of the Act;

“intervenor” means a person or organization that has been granted the right to intervene in a complaint;

“Panel” means the Yukon Human Rights Panel of Adjudicators established under s. 22 of the Act;

“party” means a complainant, the Commission, a respondent to a complaint, or an intervenor;

“Registrar” means the Registrar of the Panel;

“Regulations” means the Yukon Human Rights Regulations, O.I.C 1988/170, as amended;

“representative” means a person that has been designated by a party to act on their behalf with respect to the complaint; and

“respondent” means a person against whom a complaint has been made.

2 Communications with the Board

- 2.1 Communications to the Board, Chief Adjudicator or Registrar may be hand-delivered, or made by mail or email to the following addresses:

If by delivery:

Yukon Human Rights Panel of Adjudicators
409 Black Street
Whitehorse, Y.T.
Y1A 2N2

If by mail:

c/o Registrar
Yukon Human Rights Panel of Adjudicators
P.O. Box 33093 Ogilvie P.O.
Whitehorse, Yukon
Y1A 5Y5

If by email:

registrar@yhrpa.ca

The Registrar may be contacted by telephone at:

(867) 668-5767

- 2.2 Any communication by a party to the Board shall be copied to all other parties.
- 2.3 Any emailed document that is over 20 pages long shall also be mailed or delivered to the Registrar in paper form.
- 2.4 The Chief Adjudicator, Board Chair, Board or Registrar shall communicate to a party either by email or mail, unless a party specifies in writing their preference for one or the other. Where a party is represented by a representative, the communication shall be to the representative, not to the party.

3 Service and Delivery of Documents

- 3.1 Where a document is required to be served on the Board, the Registrar, or a party, confirmation of service may be provided by an affidavit of service, written confirmation by the recipient as to when the document was received, or by testimony at a hearing.

- 3.2 Where a document is required to be delivered to the Board, the Registrar, or a party, it may be delivered personally, by mail or email, or in a manner otherwise agreed upon by the sender(s) and recipient(s).

4 Representatives

- 4.1 A party may choose to represent him or herself or to be represented by another person.
- 4.2 Where a party has a representative, any communication to the party shall be made to the representative.

5 Calculation of Time

- 5.1 A reference to a particular number of days means the number of calendar days, excluding the first day and including the last day.
- 5.2 Where a time limit expires on a weekend day or statutory holiday, the time limit is extended to the next day that is not a weekend or statutory holiday.

6 Powers of Chief Adjudicator, Board Chair and Board

- 6.1 Notwithstanding anything in these rules, the Chief Adjudicator, Board Chair or Board may make any order necessary to ensure the fair and expeditious resolution of a complaint, either on application by a party or on their own initiative, including but not limited to the following:
- 6.1.1 lengthening or shortening any time limit in these rules;
 - 6.1.2 adding or removing a party;
 - 6.1.3 consolidating or hearing applications or complaints together or separately;
 - 6.1.4 directing that notice of a proceeding be given to a person or organization;
 - 6.1.5 determining the order in which issues in a proceeding will be considered or evidence will be heard;
 - 6.1.6 defining or narrowing the issues in an application or a complaint;
 - 6.1.7 at the request of a party, directing another party to provide documentary evidence, report or other statement, or to produce a witness when that person is reasonably within that party's control;
 - 6.1.8 permitting a party to give a narrative before questioning commences;
 - 6.1.9 limiting the evidence or submissions on any issue;

- 6.1.10 requiring a party or other person to produce any document, information or thing, including using any data storage, processing or retrieval device or system, to produce the information in any form;
- 6.1.11 directing that a person be cross-examined on their affidavit before the Board or an official examiner;
- 6.1.12 making such further orders as are necessary to give effect to an order or direction under these rules; or
- 6.1.13 varying or waiving the application of one or more rules.

7 Consequences of Not Complying with Rules

- 7.1 The Board, Board Chair, or Chief Adjudicator may decline to deal with an application or complaint that does not comply with the rules or may grant relief regarding the failure to comply, with or without terms, as appropriate.
- 7.2 Where a party fails to deliver material to another party or person as required by the rules, the Board may refuse to consider the material at the hearing of the complaint or take other action it considers appropriate.
- 7.3 A technical defect or irregularity is not a breach of the rules.

PART II. How a Complaint Comes before the Board

8 Referral by Commission

- 8.1 The Commission shall refer a complaint to the Panel by delivering a request to the Chief Adjudicator to strike a Board to hear the complaint, together with a copy of the complaint and contact information for the parties.

9 Notice of Complaint

- 9.1 Upon receipt of a complaint, the Registrar shall serve notice of the complaint in **Form 1** on the parties together with contact information for each party and a copy of **Form 2** soliciting preliminary Information from each party.

10 Information Parties must provide to Registrar

- 10.1 Within 15 days of receipt of notice of the complaint, the parties shall deliver to the Registrar and to each other their completed **Form 2**.

11 Dismissal or Deferral of Complaint

- 11.1 If a respondent says the complaint should be dismissed, or deferred, without a hearing, the respondent shall deliver copies of its evidence and argument in support of dismissal or deferral to all other parties at the same time as it submits the completed Form 2 to the Board.
- 11.2 Upon receipt of the dismissal or deferral request, the Chief Adjudicator shall set a schedule for submissions.
- 11.3 The Chief Adjudicator shall decide whether the complaint should be dismissed or deferred and shall notify the parties of the decision.
- 11.4 On their own initiative the Chief Adjudicator or Board Chair may, after notifying the parties and providing them with an opportunity to make submissions, defer a complaint or dismiss a complaint that is outside the jurisdiction of the Board.

12 Failure to Respond to a Complaint

- 12.1 Where the Chief Adjudicator or Board Chair is satisfied that notice of complaint was served on a respondent at the address provided by the Commission, and that respondent has failed to respond as required by rule 10, the Chief Adjudicator or Board Chair may proceed to deal with the complaint without further notice to that respondent or make any other order that they consider appropriate in the circumstances.

PART III. Pre-Hearing Procedures

13 Pre-Hearing Conference

- 13.1 Upon receipt of **Form 2** from all parties, the Registrar shall schedule a pre-hearing conference with the Chief Adjudicator or Board Chair to establish the pre-hearing process for the complaint.
- 13.2 The Registrar shall consult with and notify the parties at least **10 days** in advance of the date of the pre-hearing conference.
- 13.3 Attendance at the pre-hearing conference may be in person, by teleconference, or by video technology.
- 13.4 The agenda for the pre-hearing conference may include the following:
 - 13.4.1 Setting dates for document disclosure, statement of remedies sought, and witness lists;

- 13.4.2 Determining or setting dates for the determination of any pre-hearing applications by a party;
 - 13.4.3 Likelihood of simplification of the issues or an agreed statement of facts;
 - 13.4.4 Setting hearing dates and location;
 - 13.4.5 Requests for any accommodations required during the pre-hearing process or at the hearing; and
 - 13.4.6 Likelihood of settlement.
- 13.5 A pre-hearing conference may proceed in the absence of one or more parties if the Chief Adjudicator or Board Chair is satisfied either that the party received notice, or that reasonable attempts had been made to notify that party of the pre-hearing conference.
- 13.6 Subsequent pre-hearing conferences may be scheduled upon the written request of a party or upon the initiative of the Chief Adjudicator or Board Chair.
- 13.7 Following a pre-hearing conference, the Registrar shall provide the parties with a Case Management Order in **Form 3**, or a written summary, setting out any matters decided or orders made at the pre-hearing conference.

14 Notice of Hearing

- 14.1 The Registrar shall consult with and serve on the parties notice of the hearing date(s), sitting times and location of the hearing, in **Form 4**.
- 14.2 After notice of hearing has been served, any request to change the hearing dates, times or location must be made by application under rule 19.

15 Disclosure of Documents

- 15.1 Each party shall deliver to the other parties a list of every document in its possession that is relevant to any of the issues in the complaint, whether or not the party intends to rely on the document. The list must identify any documents over which privilege is claimed.
- 15.2 Each party shall deliver to the other parties a copy of every document in its list of documents over which privilege is not claimed, unless a copy of that document has already been provided by another party.
- 15.3 Unless otherwise ordered by the Chief Adjudicator or Board Chair, the following time limits apply under this rule:

- 15.3.1 within **30 days** of receipt of the Notice of Complaint, the Commission shall satisfy the disclosure obligations set out in rules 15.1 and 15.2;
- 15.3.2 within **15 days** of receiving the Commission's disclosure, the complainant shall satisfy the disclosure obligations set out in rules 15.1 and 15.2; and
- 15.3.3 within **15 days** of receiving the Complainant's disclosure, the respondent shall satisfy the disclosure obligations set out in rules 15.1 and 15.2.
- 15.4 Each party shall disclose to all of the other parties any additional relevant documents that come into its possession prior to the commencement of the hearing by providing every party with a supplementary list of documents along with copies of those documents for which privilege is not claimed.
- 15.5 Unless otherwise ordered, parties may not use documents disclosed under these rules for any purpose other than the proceeding before the Board.
- 15.6 Unless otherwise ordered, no party may rely on a document at the hearing of the complaint that has not been disclosed under these rules.

16 Notice of Witnesses and Experts

- 16.1 No less than **60 days** prior to the date scheduled for commencement of the hearing, each party shall deliver to the other parties a list of the names of each witness it intends to call at the hearing together with a brief statement of the evidence it is expected that the witness will give.
- 16.2 A party that intends to call an expert witness shall deliver to the other parties, no less than **60 days** prior to the date scheduled for commencement of the hearing, a summary of the expert's testimony and a copy of any expert's report that the party intends to present at the hearing, together with a statement of the expert's qualifications.
- 16.3 After receipt of notice of witnesses and experts from the other parties, a party may deliver notice of additional witnesses or expert witnesses to the other parties as set out in rules 16.1 or 16.2, no later than **30 days** before the date scheduled for commencement of the hearing.

17 Orders to Appear

- 17.1 A party may request the Chief Adjudicator or the Board Chair to order a witness to appear at the hearing, in person or by telephone, to give evidence, by delivering to the Registrar a request in **Form 5**, along with reasons for the request.
- 17.2 The Registrar will deliver any Order to Appear made to the requesting party, and that party is responsible for serving the Order to Appear on the witness.

18 Settlement or Withdrawal of Complaint

- 18.1 Where all or part of a complaint is settled prior to the scheduled date for commencement of the hearing, the Commission shall deliver to the Registrar and the other parties notice in **Form 6**, signed by each party, that the complaint has been settled, or specifying what part of the complaint has been settled.
- 18.2 Where all or part of a complaint is withdrawn prior to the scheduled date for commencement of the hearing, the Commission must deliver to the Registrar and the other parties notice in **Form 7** that the complaint is withdrawn, or specifying what part of the complaint is withdrawn.
- 18.3 Upon receipt of notice of settlement or withdrawal of all or part of a complaint, the Registrar shall provide written acknowledgment to the parties that all or part of the complaint has been settled or withdrawn.

19 Making and Responding to Applications Before the Hearing

19.1 General rules

- 19.1.1 A person who wishes the Chief Adjudicator or Board Chair to make an order shall deliver a written application in **Form 8**. Except for adjournment applications, no application may be made within **10 days** of the scheduled date for commencement of a hearing.
- 19.1.2 The application shall describe the order requested, state any facts relied upon, and set out the arguments in support of the application.
- 19.1.3 The application shall state whether any party or affected person consents to all or part of the order being requested.
- 19.1.4 An application shall be served on the Registrar and on all parties and any affected person.
- 19.1.5 A party or affected person shall respond to the application within **21 days** of service. Responses shall be in **Form 9**, and must be served on the Registrar and on all parties and affected persons.
- 19.1.6 Responses to an application shall include the party or affected person's position on the order sought, which facts and issues are, and are not, disputed, arguments in support of the party or person's position, and any additional relevant facts.

- 19.1.7 The applicant may make a reply submission in **Form 10**, by delivering it to the Registrar and serving it upon the other parties and any affected person within **10 days** of the responses.
- 19.1.8 The reply shall include only the applicant's reply to any issues raised in the responses and may not raise new issues. The reply may not include new facts or arguments unless the response contains new facts or arguments that could not reasonably have been anticipated by the applicant.
- 19.1.9 Upon completion and after consideration of the submissions, the Chief Adjudicator or Board Chair shall notify the parties and any affected person, in writing, of the decision.

19.2 Particular Applications

- 19.2.1 Unless otherwise stated in this section, the general rules governing applications apply to these applications.
- 19.2.2 Protection of Identity
- 19.2.2.1 A party may apply for an order that the identity of a person not be disclosed to the public.
- 19.2.2.2 If granted, the person shall be referred to by their initials in all written communications to and from the Board or Chief Adjudicator and among the parties concerning that individual, including in any decisions of the Board.
- 19.2.3 Expedited Hearing
- 19.2.3.1 A party may apply to expedite the hearing of the complaint to proposed dates within 3 months of the date of the Notice of Complaint where:
- the complaint can be heard in 3 days or less,
 - there are no other preliminary applications, and
 - all parties and witnesses are available on the proposed hearing dates.
- 19.2.3.2 If the application is granted, a pre-hearing conference may be scheduled to establish an expedited pre-hearing process.
- 19.2.4 Intervention
- 19.2.4.1 A person may apply to intervene in a complaint.

19.2.4.2 The application must explain the proposed intervenor's interest in the complaint, describe which of the issues the proposed intervenor seeks to address, and set out the proposed terms upon which the intervenor seeks to participate (such as whether seeking to make arguments orally, or in writing, or to present any new evidence).

19.2.5 Adjournment of the Hearing

19.2.5.1 Where an adjournment request is made with the consent of all parties, the application shall state that all parties consent, and no further submissions are required.

19.2.5.2 Unless an adjournment is upon consent of all parties, a party may not apply for an adjournment less than **5 days** before the date scheduled for commencement of the hearing. Adjournment applications after that date must be made at the commencement of the hearing.

19.2.5.3 Any party seeking an adjournment must state whether each other party consents, opposes, or takes no position on the application, provide reasons why the adjournment is necessary and appropriate (including whether any prejudice will arise), attach any relevant evidence, and set out the length of the proposed adjournment.

19.2.5.4 Any party that opposes the adjournment request must deliver its written response to the Registrar and the other parties within **3 days** of receipt of the adjournment application.

19.2.5.5 The party seeking the adjournment has no right of reply, unless otherwise ordered.

19.2.5.6 Where an adjournment is granted, new hearing dates shall not be scheduled less than 30 days after the previous scheduled date for commencement of the hearing, unless all the parties consent to a shorter time.

19.2.6 Production of Documents by Non-Parties

19.2.6.1 An application for an order to compel a non-party to produce a document within its possession shall be served on the non-party and on the other parties.

19.2.6.2 The application shall state what other efforts the applicant has made to obtain the document.

- 19.2.6.3 The non-party has the right to respond to the application and to be notified of the decision.

PART IV. Hearing Procedures

20 Language of proceedings

- 20.1 Hearings shall be conducted in English unless a party makes a written request to the Registrar no less than **45 days** before the date scheduled for commencement of the hearing, that the hearing be conducted in French.
- 20.2 A party who requires interpretation from a language other than English or French, for themselves or a witness, shall make a written request to the Registrar specifying the services required no less than **45 days** before the date scheduled for commencement of the hearing.

21 Hearing Accommodation requests

- 21.1 A party seeking accommodation for themselves or for a witness at the hearing shall make a written request to the Registrar specifying the requested accommodation, no less than **45 days** before the date scheduled for commencement of the hearing.

22 Books of Authorities and Books of Documents

- 22.1 Unless otherwise ordered at a pre-hearing conference, a party may provide the Board with their books of authorities in advance of commencement of the hearing by delivering a sufficient number of copies to the Registrar no less than **3 days** prior to the scheduled date for commencement of the hearing.
- 22.2 Unless otherwise ordered at a pre-hearing conference, a party may present their documentary evidence by means of books of documents tendered to the Board at the commencement of the hearing.

23 Consequences of Failing to Attend the Hearing

- 23.1 If satisfied that a party was served with notice of the hearing under rule 14, the Board may proceed with the hearing in the absence of that party.

24 Conduct of Proceedings

- 24.1 The usual order of presentation shall be: Commission, complainant, respondent.
- 24.2 Where an intervenor is participating in the hearing, the Board shall make an order as to when and how the intervenor will participate in the proceedings.

- 24.3 Hearings are open to the public, unless otherwise ordered.
- 24.4 Witnesses other than the complainant and respondent are excluded from the hearing until after they have given their evidence. No one may communicate with an excluded witness regarding the content of, or evidence given in, the proceedings, while the witness is excluded.

25 Recording of Hearing and Transcripts

- 25.1 Hearings are recorded as required by section 13 of the Regulations. No unauthorized recording of all or part of a proceeding may be made by any means.
- 25.2 Hearings are not transcribed, unless otherwise ordered.
- 25.3 A party who wishes to obtain a transcript of the hearing shall make the request in writing no less than **30 days** after the date of the decision, and shall confirm that the party will bear the cost of producing a copy of the transcript for each party and for the Registrar.
- 25.4 Upon receipt of a request under rule 25.3, the Registrar shall arrange for transcription of the hearing.

PART V. Decisions and Appeals

26 Issuance of Decisions

- 26.1 Decisions shall be in writing, signed, and delivered to each party.
- 26.2 Within 30 days of the date of a decision, or of a Case Management Order, a party may request correction of a clerical error by making a request in writing to the Registrar. The Board Chair, Chief Adjudicator or the Registrar may correct clerical errors on their own initiative. The Registrar shall deliver to the parties corrected copies of the decision.

27 Appeals

- 27.1 The address for service of a notice of appeal or judicial review of any order or decision of the Chief Adjudicator, the Board Chair, or the Board, is the address set out in rule 2.

FORMS (Revised as of September 12, 2016)

- 1 Notice of Complaint**
- 2 Preliminary Information**
- 3 Case Management Conference Order**
- 4 Notice of Hearing**
- 5 Request for Order to Appear**
- 6 Notice of Settlement**
- 7 Notice of Withdrawal**
- 8 Application**
- 9 Response to Application**
- 10 Reply to Application**