

# Rules and Practice Notes

## Definitions

1. In these Rules,
  - a. "Act" means the Public Service of Ontario Act, 2006;
  - b. "Board" means the Public Service Grievance Board;
  - c. "Case" means any proceeding before the Board;
  - d. "Day" means any day of the week and "days" means calendar days;
  - e. "Electronic hearing" means a hearing held by telephone conference; videoconference or some other similar form of electronic technology allowing persons to communicate with another;
  - f. "Filing" means the effective delivery of documents to the Registrar of the Board;
  - g. "Complaint" means a complaint filed with the Board by a complainant in accordance with the time limits and any other requirements of the Regulation;
  - h. "Complainant" means a person entitled to file a complaint with the Board under the Public Service of Ontario Act, 2006 and the Regulation;
  - i. "Hearing" is any part of a proceeding including the consideration of preliminary matters and/or the submission of evidence and argument on the merits of the complaint;
  - j. "Regulation" means Ontario Regulation 378/07, as amended from time to time;
  - k. "Representative" means counsel or agent who is authorized to represent the complainant, the employer or any other party;
  - l. "Registrar" means the Registrar of the Board and can include the Deputy Registrar or other designate.

## Computation of Time & Holidays Under These Rules

2. In these Rules,
  - a. Time limits that would otherwise expire on a holiday are extended to include the next day that is not a holiday;
  - b. Time limits for registering or filing documents or for doing anything else that expire on a day when the Board is not open during its regular hours of business are extended to include the next day the Board is open during its regular hours of business;
  - c. A reference to the number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens, even if the reference is to "at least" or "not less than" a number of days;
  - d. A period of time described as beginning or ending on, at or with a specified day includes that day;
  - e. A period of time described as beginning before or after a specified day excludes that day;
  - f. The following days are "holidays":
    - i. Sunday;

- ii. New Year's Day;
  - iii. Family Day;
  - iv. Good Friday.
  - v. Easter Monday;
  - vi. Victoria Day;
  - vii. Canada Day;
  - viii. Labour Day;
  - ix. Thanksgiving Day;
  - x. Remembrance Day;
  - xi. Christmas Day;
  - xii. Boxing Day;
  - xiii. Any day fixed as a holiday by proclamation of the Governor General or Lieutenant Governor;
- g. When New Years Day falls on a Sunday, the following Monday is also a holiday;
  - h. When July 1 is on a Sunday, Canada Day falls on July 2; and
  - i. When Christmas Day falls on a Saturday, the following Monday is also a holiday, and when it falls on a Sunday, the following Tuesday is also a holiday.
3. The Board or the Registrar may shorten or lengthen any time period set out in or under these Rules, as either considers advisable.

### **Practice Notes and Information Bulletins**

- 4. The Board may issue practice notes and information bulletins from time to time, which should be referred to for information on Board practice.

### **Applications to the Board**

#### **Form 1- Complaint under Regulation 378/07 Dismissal for Cause/ Discipline/Working Conditions and Terms of Employment**

- 5. (1) A complaint shall be delivered to the Board in Form 1 and must include a copy of the notice of the complaint that was filed with the deputy minister.  
(2) The Board shall give a copy of the complaint to the deputy minister concerned.

#### **Form 1a –Complaint under Part V of the Act Political Activity and/or Part VI of the Act Disclosing and Investigating Wrongdoing**

- 6. (1) A complaint shall be delivered to the Board in Form 1a.  
(2) The Board shall give a copy of the complaint to the deputy minister concerned.

## **Form 2 or Form 2a – Employer Responses**

7. (1) After receipt of a Form 1 complaint, the Employer shall deliver to the Board its response on Form 2 no later than 30 days after receipt of the Form 1.
- (2) After receipt of a Form 1a complaint, the Employer shall deliver to the Board its response on Form 2a no later than 30 days after receipt of the Form 1a.

## **Amending the Complaint or the Response**

8. The Complainant may amend the complaint and the Employer may amend the Response with the leave of the Board.

## **Board Procedures**

9. (1) The Board shall fix a time and place for the hearing and give written notice to the complainant and to the deputy minister.
  - (2) One member of the Board may hear and dispose of a complaint.
10. The Board may direct the parties to participate in a pre-hearing conference to consider:
    - a. the settlement of any or all of the issues;
    - b. the simplification of the issues;
    - c. facts or evidence that may be agreed upon;
    - d. the dates by which any steps in the proceeding are to be taken or begun;
    - e. the estimated duration of the hearing; and
    - f. any other matter that may assist in the just and most expeditious disposition of the proceeding.
11. (1) The complainant may present his or her complaint personally or may be represented by a representative.
  - (2) A party to a proceeding may, at an oral or electronic hearing,
    - a. call and examine witnesses and present evidence and submissions; and
    - b. conduct cross-examinations of witnesses at the hearing reasonably required for the full and fair disclosure of all matters relevant to the issues in the proceeding.
  - (3) A witness at an oral or electronic hearing is entitled to be advised by counsel or an agent as to his or her rights but such counsel or agent may take no other part in the hearing without leave of the Board.
  - (4) Where a hearing is closed to the public, the witness's representative is not entitled to be present except when that witness is giving evidence.
12. The Board may, at any stage of the proceeding before all hearings are complete, make orders for:
    - a. the provision of particulars;
    - b. the exchange of documents;

- c. the exchange of witness statements and reports of expert witnesses;
  - d. the oral or written examination of a party;
  - e. any other form of disclosure relevant to the proceeding.
13. (1) A decision of the Board is final.
- (2) The Board shall send each party who participated in the proceeding, or the party's representative, a copy of its final decision or order, including the reasons if any have been given,
- a. by regular letter mail; or
  - b. by electronic transmission.
- (3) If the copy is sent by regular letter mail, it shall be sent to the most recent addresses known to the Board and shall be deemed to be received by the party on the fifth day after the day it is mailed.
- (4) If the copy is sent by electronic transmission, it shall be deemed to be received on the day after it was sent, subject to Section 2 of these Rules.
- (5) If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a later date than the deemed day of receipt, subsection (3) or (4), as the case may be, does not apply.
14. The Board shall compile a record of any proceeding in which a hearing has been held which shall include:
- a. any complaint, reference or other document, if any, by which the proceeding was commenced, including any appendices or attachments;
  - b. the notice of any hearing;
  - c. any interlocutory orders made by the Board;
  - d. all documentary evidence filed with the Board, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
  - e. the official transcript, if any, of the oral evidence given at the hearing; and
  - f. the decision or decisions of the Board and the reasons therefore, where reasons have been given.

### **Dismissal Without a Hearing or Consultation**

15. Where the Board considers that a complaint does not make out a case for the orders or remedies requested, even if all the facts stated in the complaint are assumed to be true, the Board may dismiss the complaint without a hearing or consultation. In its decision the Board will set out its reasons.

### **Notice of Hearing or Mediation/Arbitration (Med/Arb) or Mediation**

16. Where a hearing, mediation/arbitration, mediation or pre-hearing conference will be held in a case, written notice will be given to all parties setting out the time, date, place and format of the proceeding (whether in-person, electronic, telephone or in writing) and any other information required to enable access to the proceeding.

17. In those complaints where third party rights are affected such as in competition complaints, the onus shall be on the Employer to identify the affected parties and provide:
  - a. the third party with notice that the complaint has been filed at the Board and the date, place and time of the first day of hearing;
  - b. the Board with the name and address of any third party affected by a complaint for the purpose of the Board providing the third party with notice of any proceedings subsequent to the initial hearing.
18. Where the Registrar considers it impractical to give written notice of hearings or any other proceedings, the Registrar may give verbal or any form of electronic notice of the proceedings.
19. Where any person properly served with a notice of hearing fails to attend the scheduled hearing, the Board may proceed to dispose of the complaint in that person's absence and without further notice.

### **Written and Electronic Hearings**

20. The Board may conduct a hearing in any case before it in person, electronically, by telephone or in written format, as the Board considers advisable. If a party asserts that the planned format of a hearing is likely to cause the party significant prejudice, after providing the parties with the opportunity to make submissions on the issue the Board shall consider what if any measures are required so as to ensure procedural fairness.

### **Adjournment or Consolidation of Cases**

21. Adjournments requested by a party will normally only be granted upon agreement of all parties. Such adjournments must be communicated to the Board in writing and copied to all parties.
22. Where it appears that adjournments by agreement of the parties have excessively delayed the commencement of the hearing process, the Board may on its own volition adjourn the case *sine die*. If a case has been adjourned *sine die* under this rule and one or more of the parties request that the complaint be scheduled for hearing, the dates set by the Board after consultation with the parties will be peremptory and further adjournments will only be granted with consent of the Board on such terms as the Board considers appropriate.
23. The Board may adjourn or stay any case on such terms as it considers advisable.
24. When the Board adjourns a complaint *sine die* on agreement of the parties, the matter will be dismissed after the expiry of one year from the date on which the adjournment is granted, unless one or more of the parties request that the complaint be scheduled for hearing within that period. In the absence of any such request, the Board shall notify the parties at least 30 days prior to the expiry of

the one year period but no further notice shall be issued prior to the dismissal of the complaint.

25. The Board may consolidate or hear cases at the same time or immediately one after the other when it appears to the Board that:
  - a. the complaints have a question of law or fact in common;
  - b. the relief claimed in the complaints arises out of the same transaction or occurrence or series of transactions or occurrences, or;
  - c. for any other reason an order ought to be made under this rule.

### **Reconsideration**

26. The Board may, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

### **Constitutional Challenges**

27. A party intending to challenge the constitutional validity of any law, regulation or rule must give prompt notice to the Board and the Attorneys General for Ontario and Canada in advance of the hearing.

### **Other Matters**

28. Where matters are not covered by these rules or the Regulation, the practice will be decided in a manner consistent with the rules and the Regulation.

### **Effective Date**

29. These Rules are effective as of **XX, 2021**.

## **Practice Note #1**

### **Dismissal of Complaints without a Hearing**

- Upon receipt of a complaint the Public Service Grievance Board (the Board) may on its own volition or on the request of a party screen a complaint for jurisdiction before listing the complaint for hearing. The Board may dismiss the complaint without a hearing or consultation when it appears on the face of the complaint that the Board is without jurisdiction to hear the complaint because the complainant is not a public servant under the jurisdiction of a Deputy Minister (see *Rampersad and WCB*, 1993 CanLii3345; *Pelissero and GO Transit*, P006/87; *Wells/Larson and the LCBO*, 1995CanLii4584); or the Board is without jurisdiction to grant a remedy (see *Laird et al*, P0144/95; *Blakney et al*, *Armstrong et al*, 2000CanLii20364; and *Easto et al*, 2000CanLii20365), even if all the facts stated in the complaint are assumed to be true.

However, when the Board deems it necessary, the Board may request and set a date for receipt of further particulars, information or submissions regarding the complaint.

When the Board requests and sets a date for receipt of further particulars, information or submissions regarding the complaint, the Board may:

1. dismiss the complaint without hearing, if the particulars, information or submissions regarding the complaint are not received by the Board on the date set;
2. decide that there is a need for a hearing to deal with any issue regarding its jurisdiction;
3. request further submissions from the parties before deciding whether or not to hold a hearing;
4. dismiss the complaint without a hearing when the Board has determined it is without jurisdiction to hear or grant a remedy based upon its review of the particulars, information or submissions regarding the complaint.

## **Practice Note #2**

### **Mediation**

In order to make better use of public resources, the Board provides to the parties an opportunity to mediate their differences prior to a formal hearing of the matter. The Board's mediation process is designed to assist the parties in reaching a settlement without the expense and delay arising from a full adjudicative hearing.

Where the Board schedules a mediation after receiving a Complaint, in order to facilitate that mediation the Board may request the parties to deliver to the Board and to the other parties, no later than 7 days prior to the scheduled mediation date, a mediation brief containing the following:

- a. a statement that identifies the factual and legal issues in dispute and briefly sets out the position and interests of the party making the statement; and
- b. any documents that the party considers of central importance in the proceeding.

## **Practice Note #3**

### **Case Management Meetings**

The Board may direct the parties to participate in a case management meeting by telephone or video conference. This meeting will normally be arranged promptly after the appointment of the member of the Board assigned the complaint, before the first mediation, med-arb or arbitration date is scheduled.

- a. The purpose of the case management meeting is to ascertain the issues, exchange basic information on the case, determine if there are preliminary objections to the Board's jurisdiction to rule on the merits, and help decide the best process for addressing the complaint. Proposals as to the best process are encouraged.
- b. The case management meeting is intended to be informal, and comments, factual allegations and suggestions made are not to be used as evidence in any subsequent arbitration hearing.
- c. The member of the Board may prepare a brief summary of the case management meeting which will be provided to the parties and may issue to the parties such directions or procedural orders as are deemed appropriate.

Such a case management meeting does not preclude a pre-hearing conference pursuant to Section 10 of the Board's Rules being scheduled at a later date.

## **Practice Note #4**

### **Presenting Documentary Evidence and Requests for Confidentiality**

When documents are filed with the Board, they are shared with the other party to the complaint in the normal course. Parties who wish to present documents as part of the evidence to support their case should bring copies to the hearing for the Board and the opposing party.

In order to be admitted into evidence, the document must be relevant to the issues the Board is deciding. If the other party objects to the presentation of a document as irrelevant or as disclosing information that should be kept confidential, the Board will decide whether the information should be entered into evidence after hearing submissions from the parties.

Whether confidential or not, information and documents presented in evidence must not be used by the parties or their representatives for any purposes other than the resolution of the complaint before the Board. This is sometimes referred to as the implied undertaking rule.

Any party to a proceeding who wishes to protect the confidentiality or privacy of any information or document that they wish to file with the Board, or evidence that they wish to produce at a hearing, is encouraged to first discuss the matter with the opposing party to see if agreement can be reached on a manner of presenting the material in question which protects the information in question. Possibilities include redacting [removing or obscuring] personal information, limiting which individuals may have access to medical or other sensitive information, or agreeing on appropriate undertakings as to confidentiality or presenting the facts to the Board by agreement of the parties instead of filing the documents. Failing agreement, a request may be made to the Board, in writing to the Registrar, at 180 Dundas Street West, Suite 600, Toronto, Ontario, M5G 1Z8, or Email: [psqb.psqb@ontario.ca](mailto:psqb.psqb@ontario.ca), as far in advance of the hearing as possible, for directions as to how the information should be handled. The Board will



also deal with requests that arise in the course of a hearing as necessary, and may raise issues of privacy or confidentiality of its own motion in appropriate circumstances.

Confidentiality orders may also be sought by persons who are not parties to a complaint before the Board who would be affected by the disclosure of information to the Board, by writing to the Registrar at the above address.

Once a final decision is rendered, the decision is public and normally available on the internet on the CanLII website, <https://www.canlii.org/en/on/onpgb>. Requests for protection or non-disclosure of information in a decision should therefore be made to the member hearing the case prior to the close of the hearing.

## **Practice Note #5**

### **Access to the Board's Records by Non-Parties**

Interested individuals or media representatives who are not parties to a complaint may request access to documents filed with the Board, such as written submissions and documents that have been admitted into evidence.

On receipt of such requests, the Board's practice is to consult the parties to the case involved, and to consider any submissions they may make as to privacy/confidentiality concerns, together with the non-party request, prior to deciding whether to grant access to those documents. In dealing with past requests for access, consideration has been given to s. 9 of the *Statutory Powers Procedures Act* which deals with the openness of hearings and access to documents submitted in written hearings, balanced by the power of statutory tribunals such as the Board to limit that openness in specific circumstances, as well as the *Freedom of Information and Protection of Privacy Act*, as appropriate.

Any person who seeks access to records in the custody of the Board should address a request in writing to the Registrar, 180 Dundas Street West, Suite 600, Toronto, Ontario, M5G 1Z8, or Email: [psgb.psgb@ontario.ca](mailto:psgb.psgb@ontario.ca), specifying the nature of the record sought and identifying the case to which it relates. The Board will then consult the parties, as noted above, and decide whether the request should be granted, and if so, in whole or in part.

Please note that the Board is not a tribunal to which the Tribunal Adjudicative Records Act, 2019, which came into force on July 1, 2019, applies.

# Practice Note #6

## Recording or Transcription of Proceedings

It is the practice of the Board to not transcribe or record any part of its proceedings. This applies to all hearing formats. If a party desires to use any form of recording or transcription device or software (“technology”) for their own purposes, the following conditions shall apply:

- a. no such technology shall be permitted in any mediation or the mediation portion of a med-arb;
- b. that party shall first seek the consent of the opposing party or parties;
- c. that party shall then seek the permission of the member assigned the complaint, advising whether or not all parties agree and, failing agreement shall provide reasons for the request including whether it is asserted that it is needed as part of any accommodation sought pursuant to the *Ontario Human Rights Code*, together with all required particulars about the technology proposed to be used;
- d. the party and their representatives who wish to use such technology must undertake to use the resulting transcription or recording only for purposes of the hearing before the Board in the same manner as their handwritten or typed notes; and
- e. unless the Board rules otherwise, if the technology is permitted to be used, the resulting transcription or recording shall not form part of the Board’s record but may only be used informally as the personal notes of the party using the technology.

The *Statutory Powers Procedures Act* is available on-line here:

<https://www.ontario.ca/laws/statute/90s22?search=statutory+power+procedures+act>

The *Freedom of Information and Protection of Privacy Act* is available on-line here:

<https://www.ontario.ca/laws/statute/90f31?search=Freedom+of+information>

The *Tribunal Adjudicative Records Act, 2019* is available here:

<https://www.ontario.ca/laws/statute/19t07>

The Regulation providing a list of tribunals to which it applies is available here:

<https://www.ontario.ca/laws/regulation/r19211>