



Human Resources Professionals Association Capacity Committee Rules of Procedure

These rules are made under section 25.1 of the *Statutory Powers Procedure Act* (SPPA) which states that a tribunal may make rules governing the practice and procedure before it.

Rule 1 – Definitions

1.0 In these Rules, unless the context requires otherwise

“Association” means the Human Resources Professionals Association

“Chair” means the Chair of the Committee

“Committee” means the Capacity Committee of the Association

“Deliver” means service and filing at the Association with proof of service, on every party. In the case of a motion, motion materials including and without limiting the generality of the foregoing, a Notice of Motion containing the relief sought, the materials to be relied upon including authorities.

“Holiday” means

- (a) any Saturday or Sunday,
- (b) Easter Monday
- (c) Remembrance Day
- (d) statutory holidays
- (e) the days between Christmas Day and New Year’s Day
- (f) where Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday
- (g) any special holiday proclaimed by the Governor General or Lieutenant Governor

“Independent Legal Counsel” means the lawyer or lawyers advising the Capacity Committee or Panel.

“Member” means a member of the Association who is the subject of a proceeding

“Motion” means a request made to a Panel for an Order in a proceeding involving a member

“Motion participant or party” means a party or any person who would be affected by the Order sought and includes Independent Legal Counsel for the Capacity Committee

“Panel” means a panel of the Capacity Committee that is hearing the matter

“Parties” means the Association and the Member, and “Party” means either of them

“Proceeding” means any step in the Capacity process

“Process” means any event in the Capacity context, following the issuance of a Notice of Application

“Prosecutor” means the lawyer or lawyers retained by the Association to represent the Association in the Capacity process

“Representative” means a person licensed under the *Law Society Act* or an agent who is authorized to represent a party in the proceeding

“Rules” means the Human Resources Professionals Association Capacity Committee Rules of Procedure

“Vice Chair” means the Vice Chair of the Committee

Rule 2 – Application of Rules

2.1 These Rules apply to all proceedings before the Committee or a Panel.

Rule 3 – Waiving/Dispensing with Compliance

3.1 Compliance with these Rules may be waived on consent of the parties or dispensed with upon an Order of a Panel.

3.2 A Panel may refuse to dispense with compliance with these Rules where a party or participant does not act on a timely basis.

3.3 A Panel may dispense with compliance with these Rules on its own initiative, after giving notice to the parties or motion participants and providing an opportunity for submissions to be made.

Rule 4 – Interpretation

4.1 These Rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every part of the process in the proceeding.

4.2 Where matters are not provided for in these Rules or under the *Statutory Powers Procedure Act* (SPPA), the practice shall be determined by analogy to them.

Rule 5 – Computing Time (Deadlines)

5.1 Subject to 5.2, in computing time periods under these Rules

(a) Where there is a reference to a number of days between events, the days shall be counted by excluding the day on which the first event occurs and including the day on which the second event occurs

(b) Where a period of fewer than seven days is prescribed, holidays shall not be counted

(c) Where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) Where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received/effective on the next day that is not a holiday.

5.2 The Chair, Vice-Chair or a Panel may, at any time and on such terms and conditions as considered appropriate, lengthen or shorten the time for the performance of any obligation under these Rules.

Rule 6 – Representation

6.1 A Member may be self-represented or may be represented by a person licensed under the *Law Society Act* or by an agent.

6.2 Where a Representative ceases to act for a Member in the proceeding, the Member shall promptly notify the Committee and other parties in writing.

6.3 Where a party to a proceeding is not represented by a person licensed under the *Law Society Act* or an agent but acts in person, anything that these Rules permit or require a person licensed under the *Law Society Act* or an agent to do shall be done by the unrepresented party.

Rule 7 – Service and Filing

7.1 All documents required to be served under the Rules shall be served by one of the following methods:

- (a) By personal delivery to the party or the representative of the party
- (b) By delivery to an adult person at the premises at which the party resides, is employed or carries on business
- (c) By regular, registered or certified mail to the last known address of the party or the representative of the party
- (d) Electronically to the facsimile number or email address of the party or the representative of the party
- (e) By courier to the last known address of the party or the representative of the party
- (f) By any other means authorized or permitted by the Committee

7.2 Service is deemed to be effective, when delivered:

- (a) By personal delivery before 4:30 p.m. on the day of the delivery, and after that time, on the next day that is not a holiday
- (b) By mail, on the fifth day after the day of the mailing
- (c) Electronically, on the same day, provided that confirmation of receipt of the email is provided
- (d) By courier, on the earlier of the date on the delivery receipt or the second day after the document was given to the courier
- (e) By any other means authorized by the Committee, on the date specified by the Committee

7.3 All documents to be filed in a proceeding shall be filed in the Office of the Registrar by leaving it in person at the Office of the Registrar, sending it by courier to the Association or mailing it to the Association, marked to the attention of the Hearings Coordinator.

- 7.4 A document shall not be considered filed until it is actually received by the Office of the Registrar.
- 7.5 A person filing a document shall file five (5) copies of the document.
- 7.6 Filing shall not be deemed to be complete without proof of service.
- 7.7 A document to be served or filed by fax must include a cover page with sufficient information to identify the sender, recipient, number of pages sent including the cover page, a telephone number to call in case of transmission problems and the date and time of the transmission.

Rule 8 – Notice of Application

- 8.1 The Prosecutor shall cause a Notice of Application to be sent to the Member and to such other persons as a Panel may direct.
- 8.2 Unless otherwise directed, it is sufficient if the Notice of Application is sent thirty (30) days before the hearing date.
- 8.3 The Notice of Application shall be in writing and shall include:
- (a) A statement of the purpose of the hearing
 - (b) A statement of the time and place of the hearing, if known
 - (c) A reference to the statutory authority under which the hearing will be held
 - (d) A statement that the Member may have a Representative at the hearing, and
 - (e) A statement of the allegations against the Member, including a brief description of the particulars
 - (f) A statement that if the Member does not attend at the hearing, the Panel may proceed in the Member's absence and the Member will not be entitled to any further notice in the proceeding

Rule 9 – Motions

- 9.1 Motions shall be initiated by filing a Notice of Motion and shall identify the parties and describe the relief sought and evidence that will be relied upon.
- 9.2 All procedural or interlocutory matters and issues shall be raised by way of a motion as soon as possible, and shall be heard on a day and at a time fixed by staff that is convenient to the Chair, the Capacity Committee and the parties.
- 9.3 Any party initiating a motion shall do so at least fourteen (14) days before the day upon which a hearing is scheduled to commence, unless the nature of the motion requires that it be heard during the hearing itself.
- 9.4 The party or person initiating the motion shall deliver the Notice of Motion, and material to support the motion, by the Monday that is at least seven (7) days before the Motion is to be heard.

- 9.5 Any other motion participant who wishes to reply shall deliver responding material at least three (3) days before the Motion is scheduled to be heard.

Rule 10 – Evidence, Submissions and Materials on a Motion

- 10.1 Evidence on a motion shall be by affidavit or testimony.
- 10.2 A motion participant may not cross-examine the deponent of an affidavit unless the Chair, Vice Chair, a Committee member designated by the Chair, or the Panel otherwise directs, having concluded that the proper determination of the issues in the motion requires such cross-examination.
- 10.3 Time limits on oral submissions shall be limited to thirty (30) minutes for the party or person initiating the motion, thirty (30) minutes for the responding persons or parties, and a further and final ten (10) minutes for the initiating party or person by way of reply.
- 10.4 The party or other person initiating the motions shall deliver the Notice of Motion, materials in support of the Motions and any written argument in the form of a Motion Record.
- 10.5 The Motion Record shall contain all materials to be relied upon.
- 10.6 If any other motion participant or party has materials it wishes to rely upon, it shall prepare a Motion Record containing all of those materials and deliver them pursuant to these Rules.

Rule 11 – Disclosure

- 11.1 Subject to Rule 11.5, a Panel may at any time order a party to provide to another party such further information or documents as the Panel considers necessary for a proper determination of the issues in the proceeding.
- 11.2 The Prosecutor shall deliver to the Member and/or the Member's Representative copies of all documents that the Association intends to produce or enter as evidence at the hearing, as soon as is reasonably practicable after the Notice of Application is serviced, and in any case, at least twenty (20) days before the commencement of the hearing on the merits or as determined by a Panel as the circumstances require.
- 11.3 The Prosecutor shall notify the Member and/or the Member's Representative and file with the Hearings Coordinator a list of the witnesses the Association intends to call to testify on the Association's behalf at the hearing, at least 10 days before the commencement of the hearing.
- 11.4 If the Association intends to call an expert witness at the hearing, the Prosecutor shall at least thirty (30) days before the commencement of the hearing, serve the Member and/or the Member's Representative with a written report signed by the expert containing the name, address and qualifications of the expert and the substance of the expert's proposed evidence including a list of all documents to which the expert will refer.
- 11.5 The Association's disclosure obligations are not reciprocal.

Rule 12 – Request to issue a Summons

- 12.1 At the request of a party, a summons to a witness may be issued pursuant to section 12 of the SPPA.
- 12.2 The issuance of or a refusal to issue a summons may be reviewed by a Panel by motion filed in accordance with Rule 9.
- 12.3 Once a summons is served, it is effective for the duration of the hearing, provided that the witness is advised of the adjourned dates.

Rule 13 – Evidence

- 13.1 The Panel may receive and act on any facts agreed on by the parties without further proof.
- 13.2 The Panel may direct the form in which written evidence shall be filed.
- 13.3 The Panel may admit a copy of a document or other thing as evidence at a hearing if it is satisfied that the copy is authentic.
- 13.4 Where a document has been filed at a hearing, and the Panel consents, the party who filed it may cause a photocopy to be made, after which a member of the Panel may certify the photocopy to be a true copy and authorize the release of the original to the party.
- 13.5 A copy certified by a member of the Panel to be a true copy of a document filed at a hearing is admissible in proceedings in which the document is admissible as evidence.
- 13.6 At a hearing the Panel may admit any evidence, including hearsay, relevant to the subject-matter of the proceeding.
- 13.7 Subject to Rule 13.6, the Panel may admit as evidence at a hearing, whether or not it would be admissible as evidence in a court:
 - (a) Any oral testimony
 - (b) Any document or thing
- 13.8 The Panel may exclude any evidence that is unduly repetitious.
- 13.9 The Panel shall exclude any evidence that is inadmissible because
 - (a) It would be inadmissible in court by reason of any privilege under the law of evidence
 - (b) It is inadmissible under the *Registered Human Resources Professionals (RHRP) Act, 2013* or any other Act.

Rule 14 – Access to Documents

- 14.1 Documents required to be filed or received in evidence in proceedings shall not be available to the public.

- 14.2 Any document filed with the Office of the Registrar or any document received in evidence or transcript of the proceeding shall be kept confidential pursuant to section 9 of the SPPA.

Rule 15 – Pre-Hearing Conferences

- 15.1 The parties and/or their Representatives may choose to participate in one or more pre-hearing conferences prior to or during the hearing.
- 15.2 The issues to be dealt with at the pre-hearing conference may include any of the following:
- (a) Settlement of any or all of the issues in dispute
 - (b) Simplification of the issues
 - (c) Facts or evidence that may be agreed upon
 - (d) Dates by which any steps in the proceeding are to be taken or begun
 - (e) Estimated duration of the hearing
 - (f) Any other matter that may assist in the just and most expeditious disposition of the proceeding
- 15.3 The pre-hearing conference may be held:
- (a) In person
 - (b) By electronic conferencing if the Committee believes that no party will suffer significant prejudice as a result of the electronic format and both parties agree to proceed via an electronic hearing.
- 15.4 In order to encourage a full and frank exchange of views, a pre-hearing conference shall be confidential and conducted in private on a without prejudice basis.
- 15.5 The Chair of the Capacity Committee shall designate a person to be the Presider at a pre-hearing conference (“Presider”). The Presider shall be a member of the Capacity Committee who does not have a conflict of interest.
- 15.6 The Presider may make such procedural orders as he or she considers appropriate, in light of the parties’ submissions and applicable legal principles of law.
- 15.7 Neither the Presider nor any other Capacity Committee member who attends the pre-hearing conference shall participate in the hearing.
- 15.8 Subject to these rules only, the Presider shall not discuss any of the issues or any other matters or make any communication with any person or committee, other than through his or her report.
- 15.9 The Prosecutor shall complete a Pre-Hearing Conference Memorandum in accordance with the form attached hereto as Form 3, entitled, “Pre-Hearing Conference Memorandum.”
- 15.10 The Association shall prepare all documents it deems necessary to assist in achieving the purposes of the pre-hearing conference and addressing the issues described in Rule 15.2.

- 15.11 The Prosecutor shall deliver to the Member and to the Presider the Association's Pre-Hearing Conference Memorandum and supporting documentation no later than five (5) business days in advance of the pre-hearing conference date.
- 15.12 The Member shall deliver to the Prosecutor and to the Presider his or her Pre-Hearing Conference Memorandum in accordance with the form attached hereto as Form 3, entitled, "Pre-Hearing Conference Memorandum" and any supporting documentation no later than two (2) business days in advance of the pre-hearing conference date.
- 15.13 The purpose of delivery of the Pre-Hearing Conference Memorandum and the supporting documentation in advance of the pre-hearing conference is to provide the other party and the Presider an opportunity to review the materials prior to the date of the pre-hearing conference.
- 15.14 If appropriate, after the pre-hearing conference, the Presider shall prepare a report in accordance with Form 4 listing every agreement reached and every order made. This report shall be given to the parties and may be used at the discipline hearing by either party.

Rule 16 – Hearings

- 16.1 Where a Notice of Application has been served on any party in compliance with Rule 8 and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.
- 16.2 A hearing may be held:
- (a) In person
 - (b) By electronic conferencing if the Committee believes that no party will suffer significant prejudice as a result of the electronic format and both parties agree to proceed via an electronic hearing.
- 16.3 Capacity hearings shall not be open to the public.
- 16.4 Unless the Panel directs otherwise, at the beginning of the hearing each party may be asked to give a brief opening statement that describes the issues that the party will address at the hearing.
- 16.5 The opening statements will be made in the following order:
- (a) The Association
 - (b) The Member
- 16.6 Evidence at the hearing shall be presented by the parties in the order directed by the Panel and, in the absence of any such direction, in the following order:
- (a) The Association
 - (b) The Member, and possibly
 - (c) The Association (limited to matters properly raised in reply)
- 16.7 In addition to any questions asked in examination in chief or in cross examination, the Panel may ask any questions of the witness, subject to the right of all parties to ask questions of the witness regarding the matters raised by the Panel.

- 16.8 Oral examination of witnesses shall be conducted under oath or affirmation that their evidence is true.
- 16.9 Witnesses shall be excluded from the hearing until they are called to provide their testimony unless both parties agree otherwise.
- 16.10 If the capacity committee determines that it is necessary to obtain the opinion of a physician or psychologist in order to determine whether a member is incapacitated, the committee may, on its own or on motion, order the member to undergo a medical or psychological examination.

Rule 17 – Decisions

- 17.1 A Panel may either announce its decision orally at the end of the hearing or reserve its decision.
- 17.2 A Panel shall issue a final written decision, which shall be the official decision.
- 17.3 If there is a discrepancy between an oral decision and the written decision, the written decision shall prevail.
- 17.4 The Panel shall send to all parties and/or their Representatives a copy of its final decision including the reasons.
- 17.5 The Panel may send its decision and reasons using any method permitted in Rule 7.1.
- 17.6 A Panel decision is effective from the date of the written decision unless the Panel provides otherwise in the decision.