

**BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL
RULES OF PRACTICE AND PROCEDURE**

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PART 1 – GENERAL

Rule 1 – Purpose of Rules, Guides, and Practice Directions

- (1) The purpose of these rules is to facilitate the just and timely resolution of complaints filed with the tribunal under the *Human Rights Code*, R.S.B.C. 1996, c. 210, as amended (the “Code”).
- (2) The tribunal may publish guides and information sheets to assist participants in using these rules and completing the forms required under these rules.
- (3) The chair may issue practice directions to provide information or set requirements for tribunal practice and procedure.

Rule 2 – Definitions

For the purpose of these rules,

- (1) “address for delivery” means a current postal address in British Columbia filed under rule 7, and may include a fax address in British Columbia;
- (2) “application” means a request for an order from the tribunal made under part 6 of these rules;
- (3) “business day” means 8:30 to 4:30 Monday through Friday, excluding holidays;
- (4) “complaint” means a complaint filed under rule 10;
- (5) “complainant” means a person or a group of persons that files a complaint and any person that the tribunal adds as a complainant;
- (6) “document” has an extended meaning and includes a paper, letter, book, map, drawing, photograph, film, recording of sound, computer disk, CD ROM, and any other thing on which information is recorded or stored;
- (7) “file” means effective delivery of a communication to the tribunal under rule 8, and effective delivery of a complaint to the tribunal under rule 10;
- (8) “intervenor” means a person or group of persons allowed by order of the tribunal to intervene in a complaint;
- (9) “member” means:
 - (a) a member of the tribunal;
 - (b) the member designated as chair; or
 - (c) a panel of members;
- (10) “participant” means:
 - (a) a complainant [see rule 2(5)];
 - (b) a respondent [see rule 2(12)];

- (c) an intervenor [see rule 2(8)];
 - (d) a person or group of persons who makes an application under part 6 of these rules; or
 - (e) a person or group of persons who may be affected by an application made under part 6 of these rules;
- (11) “party” means a complainant or a respondent;
- (12) “respondent” means a person or persons against whom a complaint is made and any person that the tribunal adds as a respondent;
- (13) “tribunal” means the British Columbia Human Rights Tribunal established under section 31 of the Code, and includes a member, a case manager, and the registrar.

Rule 3 – Application of Rules and Tribunal Powers

Application

- (1) All participants must comply with these rules and any practice directions issued under rule 1(3), unless the tribunal orders or directs otherwise.

Tribunal powers

- (2) A member may exercise any power under these rules on the member’s own initiative or on the application of a participant.
- (3) A member may waive or vary these rules and may shorten or lengthen any time limits in these rules, as the member considers appropriate in the circumstances.

Rule 4 – Effect of Non-compliance with these Rules

Effect of non-compliance with these rules

- (1) If a participant fails to comply with these rules, a decision, order, or direction of the tribunal made under these rules, or a practice direction issued under rule 1(3), a member may, in addition to any order made under rule 4(3) or 4(6):
- (a) order costs under rule 31, if the participant failing to comply is a complainant or respondent; and/or
 - (b) make any other decision or order the member considers appropriate in the circumstances.

Failure to disclose documents and witnesses

- (2) For the purpose of this rule, "document" includes a witness list, witness statement, expert report, and a summary of an expert report.

- (3) If a participant fails to comply with these rules, a decision, order or direction of the tribunal made under these rules, or a practice direction issued under rule 1(3), requiring disclosure of any document:
- (a) the participant may not introduce the document as evidence without leave of a member;
 - (b) the participant may not call as a witness a person whose name, witness statement, expert report or summary of an expert report was not disclosed as required, without leave of a member; and
 - (c) a member may make any decision or order the member considers appropriate in the circumstances, including:
 - (i) adjourning a settlement meeting, pre-hearing conference or hearing; and
 - (ii) if the participant is a complainant or respondent, ordering the complainant or respondent to pay the costs incurred by any other participants as a result of the adjournment.

Failure to pursue a complaint

- (4) If a complainant fails to respond to communications from the tribunal or otherwise fails to pursue the complaint, the tribunal may deliver a notice to the complainant at the complainant's address for delivery requiring the complainant to diligently pursue the complaint.
- (5) The notice will advise the complainant that a member may dismiss the complaint as abandoned unless the complainant responds to the notice within the time allowed by the tribunal.
- (6) If the complainant does not respond to the tribunal's notice within the time allowed by the tribunal, a member may dismiss the complaint.

Technical defects

- (7) Any technical defect or irregularity in form will not invalidate the tribunal's proceedings and does not constitute non-compliance with these rules.

Rule 5 – Representation before the Tribunal

How participants may be represented

- (1) A participant may be represented by an agent or a lawyer, or may participate without representation.

Withdrawal of lawyer or agent

- (2) If a participant's lawyer or agent withdraws from representing the participant, that lawyer or agent must immediately:
 - (a) file a notice that he or she has withdrawn and that his or her client has been notified; and
 - (b) deliver a copy of the notice to all other participants.

Rule 6 – Public Proceedings

- (1) For the purpose of this rule, "complaint file" means the record of communications maintained by the tribunal regarding a complaint, including all communications filed with the tribunal or delivered by the tribunal to the participants, except:
 - (a) notes made by a member; and
 - (b) information received by the tribunal in the course of attempting to reach a settlement of a complaint.
- (2) The tribunal's proceedings are public and the information in a complaint file, including personal information, may be disclosed to members of the public in the following circumstances:
 - (a) if the tribunal publishes a preliminary decision;
 - (b) at a hearing;
 - (c) in a final decision of the tribunal;
 - (d) in a judicial review concerning a complaint;
 - (e) if a person makes a successful application under the *Freedom of Information and Protection of Privacy Act*; and
 - (f) under rule 6(3).
- (3) If a complaint has not settled three months before the dates scheduled for hearing, the following parts of the complaint file, except participants' addresses, phone numbers and fax numbers, will be available to the public:
 - (a) the Complaint Form (Form 1) and the Representative Complaint Form (Form 2);
 - (b) the Response to Complaint Form (Form 3);
 - (c) the Time Limit Response Form (Form 4) and Time Limit Reply Form (Form 5);
 - (d) a complainant's particulars of the remedy sought and a respondent's response to the particulars of the remedy sought;
 - (e) tribunal notices regarding the hearing of the complaint; and

- (f) any preliminary decision regarding the complaint.
- (4) Preliminary and final decisions of the tribunal may be published on the tribunal's website.
- (5) A participant who wants the tribunal to make an order limiting public disclosure of personal information must apply to the tribunal under rule 24 setting out the reasons why that participant's privacy interests outweigh the public interest in access to the tribunal's proceedings.

PART 2 – FILING AND DELIVERY OF COMMUNICATIONS

Rule 7 – Address for Delivery

Address for delivery

- (1) Every participant must file a notice of the participant's address for delivery.

Address if lawyer or agent

- (2) If a participant is represented by a lawyer or agent, the participant must give the postal address of the lawyer or agent as the participant's address for delivery.

Change of address

- (3) If a participant's address for delivery changes, the participant must immediately:
 - (a) file notice of the change; and
 - (b) deliver a copy of the notice of the change to all other participants.

Deemed delivery

- (4) If the tribunal or another participant delivers a communication to a participant's address for delivery under rule 9, that participant is deemed to have notice of the communication.

Rule 8 – Filing with the Tribunal

How to file communications with the tribunal

- (1) A participant may file a communication with the tribunal by mail, fax, hand, courier or process server.

Filing by fax

- (2) If a participant wishes to file a communication by fax that is longer than 20 pages, the participant must first telephone the tribunal to obtain permission.

Filing outside of business days

- (3) A communication received by the tribunal outside of a business day is deemed to be filed on the next business day.

If time for filing falls on a day that is not a business day

- (4) If the date a participant must file a communication falls on a day that is not a business day, the participant may file the communication the next business day.

Complaint name and case number

- (5) A participant must include the complaint name and case number on any communication that the participant files.

Communications addressed to registrar

- (6) A participant must address any communication that the participant files to the registrar, unless the tribunal directs otherwise.

Delivery to other participants

- (7) A participant must deliver to the other participants any communication that the participant intends to file with the tribunal:
 - (a) before filing the communication, if required by another rule or a decision, order or direction of the tribunal; and
 - (b) in every other case, at the same time that the participant files the communication.

Communications between participants

- (8) A participant must not file a copy of their communications to another participant, unless the communication is filed to support the participant's position on an application under part 6 of these rules.

Rule 9 – Delivering Communications to Participants

Communications to participants

- (1) The tribunal or a participant may deliver a communication to a participant by:

- (a) mailing the communication to the participant's address for delivery by regular or registered mail;
- (b) delivering the communication by hand, courier or process server to the participant's address for delivery; or
- (c) faxing the communication to the participant's fax address for delivery.

Proof of delivery

- (2) If the tribunal requires proof of delivery, a participant may prove delivery by:
 - (a) an affidavit from the deliverer setting out the time, date and method of delivery;
 - (b) a copy of "Canada Post's Certificate of Delivery Confirmation – Registered Mail";
 - (c) a fax transmittal sheet; or
 - (d) having the deliverer testify under oath or solemn affirmation at a hearing as to the time, date, and method of delivery.

Deemed date of delivery

- (3) If a communication is delivered by mail to a participant's address for delivery, the communication is deemed to be delivered 7 days after it was mailed unless there is evidence to the contrary.
- (4) If a communication is delivered outside of a business day, the communication is deemed to be delivered on the next business day.

If time for delivery falls on a day that is not a business day

- (5) If the date a participant must deliver a communication falls on a day that is not a business day, the participant may deliver the communication on the next business day.

Alternative methods of delivery

- (6) If ordinary methods of delivery have not been or are not likely to be effective, the tribunal may permit or require an alternative method of delivery.

PART 3 – MAKING A COMPLAINT AND RESPONDING TO A COMPLAINT

Rule 10 – Making A Complaint

Completing complaint form

- (1) To make a complaint, a person must:
 - (a) complete a Complaint Form (Form 1); and
 - (b) file the completed Complaint Form.

How to file a complaint

- (2) A person may file a complaint by mail, fax, hand, courier, process server, or email.

Filing by email

- (3) If a person files a complaint by email, the person must file the signed copy of the Complaint Form by mail, fax, hand, courier, or process server within 21 days from the date the unsigned Complaint Form was filed by email.
- (4) If the person does not file the signed Complaint Form within 21 days, the tribunal may refuse to accept the complaint for filing.
- (5) If the person files the signed Complaint Form within 21 days, the tribunal will treat the complaint as filed on the day it was first filed by email rather than on the day the signed form was filed.

Time limit for filing complaint

- (6) A person must file a complaint:
 - (a) within 6 months of the alleged contravention of the Code; or
 - (b) if a continuing contravention of the Code is alleged, within 6 months of the last alleged instance of the contravention.
- (7) A member may accept all or part of a complaint filed after the expiration of the 6-month time limit if the member determines that:
 - (a) it is in the public interest to accept the complaint; and
 - (b) no substantial prejudice will result to any person because of the delay [see rule 14].

Complaints filed on behalf of another person

- (8) To make a complaint on behalf of another person, a person must also:
- (a) complete a Representative Complaint Form (Form 2); and
 - (b) file the completed Representative Complaint Form with the completed Complaint Form by mail, fax, hand, courier, process server, or email.

Group or class complaints

- (9) To make a complaint on behalf of a group or class of persons, a person must also:
- (a) complete a Representative Complaint Form (Form 2); and
 - (b) file the completed Representative Complaint Form with the completed Complaint Form by mail, fax, hand, courier, process server, or email.

Rule 11 – Screening of Complaints

Tribunal will screen

- (1) When a complaint is filed, the tribunal will screen the complaint to ensure that:
- (a) the Complaint Form and, if applicable, the Representative Complaint Form, is complete; and
 - (b) the complaint appears to be within the jurisdiction of the tribunal.

Screening the form of complaint

- (2) If the Complaint Form or the Representative Complaint Form is not complete, the tribunal will deliver the incomplete form to the complainant, identifying the part of the form that is not complete.
- (3) The complainant must file the completed form within the time allowed by the tribunal.
- (4) If the complainant does not file the completed form within the time allowed, the tribunal may refuse to accept the complaint for filing.
- (5) If the complainant files the completed form within the time allowed, the tribunal will treat the complaint as filed on the day it was first filed rather than the day the completed form was filed.

Screening for lack of jurisdiction

- (6) If it appears that the tribunal may not have jurisdiction to proceed with the complaint, the tribunal will deliver a notice to the complainant setting out the reason why it appears that the tribunal may not have jurisdiction.

- (7) The complainant must file a response to the tribunal's notice within the time allowed by the tribunal.
- (8) Once the complainant has filed a response, or the time allowed for filing the response has passed, a member will decide either that:
 - (a) the tribunal will proceed with the complaint; or
 - (b) the tribunal does not have jurisdiction to proceed and will refuse to accept the complaint for filing with written reasons for that decision.
- (9) A decision to proceed with the complaint under rule 11(8)(a) is not a final decision that the tribunal has jurisdiction over the complaint.

Rule 12 – Notice to Respondents

When the tribunal has screened the complaint under rule 11, the tribunal will deliver a notice of the complaint to the respondent, including:

- (a) a copy of the Complaint Form;
- (b) a copy of the Representative Complaint Form, if applicable; and
- (c) a copy of any decision made under rule 11(8)(a).

Rule 13 – Responding to a Complaint

How to respond

- (1) To respond to a complaint, a respondent must:
 - (a) complete a Response to Complaint Form (Form 3);
 - (b) deliver a copy of the completed Response to Complaint Form to the complainant [see rule 9]; and
 - (c) file the completed Response to Complaint Form [see rule 8].

Time limit for responding to complaint filed within time limit

- (2) A respondent must respond to a complaint that is filed within the 6-month time limit within 35 days from the date on the tribunal's notice to the respondent of the complaint.

Time limit for responding to complaint filed outside time limit

- (3) A respondent must respond to a complaint that is filed outside the 6-month time limit within 35 days from the date on the tribunal's notice to the participants that it has accepted the complaint for filing outside the 6-month time limit [see rule 14].

Time limit for responding if early settlement meeting

- (4) The tribunal will extend the time limits under this rule for filing the respondent's Response to Complaint Form if:
 - (a) the complainant has stated an interest in an early settlement meeting in section M of the Complaint Form; and
 - (b) the respondent has advised the tribunal within the time allowed by the tribunal that they are interested in an early settlement meeting.

Screening the response to complaint

- (5) When a Response to Complaint Form is filed, the tribunal will screen the form to ensure that it is complete.
- (6) If the form is not complete, the tribunal will deliver a copy of the incomplete form to the respondent identifying the part of the form that is incomplete.
- (7) The respondent must file the completed form within the time allowed by the tribunal.
- (8) If the respondent does not file the completed form within the time allowed, the tribunal may:
 - (a) proceed based on the incomplete form; or
 - (b) deliver a notice of hearing to the participants under rule 35.
- (9) If the respondent files the completed form within the time allowed, the tribunal will accept the form.

Failure to respond

- (10) If a respondent does not file a Response to Complaint Form within the time allowed, the tribunal will deliver a notice of hearing to the participants under rule 35.

Rule 14 – Complaints Filed Outside Time Limit

Completing a request to file a complaint outside time limit

- (1) If a complainant files a complaint outside the 6-month time limit, the complainant must complete section G of the Complaint Form.

Tribunal will deliver notice of request to file complaint outside time limit

- (2) The tribunal will deliver notice of the request to file the complaint outside the 6-month time limit to the respondent and complainant, including:

- (a) a copy of the Complaint Form and a blank Time Limit Response Form (Form 4) for the respondent; and
- (b) a copy of a blank Time Limit Reply Form (Form 5) for the complainant.

Opportunity to respond to request

- (3) If a respondent wants to respond to the complainant's request to file the complaint outside the 6-month time limit, the respondent must, within 21 days from the date on the tribunal's notice of the request to file the complaint outside the 6-month time limit:
 - (a) complete a Time Limit Response Form (Form 4);
 - (b) deliver a copy of the completed Time Limit Response Form to the complainant [see rule 9]; and
 - (c) file the completed Time Limit Response Form [see rule 8].

Opportunity to reply to response

- (4) If a complainant wants to reply to the respondent's Time Limit Response Form, the complainant must, within 35 days from the date on the tribunal's notice of the request to file the complaint outside the 6-month time limit:
 - (a) complete a Time Limit Reply Form (Form 5);
 - (b) deliver a copy of the completed Time Limit Reply form to the respondent [see rule 9]; and
 - (c) file the completed Time Limit Reply Form [see rule 8].

Tribunal decision

- (5) When the complainant and respondent have filed the Time Limit Response Form and Time Limit Reply Form, or the time allowed for filing these forms has passed, a member will:
 - (a) decide whether to accept all or part of the complaint; and
 - (b) deliver a copy of that decision with written reasons to the complainant and respondent.
- (6) A decision whether to accept all or part of the complaint under rule 14(5) is a final decision.

PART 4 – MANAGEMENT AND STREAMING OF COMPLAINTS

Rule 15 – Deferral of Complaint

Other proceedings

- (1) A complainant and a respondent must state in the Complaint Form and the Response to Complaint Form, as applicable:
 - (a) whether a proceeding has been commenced in another forum that deals with the same subject-matter as the complaint; and
 - (b) their position on whether the tribunal should defer further consideration of the complaint until the outcome of the other proceeding.

Tribunal may defer complaint

- (2) When the Response to Complaint Form is filed, and any further information or submissions requested by the tribunal are filed, a member may defer further consideration of the complaint until the outcome of the other proceeding, if the member determines that the other proceeding is capable of appropriately dealing with the substance of the complaint.

Rule 16 – Complaint Resolution Alternatives

The tribunal manages complaints toward resolution in the following ways:

- (a) assigning complaints to appropriate streams [see part 4 of these rules];
- (b) using alternate dispute resolution at a settlement meeting [see part 5 of these rules];
- (c) determining preliminary applications [see part 6 of these rules]; and
- (d) hearing and deciding the complaint [see part 7 of these rules].

Rule 17 – Complaint Streams

Complaint streams

- (1) When a Response to Complaint Form is filed, the tribunal will assign the complaint to one of the following streams:
 - (a) the standard stream, in which the process is set by the requirements of rule 18; or
 - (b) the case-managed stream, in which the process is set by the directions and orders of a member under rule 19.

Criteria for streams

- (2) The tribunal will assign a complaint to the standard stream unless:
 - (a) the parties request and the tribunal decides to schedule an expedited hearing under rule 20; or
 - (b) the tribunal decides that a complaint would be more appropriately case-managed by a member under rule 19.
- (3) To decide whether a complaint would be more appropriately case-managed by a member, the tribunal will take into account any factors it considers relevant, including:
 - (a) the novelty of the issues;
 - (b) the complexity of the issues, facts and evidence;
 - (c) the complexity and quantity of the documents;
 - (d) the likelihood of settlement;
 - (e) the number of participants;
 - (f) the likely number of witnesses and/or expert witnesses;
 - (g) the number of procedural steps that may be needed to focus the issues and expedite resolution;
 - (h) the estimated length of the hearing;
 - (i) the remedies being sought;
 - (j) the requests of the complainant and respondent;
 - (k) the potential for any jurisdictional challenges; and/or
 - (l) the potential for any constitutional challenges.

Notification

- (4) The tribunal will deliver to the participants a notice of the stream to which it has assigned the complaint.

Complaint may be reassigned

- (5) At any time, the tribunal may decide to reassign a complaint to a different stream and will deliver notice to the participants of the reassignment.

Priority scheduling

- (6) Any participant may apply for early dates for a hearing of the complaint under rule 24, stating the compelling reasons to give scheduling priority to the complaint.

Rule 18 – Standard Stream Complaints

Setting of dates

- (1) If a complaint is assigned to the standard stream, the tribunal will deliver to the participants a notice of the assignment, including a Proceedings Schedule Form that will set out limited optional dates for:
 - (a) a settlement meeting;
 - (b) a pre-hearing conference; and
 - (c) the hearing of the complaint.
- (2) The participants must:
 - (a) complete the Proceedings Schedule Form; and
 - (b) file the completed form [see rule 8] within 21 days from the date on the tribunal's notice of the assignment.
- (3) If a participant fails to file the completed Proceedings Schedule Form within the time allowed, the tribunal may set dates for a settlement meeting, pre-hearing conference and hearing of the complaint without further consultation.
- (4) The tribunal will deliver to the participants notice of the dates set for a settlement meeting, pre-hearing conference, and hearing of the complaint.

Disclosure by complainant

- (5) Within 60 days from the date on the tribunal's notice of the assignment of the complaint to the standard stream, a complainant must:
 - (a) file, and deliver to each respondent, particulars of the remedy sought under section 37 of the Code; and
 - (b) deliver to each respondent copies of all relevant documents in the complainant's possession or control.

Disclosure by respondent

- (6) Within 30 days from the date that a complainant delivered disclosure under rule 18(5), a respondent must:
 - (a) file, and deliver to the complainant, a response to the particulars of the remedy sought by the complainant; and
 - (b) deliver to the complainant copies of all relevant documents in the respondent's possession or control.

Changing disclosure dates by agreement

- (7) A complainant and respondent may, by agreement, change the dates for delivery of information and documents under this rule as long as they will be prepared to proceed on all the dates scheduled for a settlement meeting, pre-hearing conference, and hearing of the complaint.

On-going obligation to disclose

- (8) Disclosure is an on-going obligation and each complainant and respondent must promptly deliver to each other:
 - (a) copies of any relevant documents that are subsequently acquired; and
 - (b) any other changes to the information delivered under this rule.

Pre-hearing conference preparation

- (9) At least 14 days before the pre-hearing conference, a complainant must deliver to the other participants a list of the witnesses the complainant intends to call at the hearing of the complaint.
- (10) At least 7 days before the pre-hearing conference, a respondent must deliver to the other participants a list of the witnesses the respondent intends to call at the hearing of the complaint.

Pre-hearing conference

- (11) The pre-hearing conference may be held by a case manager or the registrar, unless it appears that an issue will be raised that can only be decided by a member or the tribunal otherwise decides that a member should hold the pre-hearing conference, in which case, rules 19(4) and 19(5) apply.
- (12) The tribunal will deliver to the participants notice of the date, time and agenda of issues for the pre-hearing conference.
- (13) The tribunal may hold a pre-hearing conference by telephone or in person.
- (14) The case manager or registrar may proceed in a participant's absence, if the case manager or registrar is satisfied that the participant received notice of the pre-hearing conference.
- (15) At a pre-hearing conference, the case manager or registrar may:
 - (a) ensure that the participants are prepared to proceed to hearing on the scheduled dates;
 - (b) ensure that the hearing can be completed in the dates scheduled for hearing;

- (c) determine whether there is any further opportunity for settlement prior to the hearing;
- (d) set dates for settlement meetings;
- (e) determine whether the participants will produce an agreed statement of facts, an agreed book of documents, and/or a joint book of authorities;
- (f) determine whether other issues need to be resolved prior to any scheduled dates;
- (g) set a schedule for submissions on an application; and/or
- (h) take other steps to ensure the just and timely resolution of the complaint.

Rule 19 – Case-Managed Stream Complaints

Pre-hearing conference

- (1) If a complaint is assigned to the case-managed stream of complaints, the tribunal will schedule a pre-hearing conference with a member.
- (2) The tribunal will deliver to the participants notice of the date, time and agenda of issues for the pre-hearing conference.
- (3) The member may hold a pre-hearing conference by telephone or in person.
- (4) The member may proceed in a participant's absence, if that member is satisfied that the participant received notice of the pre-hearing conference.
- (5) During the pre-hearing conference, the member may:
 - (a) set a case-management plan, including setting dates for:
 - (i) a settlement meeting;
 - (ii) future pre-hearing conferences;
 - (iii) submissions on any application;
 - (iv) disclosure of relevant documents, witness lists, witness statements, and expert reports and summaries;
 - (v) disclosure of the complainant's particulars of the remedy sought under section 37 of the Code and the respondent's response to the complainant's particulars of the remedy sought; and
 - (vi) the hearing of the complaint;
 - (b) hear and decide an application;
 - (c) assist the complainant and respondent to simplify or resolve issues;
 - (d) order the pre-hearing examination of the complainant or respondent;

- (e) order a participant to produce a list of the witnesses the participant intends to call at the hearing;
- (f) order a participant to produce witness statements;
- (g) order a participant to produce a list of documents the participant intends to put in evidence at the hearing;
- (h) order a participant to produce a brief statement of the factual and legal basis for the remedy or order sought;
- (i) determine whether the participants will produce an agreed statement of facts, an agreed book of documents, and/or a joint book of authorities;
- (j) make orders to address non-compliance with these rules; and/or
- (k) make any other decision or order necessary for the just and timely resolution of the complaint.

Rule 20 – Expedited Hearing

Expedited hearing is available

- (1) Where all complainants and respondents agree, the tribunal may schedule a hearing within three months of the date the tribunal accepted the complaint for filing.

When is an expedited hearing available?

- (2) A complainant or respondent may request an expedited hearing if all complainants and respondents agree that:
 - (a) the hearing of the complaint will require no more than two days;
 - (b) there will be no preliminary applications;
 - (c) no further disclosure of evidence will be required; and
 - (d) they and their witnesses will be available for an expedited hearing.

How to request an expedited hearing

- (3) A complainant or respondent may request an expedited hearing by filing a request, setting out:
 - (a) that all complainants and respondents consent to the request;
 - (b) that each of the criteria in rule 20(2) is satisfied; and
 - (c) all dates in the three month period that all complainants and respondents are available for the hearing.
- (4) When a request for an expedited hearing is filed, the tribunal will decide whether it will schedule an expedited hearing, and will deliver notice of its decision to the participants, together with the dates scheduled, if any.

PART 5 – ALTERNATE DISPUTE RESOLUTION AND SETTLEMENT

Rule 21 – Settlement Meetings

Alternate dispute resolution at settlement meetings

- (1) The tribunal will offer settlement meetings for the purpose of assisting the complainant and respondent to achieve resolution through alternate dispute resolution, including:
 - (a) mediation, where the participants meet with a mediator who may be a member or other neutral person to discuss their interests and objectives in an attempt to resolve all or part of the complaint;
 - (b) assessment of the respective strengths and weaknesses of the positions of the complainant and respondent by a member or other neutral person;
 - (c) structured negotiations, where the tribunal provides a meeting place for the complainant, respondent, and a member or other neutral person who may provide limited assistance to the complainant and respondent to negotiate their own settlement of all or part of a complaint; or
 - (d) final determination of the merits of all or part of the complaint by the member mediating the complaint, if settlement is not achieved and the complainant and respondent consent.
- (2) If a member conducts a settlement meeting and the complaint is not resolved, that member will not hear the complaint without the consent of the complainant and respondent.

Early settlement meetings

- (3) To promote opportunities for early resolution of complaints, the tribunal will offer the complainant and respondent an early settlement meeting before those parties must take any further steps under these rules, including responding to the complaint.

Scheduling settlement meetings

- (4) The tribunal will request the complainant and the respondent to provide their available dates for a settlement meeting and will schedule dates for that meeting.
- (5) If a complainant or respondent does not want to participate in a settlement meeting after receiving a request for available dates, the complainant or respondent must advise the tribunal.

Request for settlement meeting

- (6) The complainant and respondent may request early, alternate or additional dates for a settlement meeting at any time during the tribunal's proceedings.

Confidentiality of settlement discussions

- (7) Any information received by any person in the course of attempting to reach a settlement of a complaint, including at a settlement meeting, is confidential and may not be disclosed or admitted in evidence, except with the consent of the person who gave the information.

Settlement meeting agreement

- (8) Before the settlement meeting, the tribunal will require that all participants in a settlement meeting sign an agreement to ensure that:
 - (a) any representative of a participant has authority to settle the complaint;
 - (b) the complainant and respondent are willing to participate in a settlement meeting; and
 - (c) the information exchanged during a settlement meeting will be kept confidential.

Rule 22 –Withdrawal and/or Settlement of a Complaint

How to withdraw a complaint

- (1) If a complainant wants to withdraw all or a part of the complaint, the complainant must:
 - (a) complete the Complaint Withdrawal Form (Form 6); and
 - (b) file the completed Complaint Withdrawal Form [see rule 8].

How to discontinue if complaint settles

- (2) If a complainant and respondent settle all or a part of a complaint:
 - (a) one of the parties must complete sections A, B, C, D and G of the Notice of Settlement Form (Form 7);
 - (b) the respondent must sign section E of the completed Notice of Settlement Form or a copy of the completed form;
 - (c) the complainant must sign section F of the completed Notice of Settlement Form or a copy of the completed form; and
 - (d) the parties must file the completed Notice of Settlement Form and any signed copy of the form [see rule 8].

Tribunal will discontinue proceedings

- (3) When a signed and completed Complaint Withdrawal Form or Notice of Settlement Form is filed, a member will order that all of the complaint, or that part of the complaint specified in the form, be discontinued and the tribunal will deliver a copy of that order to the participants.

Rule 23 – Enforcement of Settlement Agreements

Section 30(1) of the Code provides that, if there has been a breach of the terms of a settlement agreement, a party to the settlement agreement may apply to the British Columbia Supreme Court to enforce the settlement agreement to the extent that the terms of the settlement agreement could have been ordered by the tribunal.

PART 6 – APPLICATIONS

Rule 24 – Applications

Application of this rule

- (1) This rule applies to all applications made to the tribunal except:
 - (a) an application to intervene in a complaint [see rule 28];
 - (b) an application to add a respondent to a complaint [see rule 27(2)]; and
 - (c) an application made at a hearing of a complaint.

Requirements before making an application

- (2) Before applying for an order, a participant must determine whether the other participants consent, oppose, or take no position regarding the application.
- (3) Before applying for an order, a participant must first take any practical steps to resolve the issue for which that participant wants an order.

How to make an application

- (4) If a participant wants to obtain an order of any kind from the tribunal, the participant must:
 - (a) complete an Application Form (Form 8);
 - (b) deliver a copy of the completed Application Form to the other participants and any other person affected by the application [see rule 9]; and
 - (c) file the completed Application Form [see rule 8].

Schedule for submissions

- (5) When a completed Application Form is filed, the tribunal will set a schedule for submissions, if required.

Affidavit may be required

- (6) A member may require a participant to provide evidence, including an affidavit, setting out the facts in support of the participant's position on the application.

Rule 25 – Amending a Complaint or Response to a Complaint

Amendments permitted up until two months before hearing

- (1) A complainant may amend the complaint and a respondent may amend the response to the complaint at any time up until two months before the date scheduled for the hearing of the complaint, without an application.
- (2) A complainant who amends the complaint and a respondent who amends the response to the complaint must:
 - (a) file written notice of the amendment with the tribunal; and
 - (b) deliver the written notice of the amendment to the other participants.
- (3) Despite rule 25(1), if the complainant's amendment to the complaint relates to a matter that occurred outside of the time limit for filing a complaint [see rule 10(6)], the complainant must apply under rule 24.

Amendments within two months of the hearing

- (4) A complainant who wants to amend the complaint or a respondent who wants to amend the response to the complaint within two months before the date scheduled for the hearing of the complaint must apply under rule 24.

Respondent must file response to amended complaint

- (5) If a complainant amends the complaint, a respondent must file and deliver a response to the amended complaint within the time allowed by the tribunal.

Rule 26 – Deferral or Dismissal of Complaints

Time limit for deferral application

- (1) If a complainant or respondent wants the tribunal to defer further consideration of the complaint under section 25 of the Code, that party must apply:

- (a) at the time the Complaint Form or the Response to Complaint Form is filed, as applicable; or
- (b) under rule 24, within 30 days from the date on which the information or circumstances that form the basis of the application came to that party's attention.

Time limit for dismissal application

- (2) If a respondent wants the tribunal to dismiss all or part of a complaint under section 27 of the Code, the respondent must apply under rule 24:
 - (a) at the time the Response to Complaint Form is filed; or
 - (b) within 30 days from the date on which the information or circumstances that form the basis of the application came to the respondent's attention.

No repeat applications

- (3) A complainant or respondent may make only one application under sections 25 and 27, unless new information or circumstances that form the basis of a new application come to that party's attention.

Required information in deferral application

- (4) If a complainant or respondent applies to defer a complaint, that party must:
 - (a) identify the other proceeding;
 - (b) attach a copy of the document commencing the other proceeding and any other relevant documents; and
 - (c) state how the other proceeding is capable of appropriately dealing with the substance of the complaint.

Required information in dismissal application

- (5) If a respondent applies to dismiss a complaint, the respondent must:
 - (a) identify the basis under section 27 or 27.5 of the Code for the dismissal; and
 - (b) state why the complaint should be dismissed.

Rule 27 – Adding Parties

Adding a complainant

- (1) A person who wants to be added as a complainant to another complaint must file a separate complaint under rule 10 and apply under rule 24 to be added as a complainant to the other complaint.

Adding a respondent

- (2) A complainant who wants to add a person as a respondent to a complaint must:
 - (a) determine whether the other participants consent, oppose or take no position regarding the application;
 - (b) complete an Application to Add a Respondent (Form 8B);
 - (c) deliver the completed Application to Add a Respondent to the other participants;
 - (d) leave the Application to Add a Respondent, the attached blank Response to Application Form, and a copy of the Complaint Form:
 - (i) with the person sought to be added, if an individual; and/or
 - (ii) at that person's usual place of business, if a company, organization or association; and
 - (e) file the completed Application to Add a Respondent with an affidavit that the person sought to be added has received a copy of the application, the attached form, and a copy of the Complaint Form.

*amended April 4, 2003

- (3) The person sought to be added must file the completed Response to Application Form within 14 days of receiving the Application to Add a Respondent.
- (4) If the person sought to be added does not file the completed Response to Application Form within the time allowed, the tribunal may decide whether to add that person as a respondent without their input, and will treat the address in the Application to Add a Respondent as their address for delivery.
- (5) When the completed Response to Application Form is filed, or the time allowed for filing the form has passed, the tribunal will set a schedule for submissions, if required.

Rule 28 – Intervenor

- (1) A person or group of persons who wants to intervene in a complaint must:
 - (a) complete an Intervenor Application Form (Form 8A); and
 - (b) file the completed Intervenor Application Form [see rule 8].
- (2) The tribunal will deliver a copy of the application to the other participants, and will set a schedule for submissions.
- (3) If a member allows a person or group of persons to intervene, the member will specify the terms and conditions of the intervention.

Rule 29 – Disclosure

A participant who wants the tribunal to order another participant to deliver a copy of a document must apply under rule 24 and state how the document requested may be relevant to the issues raised in the complaint or response to complaint.

Rule 30 – Adjournments

Required information in adjournment application

- (1) A participant who wants an adjournment must apply under rule 24 and state:
 - (a) why the request is reasonable; and
 - (b) why granting the request will not unduly prejudice the other participants.

Time limit for filing adjournment application

- (2) A participant must file an adjournment application no later than two business days before the date set for the hearing, unless the information or circumstances that form the basis of the application have not come to the participant's attention by that time.

Adjournment application filed after time limit

- (3) If a participant files an adjournment application within two business days before the date set for the hearing because the information or circumstances that form the basis of the application have come to the participant's attention during that time, the tribunal will advise the participants whether the adjournment application will be heard at a pre-hearing conference or in person at the commencement of the hearing.

Rule 31 – Costs

- (1) A complainant or respondent who wants the tribunal to award costs against another party must apply under rule 24 and state how the other party engaged in improper conduct during the course of the complaint, including, if applicable, how that party contravened a rule, or a decision, order or direction of the tribunal.
- (2) Any costs awarded under this rule are payable immediately unless a member orders otherwise.

PART 7 - HEARINGS

Rule 32 – Summoning Witnesses

Tribunal power

- (1) The tribunal may summons a person in British Columbia to testify before the tribunal and to bring with them documents and other things in their possession or control relating to the complaint.

How to require a person to come to a hearing

- (2) A participant who wants to require a person to give evidence at a hearing must request a summons from the tribunal. The request must include:
 - (a) the name and address of the person for whom the request for summons is made; and
 - (b) if required, a list of the particular documents or other things the person must bring with them to the hearing.

Member may order further information

- (3) A member may order that a participant who requests a summons state how the testimony of the person named or the specified documents or things relate to the complaint.

Participant must serve summons within a reasonable time

- (4) The participant who requested the summons must serve it on the person named by leaving the summons with that person or by leaving it at the person's usual residence within a reasonable time before the date the person is required to appear.

Rule 33 – Expert Evidence

Expert witness

- (1) A participant who wants to call an expert witness to give opinion evidence at a hearing must deliver a written summary of the opinion to the other participants no later than 60 days before the start of the hearing.

Expert report

- (2) A participant who wants to introduce a report stating an expert opinion at a hearing without calling its author to testify must deliver a copy of the report to the other participants no later than 60 days before the start of the hearing.

How to respond

- (3) No later than 30 days from receipt of a summary or report delivered under rule 33(1) or (2), another participant may deliver a written summary of an expert opinion or a report stating an expert opinion to all participants, in response to the summary or report delivered under rule 33(1) or (2).

How to reply to response

- (4) A participant who wants to deliver a reply summary or report must promptly request directions from the tribunal regarding the timing for delivery of that summary or report.

If participant wants expert to testify

- (5) If, after receipt of an expert's report, a participant wants that expert to testify, the participant must promptly deliver notice to the other participants that the participant requires the expert to testify at the hearing.
- (6) If an expert is required to testify at the hearing under rule 33(5) and the expert's evidence does not materially add to their expert report, a member may order costs against the participant who required the testimony.

Proving an expert's qualifications

- (7) A written statement of an expert's qualifications is proof that the expert has those qualifications, unless there is evidence to the contrary and a member finds otherwise.

Participants may change dates

- (8) The participants may, by agreement, change the dates for delivery of a report or summary under this rule, as long as they will be prepared to proceed on the dates scheduled for the hearing.

Rule 34 – Constitutional Questions

A complainant or respondent who intends to challenge the constitutional applicability of any provision of the Code or claim a remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms* in an application or at the hearing must:

- (a) comply with the *Constitutional Question Act*, by delivering notice of the constitutional question to the other participants and the Attorneys General of Canada and British Columbia at least 14 days before the issue is argued; and
- (b) file with the tribunal proof of compliance with the notice requirements in rule 34(a).

Rule 35 – Hearings

Notice of hearing

- (1) The tribunal will deliver a notice of hearing to the participants setting out the time, date and place for the hearing of the complaint.

Interpreters and other accommodations

- (2) At least 30 days before the first date set for the hearing of the complaint, a participant must notify the tribunal if that participant or their lawyer or agent requires:
 - (a) an interpreter, and/or
 - (b) any other accommodation.

Hearing open to public

- (3) A hearing of a complaint is in person and is open to the public unless the member hearing the complaint orders otherwise.

If participant does not appear

- (4) The member hearing the complaint may proceed in a participant's absence, if that member is satisfied that the participant received notice of the hearing.

Hearing is not recorded

- (5) The hearing is not recorded unless:
 - (a) the tribunal agrees to a request to record the hearing under rule 35(2); or
 - (b) a participant records the hearing at their own expense, after obtaining the consent of the tribunal and the other participants, and agreeing to provide a copy of the recording to the tribunal and the other participants.
- (6) A recording made under rule 35(5) is not part of the official record of the tribunal's proceedings.

Evidence

- (7) The complainant and the respondent may present relevant evidence, cross-examine witnesses and make submissions.
- (8) A participant who intends to put a document in evidence at a hearing must provide a copy for the witness, the member hearing the complaint, and each other participant.

Solemn affirmation or oath

- (9) Except as provided in rule 35(10), every witness will be required to make a solemn affirmation.
- (10) If a witness wants to swear an oath involving a religious text, the participant calling that witness must provide the religious text.

Legal authorities

- (11) A participant who intends to rely on a legal authority must provide a copy for the member hearing the complaint and each other participant.

Power of member

- (12) The member hearing the complaint will determine how the hearing is conducted and may:
 - (a) determine the order and the hours of proceeding;
 - (b) receive and accept on oath, by affidavit or otherwise, evidence and information that the member considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law;
 - (c) require the production of evidence;
 - (d) require the attendance of witnesses;
 - (e) ask questions to clarify issues or facts;
 - (f) ask questions of a witness;
 - (g) place time limits on the examination or cross-examination of witnesses, or on opening or closing arguments;
 - (h) adjourn a hearing; and/or
 - (i) make any other decision or order necessary for the just and timely resolution of the complaint.

PART 8 – POST-HEARING MATTERS

Rule 36 – Decisions and Orders

Decisions and orders of tribunal

- (1) A decision or order of a member is a decision or order of the tribunal.

Final decisions and orders

- (2) Once a member has made a final decision respecting a complaint, whether to dismiss under section 27 of the Code or that the complaint is, or is not, justified under section 37 of the Code, that member:
 - (a) may advise the participants of the decision orally; and
 - (b) will advise the participants in writing of the decision and give written reasons for the decision.

Rule 37 – Modifying Final Orders

A complainant or respondent who wants the tribunal to modify an order that has not been fully implemented must apply to the tribunal under rule 24 and state:

- (a) the extent to which the order has been implemented;
- (b) why the order is no longer appropriate; and
- (c) what unforeseen circumstances have arisen.

Rule 38 – Enforcing Final Orders

- (1) A complainant or respondent who wants to enforce a final order of the tribunal must file a request for a certified copy of the final decision containing the order.
- (2) Section 39 of the Code provides that the complainant or respondent may file the certified copy of the decision containing the order in British Columbia Supreme Court for the purposes of enforcing the order.

Rule 39 – Judicial Review of Tribunal Decisions and Orders

A participant who disputes a tribunal decision or order may seek judicial review by bringing a petition in the British Columbia Supreme Court under the *Judicial Review Procedure Act*.