

Human Resources Professionals Association Appeal Committee Rules of Procedure for Hearings

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 Unless otherwise specified, or unless the context requires otherwise, in these Rules:

“Act” means the *Registered Human Resources Professionals Act*, 2013, S.O. 2013, c. 6;

“Appeal” means an appeal of a decision or order of the Discipline Committee, the Capacity Committee or the Review Committee of the Association made pursuant to the By-laws;

“Appellant” is a person who commences an appeal by making a request to the Registrar pursuant to the procedure set out in the By-laws and these Rules;

“Association” means the Human Resources Professionals Association;

“By-laws” means the General By-Laws (By-Law 1) of the Association;

“Chair” means the Chair of the Committee;

“Committee” means the Appeal 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; and
- (g) any special holiday proclaimed by the Governor General or Lieutenant Governor;

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

“Panel” means a panel of the Appeal Committee that is hearing the appeal;

“Parties” means the Appellant and the Respondent, and “Party” means either of them;

“Proceeding” means any step in the Appeal process;

“Process” means any event in the Appeal context, following the issuance of a Notice of Hearing;

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

“Respondent” means the party to the proceeding from which the Appellant appeals, other than the Appellant, and can include the Member who is the subject of the proceeding;

“Rules” means the Human Resources Professionals Association Appeal Committee Hearing Rules of Procedure;

“SPPA” is the *Statutory Powers Procedures Act, 1990*;

“Vice Chair” means the Vice Chair of the Committee.

Rule 2 – Application of Rules

- 2.1 These Rules apply to hearings before the Committee.
- 2.2 The Rules shall be liberally interpreted and applied by the Committee to facilitate a fair, open and accessible process and to secure the most just, timely and least expensive resolution of every proceeding.
- 2.3 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.
- 2.4 The Committee may issue practice directions from time to time to explain or clarify these Rules.

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, upon such terms as are just, after giving notice to the parties or motion participants and providing an opportunity for submissions to be made.

Rule 4 – Computing Time (Deadlines)

- 4.1 Subject to Rule 5.2, in computing time periods under these Rules or under an order, except where the contrary intention appears:
 - (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.

4.2 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 5 – Commencement of Appeal

- 5.1 A person shall commence an appeal by delivering to the Registrar a completed Request for Appeal Form, in the form available from the Registrar, within 30 days after notice of the decision, order or disposition being appealed is deemed to have been received by the appellant.
- 5.2 The request for appeal must set out the decision, order or disposition being appealed, the grounds for the appeal, the order sought and any other information requested on the form.
- 5.3 The grounds of appeal are limited to a denial of natural justice or an error on the record of the decision of the Discipline Committee, the Capacity Committee or the Review Committee.
- 5.4 Upon receipt of a request for appeal, the Registrar shall prepare sufficient quantities of the record of the decision or order under appeal for the parties and the Committee.
- 5.5 The Appellant is responsible for the costs of preparing sufficient quantities of the record.
- 5.6 Unless the Committee Chair concludes that the appeal is frivolous or vexatious or without merit, or that the Committee does not have jurisdiction to grant the order sought on the appeal, the Committee shall consider the appeal.
- 5.7 Where the Committee Chair determines that the appeal is frivolous or vexatious or without merit, or that the Committee does not have jurisdiction to grant the order sought on the appeal, the Committee Chair shall notify the appellant that the Committee Chair intends to dismiss the appeal. The appellant may within thirty days (30 days) provide written submissions, including additional information or evidence as to why the appeal should proceed. The Committee Chair shall assign a Panel of three or more members of the Committee, who do not have a conflict of interest, to consider any written submissions provided by the appellant and to determine whether the appeal shall proceed. If the panel determines that the appeal is frivolous or vexatious or without merit, or that the Committee does not have jurisdiction to grant the order sought on the appeal, the panel shall dismiss the appeal.

Rule 6 – Parties and Representation

- 6.1 The parties to an appeal are the Appellant and the Respondent, including, but not limited to the Registrar of the Association or a delegate, and any other interested person as determined by the Appeals Committee.
- 6.2 An Appellant may be self-represented or may be represented by a person licensed under the *Law Society Act* or by an agent.
- 6.3 The Committee does not assign or pay for the costs of retaining a Representative.
- 6.4 If a party is represented, the party or his or her Representative must notify the Committee in writing.
- 6.5 Where a Representative ceases to act for an Appellant in a proceeding, the Appellant shall promptly notify the Committee and other parties in writing.
- 6.6 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; and
 - (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; and
 - (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 Appeal

- 8.1 The Committee shall appoint a time and place for the hearing of the appeal.
- 8.2 An appeal may be conducted in-person or electronically (i.e. by way of telephone or video-conferencing).
- 8.3 The Committee, through the Office of the Registrar, shall provide the parties with written notice of an appeal.
- 8.4 The notice of an appeal shall include:
- (a) a statement of the date, time and place for the appeal and details about the manner in which the appeal will be held, including information such as telephone numbers and conference entry codes necessary for accessing an electronic proceeding;
 - (b) a reference to the statutory authority under which the appeal will be held;
 - (c) a statement that the Appellant may have a Representative at the appeal;
 - (d) a statement that if the Appellant or his or her Representative does not participate in the appeal in accordance with the notice, the Committee may proceed without the party's participation;
 - (e) a statement of the purpose of the appeal;
 - (f) a statement that the appeal will be open to the public unless the Panel directs otherwise or the appeal is from a decision of the Capacity Committee; and
 - (g) any other information the Committee considers advisable.

Rule 9 – Abandonment and Withdrawals

- 9.1 The Committee may deem that an Appellant has abandoned an appeal if:
- (a) the Appellant cannot be contacted despite reasonable efforts by the Committee; or
 - (b) the Appellant fails to diligently pursue the appeal.
- 9.2 If the Committee is of the opinion that the appeal should be dismissed as abandoned under this Rule, the Committee will notify the Appellant and provide the basis for its decision, and provide the Appellant with an opportunity to pursue the appeal by contacting the Committee through the Office of the Registrar.
- 9.3 If the Appellant does not contact the Committee within 30 days of receipt of the Committee's notice under this Rule, the Committee may deem the appeal abandoned and dismiss the appeal.
- 9.4 An Appellant may withdraw his or her appeal by notifying the Committee in writing of the decision to withdraw the appeal.

Rule 10 – Request to Issue a Summons

- 10.1 At the request of a party, a summons to a witness may be issued pursuant to section 12 of the *Statutory Powers Procedures Act, 1990*.
- 10.2 The issuance of or a refusal to issue a summons may be reviewed by a Panel by a motion
- 10.3 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 11 – Public Access to Documents

- 11.1 Subject to Rule 11.2, and excluding appeals from decisions of the Capacity Committee documents required to be filed or received in evidence in Proceedings shall be available to the public.
- 11.2 At the request of a party or person, the Panel may order that any document filed with the Office of the Registrar or any document received in evidence or transcript of the proceeding be kept confidential pursuant to section 9 of the *Statutory Powers Procedures Act, 1990*.
- 11.3 A party or person who makes a request pursuant to Rule 11.2 shall advise the Panel of the reasons for the request.
- 11.4 The Panel may, if it is of the opinion that there are valid reasons for restricting access to a document, declare the document confidential and make such other orders as it deems appropriate.

Rule 12 – Disclosure

- 12.1 Every party to an appeal shall provide all other parties to the appeal with a copy of all documents that the party intends to rely upon in the appeal at least ten (10) days in advance of the date set for the appeal.
- 12.2 A party wishing to rely upon documents not already disclosed to a party or to the Committee shall deliver a copy of the documents to the other party and the Committee, as directed by the Committee.

Rule 13 – Case Conferences

- 13.1 If the Committee deems it necessary, it may require the parties to participate in a case conference prior to the appeal.
- 13.2 At a case conference, the Committee may direct the parties to consider and discuss one or more of the following and may make orders or directions about:
- (a) identifying, clarifying and narrowing the issues;
 - (b) documents to be disclosed and the method and timing of disclosure;
 - (c) any matters related to the scheduling of the proceedings;
 - (d) estimated duration of the proceedings;
 - (e) special requirements or accommodations;
 - (f) settlement of any or all of the issues; and

- (g) any other matter that may assist in the just and most expeditious disposition of the proceeding.
- 13.3 The case conference shall be held by electronic conferencing, unless the Chair or Vice Chair of the Committee determines that an in-person case conference is required.
- 13.4 The case conference shall be held in the absence of the public. The case conference shall be confidential and conducted on a without prejudice basis. Statements made by the parties at the case conference cannot be used in the proceeding or any future proceedings and cannot be relied upon by any of the parties other than during the case conference.
- 13.5 The Chair of the Committee shall designate a person to be the Presider at a case conference (“Presider”). The Presider shall be a member of the Committee who does not have a conflict of interest.
- 13.6 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.
- 13.7 Neither the Presider nor any other Committee member who attends the case conference shall participate in the appeal unless the parties consent.
- 13.8 The Presider may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding. Such orders shall be deemed to be orders of the Committee.
- 13.9 If the parties come to an agreement at a case conference regarding procedural steps in a proceeding, the Committee may convert such agreement into a consent order of the Committee.
- 13.10 If appropriate, after the case conference, the Presider shall prepare a report setting out every agreement reached and every order made.

Rule 14 – Hearing of Appeal

- 14.1 Where a Notice of Appeal 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.
- 14.2 The Chair shall assign a Panel of three or more members of the Committee, who do not have a conflict of interest, to hear the appeal.
- 14.3 A hearing may be held:
- (a) in person; or
 - (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.
- 14.4 Subject to Rule 14.5, a hearing shall be open to the public, except
- (a) Where the decision, order or disposition appealed from was made by the Capacity Committee, the hearing of the appeal shall be closed;

- (b) Where the decision, order or disposition appealed from was made by the Discipline Committee or the Review Committee pursuant to a closed hearing, the hearing of the appeal shall also be closed; and
 - (c) When having regard to the circumstances, the Panel is of the opinion that intimate financial, personal or other matters may be disclosed at the hearing and that the desirability of avoiding that disclosure in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, pursuant to section 9 of the *SPPA*.
- 14.5 If a party wishes that all or part of a hearing be closed to the public, the party shall so request at the commencement of the hearing before the Panel, pursuant to section 9 of the *SPPA*. The Panel will decide whether all or part of the hearing should be closed to the public based on the facts of each case.
- 14.6 Where the hearing of the appeal is closed, the date and time of the hearing shall be published in the normal course, except that where the decision, order or disposition appealed from was made by the Capacity Committee, in which case the date and time of the hearing shall not be published.
- 14.7 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.
- 14.8 The opening statements will be made in the following order:
- (a) the Appellant; followed by
 - (b) the Respondent(s).
- 14.9 The Chair shall specify the time to be allotted to the Appellant and the Respondent(s) for oral argument and reply on the appeal.
- 14.10 The Committee shall notify the Appellant and the Respondent(s) of the time allotted to them for oral argument and reply on the appeal as soon as practicable after it is specified by the Chair.
- 14.11 The Appellant and the Respondent(s) shall limit their oral argument and their reply on the appeal to the time allotted to them.
- 14.12 If it is in the interest of justice, a member of a Panel may give special directions and vary the time limits imposed on the Appellant or the Respondent under Rule 14.7.
- 14.13 The Panel may ask questions of the parties at any time.

Rule 15 – Fresh Evidence

- 15.1 Subject to Rule 15.2, a party who wishes to introduce at the hearing of the appeal evidence that was not before the Discipline Committee, the Capacity Committee or the Review Committee shall make a motion to the Committee to do so.
- 15.2 A motion under Rule 15.1 shall be heard on the date on which the appeal is scheduled to be heard.

- 15.3 The Committee shall not permit additional or fresh evidence to be introduced at the hearing, other than evidence about the process followed by the Discipline Committee, the Capacity Committee or the Review Committee for the purpose of demonstrating that there was a denial of natural justice, unless the additional or fresh evidence:
- (a) is apparently credible;
 - (b) if admitted, would probably have an important influence on the result; and
 - (c) could not have been obtained by reasonable diligence at the time of the original decision.
- 15.4 Rule 15.1 does not apply where the parties consent to the introduction at the hearing of the appeal of evidence that was not before the Discipline Committee, the Capacity Committee or the Review Committee.

Rule 16 – Decision and Reasons

- 16.1 Following a hearing, a Panel may:
- (a) make any decision or order that could have been made by the committee that made the order, decision or disposition that is the subject of the Proceeding;
 - (b) order a new proceeding before a new panel of the committee that made the order, decision or disposition that is the subject of the Proceeding; or
 - (c) dismiss the appeal.
- 16.2 The Committee may not make any decision or order that would contravene the Act or the By-laws.
- 16.3 A decision or order of a Panel shall be made in writing, with reasons for the decision or order.
- 16.4 The Panel shall send to all parties and/or their Representatives a copy of its final decision or order, including the reasons.
- 16.5 The Panel may send its decision and reasons using any method permitted in Rule 7.1.
- 16.6 A Panel decision is effective from the date of the written decision unless the Panel provides otherwise in the decision.
- 16.7 A decision or order of the Committee is final.

Rule 18 – Costs

- 18.1 Subject to Rules 18.2 and 18.3, where the Appellant or Respondent is a member or firm and the Association seeks costs of the appeal, the Committee may order that the Appellant or Respondent pay costs.
- 18.2 Costs may only be ordered against a Party under Rule 18.1 where the conduct of the Party has been unreasonable, frivolous or vexatious or the Party has acted in bad faith.
- 18.3 The costs ordered under Rule 18.1 may include costs incurred by the Association arising from the appeal.