

Canadian Human Rights Tribunal Draft Rules Respecting Pay Equity

The CHRT is in the process of developing formal rules of procedure for appeals and inquiries into referrals under the Pay Equity Act (PEA). The following *Draft Rules Respecting Pay Equity* will guide the CHRT’s procedures on an interim basis during the formal rules development period. The CHRT invites comments on the procedures described in these *Draft Rules*. Comments can be delivered to the following address: [CHRT Consultation TCDP@chrt-tcdp.gc.ca](mailto:CHRT_Consultation_TCDP@chrt-tcdp.gc.ca).

A further comment period will occur during publication of rules of procedure in the *Canada Gazette Part I*.

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Definitions

Definitions

1. The following definitions apply in these Rules.

Act means the *Pay Equity Act*. (*Loi*)

appeal means an appeal brought under subsection 168(1) of the Act. (*appel*)

Chairperson means the Chairperson of the Tribunal, appointed in accordance with subsection 48.1(1) of the *Canadian Human Rights Act*, who has supervision over and direction of the work of the Tribunal. (*président*)

Commissioner means the Pay Equity Commissioner appointed under subsection 26(1) of the *Canadian Human Rights Act*. (*Commissaire*)

interested party means a person or organization that has been granted interested party status under paragraph 18. (*intervenant*)

member means a member of the Canadian Human Rights Tribunal assigned by the Chairperson to an inquiry into a referral or appeal. (*membre*)

oral hearing means a hearing conducted in whole or in part in-person, or by means of a telephone conference call, videoconference or any other form of electronic communication that is conducted orally. (*audience*)

panel means the group of three members of the Tribunal assigned by the Chairperson to an inquiry into a referral or appeal. (*formation*)

party means

(a) in respect of an inquiry into a referral, the Commissioner, a person or organization that has filed a notice of intention to participate in accordance with paragraph 30, or any person or organization added as a party by a member or panel;

(b) in respect of an appeal, an appellant, a respondent, or any person or organization added as a party by a member or panel. (*partie*)

referral means a question brought to the Tribunal under section 162 of the Act. (*renvoi*)

Registrar means the employee of the Administrative Tribunals Support Service of Canada who is responsible for the provision of registry services to the Tribunal under the direction of the Chairperson, or a registry officer acting on the Registrar's behalf. (*greffier*)

General Principles

Application

2. These Rules apply to the conduct of

(a) an inquiry into a referral; and

(b) an appeal.

General principle

3. These Rules are to be interpreted and applied to secure the informal, expeditious and fair determination of every appeal or inquiry into a referral.

Non-exhaustive

4. A member or panel may decide any matter of procedure that is not provided for by these Rules.

Varying or dispensing with the Rules

5. A member or panel may, on the motion of a party or on its own initiative, vary or dispense with compliance with these Rules, if doing so advances the aims set out in paragraph 3.

Needs of participants

6. (1) These Rules are to be interpreted and applied to reasonably accommodate the needs of all participants in an inquiry into a referral or an appeal.

Notification to Registrar

- (2) Any participant in an inquiry into a referral or an appeal who requires accommodation must notify the Registrar as soon as feasible.

Consequences of Non-compliance

Non-compliance with Rules or orders

7. If a party does not comply with these Rules, an order of a member or panel or a time limit established under these Rules, the member or panel may, on the motion of another party or on its own initiative, proceed with or dismiss the appeal or inquiry into a referral or order the party to remedy the non-compliance.

Vexatious conduct or abuse of process

1. (1) A member or panel may, on the motion of a party or on its own initiative, make any order that it considers necessary against vexatious conduct or abuse of process.

Costs

- (2) Such an order may include the awarding of costs to the extent permitted by law for expenses reasonably incurred as a result of the conduct found by the member or panel to be vexatious or an abuse of process.

Service and Filing

Documents to be served and filed

2. Every document that must be served and filed under this Rules must be served on all parties and filed with the Registrar.

Methods of service

3. Service may be effected
 - (a) by email to an email address provided by the other party;
 - (b) by registered mail or by courier;
 - (c) in person;
 - (d) by fax if the document does not exceed 20 pages; or
 - (e) electronically to the e-filing system link designated by the Registrar

Filing

4. Electronic filing under subparagraph 11(a) is the preferred means of filing. A document may, however, be filed by:
 - (a) transmitting it to the email address or e-filing system link designated by the Registrar;
 - (b) delivering it in person or mailing two copies to the address designated by the Registrar; or
 - (c) faxing it to the fax number designated by the Registrar if the document does not exceed 20 pages.

Language of documents

1. Any document that is filed must be in English or French or be accompanied by an English or French translation and an affidavit of the translator attesting to its accuracy.

Format of written submissions

2. Written submissions must
 - (a) have no more than 30 lines per page, be in 12-point, Times New Roman, Arial or Tahoma font, and have numbered paragraphs; and
 - (b) top and bottom margins of not less than 2.5 cm and left and right margins of not less than 3.5 cm.

Official Record

Official record

3. (1) For each inquiry into a referral or appeal conducted under these Rules, the Registrar must keep an official record that contains
 - (a) any referral made to the Tribunal or application for an appeal;
 - (b) any memoranda of argument and any responses or replies thereto;
 - (c) any motion materials;

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- (d) any correspondence between the Registrar and the parties;
- (e) any summaries of case management conferences;
- (f) any book of authorities;
- (g) any written submissions;
- (h) any orders, rulings or decisions;
- (i) any exhibits;
- (j) any recordings of the hearing and any transcripts of those recordings; and
- (k) any other documents that are designated by the member or panel.

Public access

- (2) Subject to any confidentiality measures or orders, the public may access the Tribunal's official record under such terms and conditions specified by the Chairperson.

Retention

- (3) The Chairperson may establish the retention period for the official record in respect of any inquiry into a referral or appeal that has concluded and for which any judicial review or appeal proceedings have been exhausted.

Motions

Notice of motion

4. (1) Unless the member or panel agrees to proceed differently, a motion must:
- (a) be initiated by a notice in writing of no more than 10 pages;
 - (b) be served and filed as soon as feasible;
 - (c) set out the order sought and the grounds relied on; and
 - (d) specify any consent obtained from other parties.

Response to notice of motion

- (2) A party who receives a notice of motion, must serve and file a response to the notice of no more than 10 pages within 10 days of being served with the notice of motion. A party who consents to the motion must file the consent as soon as feasible.

Reply

- (2) The moving party may serve and file a reply of no more than 5 pages within 5 days after being served with the response to the motion.

Time adjustment

- (2) If a party anticipates that the relief requested in the motion will require a change in any filing deadlines or the hearing schedule, the party must address why the change would be justified in their motion submissions and propose a new schedule or hearing date that the party considers to be feasible.

Directions

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- (2) A member or panel that receives a notice of motion must give the other parties an opportunity to respond, and may give directions respecting the presentation of arguments and evidence by the parties, including the time at which and the manner and form in which the arguments and the evidence must be presented.

Motion for joinder of appeals or inquiries into a referral

5. If a common question of law or fact arises and no injustice is likely to be caused to any party, a member or panel may, on its own initiative or by way of a motion by a party deal with
- (a) two or more appeals jointly; or
 - (b) two or more inquiries into referrals jointly.

Notice of constitutional question

1. If a party intends to challenge the constitutional validity, applicability or operability of a statute or regulation, that party must file and serve a notice in accordance with subsection 57(2) of the *Federal Courts Act* and Form 69 of the *Federal Courts Rules*.

Addition of Interested Parties

Motion for interested party status

2. (1) A person or organization that wishes to be recognized as an interested party must serve and file a notice of motion for an order to that effect.

Content of notice

- (2) The notice of motion must contain the following information:

- (a) the person or organization's full name, address, telephone number and, if any, fax number and email address; and
- (b) the name, address, telephone number and, if any, fax number and email address of any person authorized to represent the person or organization;
- (c) a statement identifying to which appeal or inquiry into a referral the person or organization would like to be added as an interested person;
- (d) a statement describing the person or organization's interest in the appeal or inquiry into a referral, the position they intend to advance and how their participation would assist the member or panel in its determination of the issues; and
- (e) a statement describing how the person or organization's intervention would serve the public interest or the interests of justice.

Directions

- (2) If the member or panel adds the person or organization to the appeal or inquiry into a referral as an interested party, they will provide that person or organization with directions regarding their role in the appeal or inquiry.

Case Management Conference

Case management conference scheduling

3. (1) A member or panel may, on their own initiative or at the request of a party, direct that a case management conference be held to resolve matters in respect of the appeal or inquiry into a referral.

Format

- (2) A case management conference may be held by telephone conference, videoconference or in person.

Notice

- (2) A party that wishes to raise a matter at a case management conference must notify the member or panel as soon as feasible before the conference.

Conduct of conference

4. At a case management conference, the member or panel may
 - (a) hear arguments on a motion or give directions;
 - (b) discuss hearing preparation or the narrowing of issues under appeal or in an inquiry into a referral;
 - (c) discuss settlement of some or all of the issues under appeal or in an inquiry into a referral;
 - (d) after hearing the parties on an issue or motion, make any order that it considers necessary;
 - (e) set dates for an oral hearing; and,
 - (f) deal with any other matter relating to the conduct of an appeal or inquiry into a referral.

Book of Authorities

Book of Authorities

5. (1) A party may serve and file a book of authorities containing copies of the legislative provisions, case law and other legal authorities on which the party intends to refer in their memorandum or to rely on in their hearing, as applicable. At the request of the member or panel, the party must serve and file a book of authorities.

Highlighted passages

- (2) The relevant passages in each legal authority must be highlighted.

Electronically available case law

- (3) For case law that is accessible to the public electronically, a party need only include in the book of authorities
 - (a) the relevant passages, along with the paragraphs immediately preceding and following those passages; and
 - (b) the case law citation, including the Internet address where the case law can be accessed.

Electronically available legislation

- (4) For legislation that is accessible to the public electronically, a party need only include in the book of authorities
- (a) the relevant provisions; and
 - (b) the legislative citation, including the Internet address where the legislation can be accessed.

Hearing

Representation of parties

6. A party may act in person or be represented by legal counsel or by another duly authorized representative.

Failure to appear

1. If a party fails to appear at an oral hearing, the member or panel may proceed in the party's absence if it is satisfied that the party received notice of the hearing.

Hours of hearings

1. (1) Oral hearings are held on Monday to Friday, except on holidays, between 9:30 a.m. and 5:00 p.m. in the time zone where the presiding member or panel is located, or as directed by the member or panel.

Technological assistance

- (2) The member or panel may give directions to facilitate the conduct of a hearing with any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

Timeline for Decision

Timeline for determination or decision

1. (1) The member or panel must issue its determination under subsection 167(1) or decision under subsection 170(1) of the Act within three months after the conclusion of arguments by the parties.

Decision on motion

- (2) The panel must issue its decision on any motion within one month after the conclusion of arguments by the parties.

Conclusion of arguments

- (3) For the purposes of these Rules, the conclusion of arguments is the later of the following
- (a) the date on which any replies have been filed or the date on which the timeline to file a reply has expired;
 - (b) for any oral hearings, the date of the close of oral submissions; or

- (c) the date on which additional submissions ordered by the member or panel are filed, as applicable.

Notice of extension

- (2) The member or panel may extend the time to issue its determination or decision. The member or panel must give notice to the parties of an extension to a time limit in subparagraph 25(1) or subparagraph 25(2).

Inquiry into a Referral

Application

- 2. Paragraphs 27 to 31 apply to the conduct of an inquiry into a referral.

Content of notice of referral and request for directions

- 3. (1) The Commissioner will initiate a referral to the Tribunal by transmitting a notice of referral and request for directions in the form approved by the Chairperson.

- (a) The notice of referral will include the following information:

- i. a statement of the question or questions being referred, including a description of the matter in dispute, objection or complaint from which the referral derives;
- ii. a bilingual summary of the question or questions being referred that is suitable for posting on the Tribunal's website;
- iii. why the Commissioner believes it would be more appropriate for the Tribunal to answer the question;
- iv. the names and contact information, or representative's name and contact information, of any parties before the Commissioner to the matter in dispute, objection or complaint from which the referral derives;
- v. the names and contact information of any person or organization that the Commissioner considers to be a potential interested party with respect to the inquiry into the referral; and

- (b) The request for directions will propose :

- i. the material that will constitute the case to be determined in the inquiry into the referral;
- ii. the timeline for the service and filing of copies of the material;
- iii. the timeline for the service and filing of memoranda of argument;
- iv. the preparation, service and filing of books of authorities, if the Commissioner considers that a variation of paragraph 21 would improve the efficiency of the inquiry into the referral;
- v. the procedure for hearing the inquiry into the referral, including whether the Commissioner prefers an oral or written inquiry;
- vi. the form of hearing and time and place for the hearing of the inquiry into the referral;
- vii. the role of the Commissioner in the inquiry into the referral.

Notice to parties before the Commissioner

- (2) The Commissioner will serve and file the notice of referral, the request for directions, and a blank notice of

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intention to participate in the form approved by the Chairperson, on any persons or organizations listed by the Commissioner on the notice of referral pursuant to paragraph 27(1)(a)(iv); and,

Notice to potential interested parties

(2) The Commissioner will serve and file the notice of referral and request for directions on any persons or organizations listed by the Commissioner on the notice of referral pursuant to paragraph 27(1)(a)(v).

Other directions

(2) The member or panel may issue directions in respect of the items in 27(1)(b) or any other matter.

Participation by parties before the Commissioner

1. Within seven days after being served with a notice of referral and request for directions, a party before the Commissioner to the matter in dispute, objection or complaint from which the referral derives may elect to participate in the inquiry into the referral by filing a notice of intention to participate.

Referrals posted online

1. Within seven days of receipt of a notice of referral and request for directions, the Tribunal will post a summary of the referral to the Tribunal's website soliciting the participation of potential interested parties. The summary of the referral will remain posted online for at least 30 days.

Notice by the Tribunal

1. Prior to commencing an inquiry into a referral the Tribunal will notify the Commissioner, the parties, and at the discretion of the member or panel conducting the inquiry, any person or organization added as an interested party or identified by the Commissioner as a potential interested party.

Conduct of inquiry into referral

1. (1) An inquiry into a referral will be conducted orally unless the member or panel otherwise directs.

Notice of motion for written inquiry into referral

(2) A party may request that an inquiry into a referral proceed in writing by serving and filing a notice of motion.

Order

(3) The member or panel may order that an inquiry into a referral proceed in writing where

- (a) it is satisfied that the public interest can be adequately served in this way;
- (b) proceeding in this way satisfies natural justice; and
- (c) it does not anticipate hearing any oral evidence.

Confidentiality

(2) A party may bring a motion for a confidentiality order pursuant to section 166 of the Act.

Appeals

Application

Appeals

1. Paragraphs 33 to 47 apply to the conduct of appeals.

Written procedure

Conduct of appeals

2. Appeals are to be conducted in writing unless the member or panel directs otherwise.
3. (1) An application for appeal brought under subsection 168(3) of the Act must be made in the form approved by the Chairperson. The application for appeal must include the following:
 - (a) the reference number of the decision or order under appeal;
 - (b) the appellant's name and telephone number and an electronic and physical address where documents can be provided to them or, if represented, their contact information;
 - (c) the identification of every party to the matter before the Commissioner who is adverse in interest to the appellant in the appeal as respondents;
 - (d) the grounds for the appeal and a description of the evidence that supports those grounds;
 - (e) whether the appellant seeks an oral hearing, and if so, the reasons why;
 - (f) whether the appellant seeks to submit new evidence and if so, the information referred to in paragraphs 38(2)(a) to (e);
 - (g) the order sought under section 170 of the Act; and
 - (h) the appellant's choice of official language for the appeal.
- (2) The application for appeal must be filed and served on the Commissioner and any other parties and interested parties to the matter before the Commissioner.

Response to application for appeal

4. A party who intends to participate in an appeal as a respondent must serve and file a response, in the form approved by the Chairperson, within 14 days after service of an application for appeal. The response must set out
 - (a) the respondent's name and telephone number and an electronic and physical address where documents can be provided to them or, if represented, their contact information;
 - (b) what position they are taking on the issues raised by the appellant in their application for appeal;
 - (c) whether the respondent cross-appeals, and if so, the grounds and relief sought;
 - (d) whether the respondent seeks an oral hearing and if so, the reasons why;
 - (e) whether the respondent seeks to submit new evidence and if so, the information referred to in paragraphs 38(2)(a) to (e); and,
 - (f) the respondent's choice of official languages for the appeal.

Request for oral hearing

5. A party that did not request an oral hearing in their application or in their response may make a request by filing and serving a notice of motion in accordance with paragraph 15, immediately after the party seeking an oral hearing becomes aware of the reasons for such a request.

Scheduling of oral hearing

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6. Immediately after a member or panel orders an oral hearing the Registrar will contact the parties and any interested parties to schedule the hearing.

Motion for new evidence in an appeal

1. (1) A party who did not seek permission to introduce new evidence in an application for appeal or response, who wishes to introduce new evidence in an appeal, must serve and file a notice of motion for an order to that effect.

Content of notice of motion

- (2) The notice of motion in an appeal must set out:

- (a) the reasons why the evidence could not have been introduced during the Commissioner's inquiry;
- (b) the reasons why the party wishing to introduce the evidence did not make the request in their application for appeal or response;
- (c) the relevance of the evidence;
- (d) the credibility of the evidence; and
- (e) how the evidence could reasonably have affected the Commissioner's decision.

Decision

- (2) The member or panel may grant a motion for leave to introduce new evidence, in whole or in part.

Conditions

- (2) In granting a motion, the member or panel may set conditions for the introduction of new evidence, including the calling of witnesses and their examination, cross-examination, re-examination or exclusion.

Confidentiality

2. (1) Appeals are to be accessible to the public unless the member or panel directs otherwise.

Notice of motion

- (2) A party may, by way of motion, request the confidentiality of the appeal. The notice of motion must set out how, if the appeal is conducted in public,

- (a) there is a real and substantial risk that matters involving public security will be disclosed;
- (b) there is a real and substantial risk to the fairness of the appeal such that the need to prevent disclosure outweighs the societal interest that the hearing be conducted in public;
- (c) there is a real and substantial risk that the disclosure of personal or other matters means that the need to prevent disclosure outweighs the societal interest in the appeal being conducted in public; or
- (d) there is a serious possibility that the life, liberty or security of a person will be endangered.

Request to suspend or vary Commissioner's decision or order

1. (1) A party may serve and file a motion to request to suspend or vary an order or decision of the Commissioner, pending the determination of an appeal, in writing, as soon as feasible.

Request

- (2) The request must set out the factors justifying the suspension or variance of a decision or order of the Commissioner, including whether

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- (a) a party would suffer irreparable harm if the request is not granted; or
- (b) the suspension or variance of the order will unduly obstruct or undermine the administration of the Act.

Investigation record

1. (1) The Commissioner must provide a complete electronic copy of the investigation record to the Tribunal and the parties within 20 days after the day on which they are served with the application for appeal.

Contents

- (2) The investigation record will include the following, as applicable:

- (a) any transcripts or recordings of the investigation into the objection or decision under appeal;
- (b) the documentary evidence filed by the parties;
- (c) the written arguments filed by the parties; and
- (d) the decisions, reasons and orders rendered by the Commissioner in their investigation.

- (3) The Commissioner may file a motion for an extension of the timeline in subsection (1), including the reasons why the Commissioner seeks the extension.

Written Arguments on Appeal

Appellant's memorandum of argument

- 2. (1)** The appellant must serve and file, within 30 days after the day on which the Commissioner provides the appeal record to the parties and the Tribunal, a memorandum of argument that sets out
- (a) the appellant's position and arguments on the order or decision being appealed;
 - (b) the decision they are seeking from the member or panel;
 - (c) a list of the new evidence in their possession, if any, the name of any witness whom the appellant intends to present and a summary of the witness's anticipated testimony on that new evidence; and
 - (d) a table of authorities, including a hyperlink or website address to each source that is relied upon.

Length of applicant's memorandum of argument

- (2)** The appellant's memoranda of argument will be a length
- (a) of no more than 30 pages for a hearing in writing;
 - (b) of no more than 20 pages when all of the appeal is heard orally;
 - (c) unless the member or panel directs otherwise.

Authorities not available electronically

- (3)** Where a legal authority cited in the memorandum is not accessible to the public online at no cost, the relevant excerpt of the authority along with the paragraphs immediately preceding and following those passages, must be appended to the memorandum.

Respondent's memorandum of argument

- 3. (1)** A respondent must serve and file, within 30 days of service of the appellant's memorandum of argument, a memorandum in response that sets out
- (a) the respondent's position and arguments on the order being appealed;
 - (b) the decision they are seeking from the member or panel;
 - (c) if applicable, a list of the new evidence in their possession, along with the name of any witness whom it intends to call along with a summary of the witness's anticipated testimony on that new evidence; and
 - (d) a table of authorities, linking to the Internet site where all cases and statutes relied upon can be accessed.

Length of memoranda of argument

- (2)** The respondent's memoranda of argument will be a length
- (a) of no more than 30 pages for a hearing in writing;
 - (b) of no more than 20 pages when all of the appeal is heard orally; or
 - (c) as determined by the member or panel.

Authorities not available electronically

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- (3) Where a legal authority cited in the memorandum is not accessible to the public online at no cost, the relevant excerpt of the authority along with the paragraphs immediately preceding and following those passages, must be appended to the memorandum.

Reply

1. The appellant may serve and file a reply 10 days after service of the respondent's memorandum of argument. A reply will be no more than 5 pages for an oral hearing and 10 pages for a hearing in writing.

Status review of appeal

1. (1) A member or panel may contact the parties to conduct a status review of the appeal if no hearing has been scheduled and no document has been filed in the appeal for 90 days.

Proposed timetable

- (2) A party who fails to comply with a timetable will propose a new one.

Order

- (2) Upon hearing the representations of the parties, the member or panel may make any orders necessary to advance the appeal in a fair and expeditious manner, including making an order for a timetable for the completion of the remaining steps in the appeal.

Proceeding in the absence or dismissal

- (2) If the respondent fails to comply with a timetable ordered by the member or panel, the member or panel may continue the appeal in their absence of the respondent. If the appellant fails to comply with a timetable ordered by the member or panel, the member or panel may dismiss the appeal.

Alternative Dispute Resolution

Alternative dispute resolution process

2. (1) The parties may participate in an alternative dispute resolution process to encourage the resolution of any matter in relation to an appeal.

Confidentiality

- (2) Subject to subparagraph (3), any information, statement or document that any party gives in an alternative dispute resolution process is confidential. It must not be disclosed later in the appeal or made public unless

- (a) it was obtained in a way that was not part of the alternative dispute resolution process; or
- (b) the party who gave the information, statement or document agrees to its disclosure.

Consent orders

- (3) If the parties request a consent order through an alternative dispute resolution process set out under this Paragraph, the Tribunal may issue a consent order that will be made public unless a party who wishes to maintain the confidentiality of such an order brings a motion to the member or panel.

Different member

- (4) If a member of the Tribunal participates in an alternative dispute resolution process under this Paragraph

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in relation to an appeal, they may only participate in a hearing in relation to that appeal with the consent of all parties.

Withdrawal

- 3.** A party who filed an application for appeal may withdraw the appeal at any time prior to the Tribunal's decision on the appeal by serving and filing a notice of withdrawal in the form approved by the Chairperson. A withdrawal is final.