

Rules of Practice and Procedure

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PART 1 – General	1
Rule 1 – Purpose of Rules, Guides, and Practice Directions.....	1
Rule 2 – Definitions.....	1
Rule 3 – Application of Rules and Tribunal Powers	2
Application	2
Tribunal powers.....	2
Rule 4 – Effect of Non-compliance with these Rules	3
Effect of non-compliance with these rules	3
Failure to disclose documents and witnesses	3
Failure to pursue a complaint	3
Technical defects	4
Rule 5 – Representation before the Tribunal.....	4
How participants may be represented.....	4
Withdrawal of lawyer or agent	4
Rule 6 – Public Proceedings.....	4
PART 2 – Filing and Delivery of Communications.....	7
Rule 7 – Address for Delivery	7
Address for delivery	7
Address if lawyer or agent.....	7
Change of address.....	7
Deemed delivery.....	7
Rule 8 – Filing with the Tribunal	7
How to file communications with the tribunal	7
Filing after business day	7
If time for filing falls on a day that is not a business day.....	8
Complaint name and case number.....	8
Communications addressed to registrar.....	8

Delivery to other participants	8
Communications between participants.....	8
Rule 9 – Delivering Communications to Participants	8
Communications to participants.....	8
Proof of delivery.....	9
Deemed date of delivery	9
If participant does not receive communication	9
If time for delivery falls on a day that is not a business day	9
Alternative methods of delivery	10
 PART 3 – Making a Complaint and Responding to a Complaint.....	 11
Rule 10 – Making a Complaint	11
Completing complaint form	11
Time limit for filing complaint.....	11
How to file a complaint.....	11
Complaints filed on behalf of another person	11
Group or class complaints	12
Filing by email [Please note email filing is not currently functional].....	12
Rule 11 – Screening of Complaints.....	12
Tribunal will screen.....	12
Screening the form of complaint.....	12
Screening for lack of jurisdiction	13
Rule 12 – Notice to Respondents	13
Rule 13 – Responding to a Complaint	13
How to respond	13
Time limit for responding to complaint accepted after initial screening	14
Time limit for responding to complaint accepted after time limit decision	14
Time limit for responding if early settlement meeting.....	14
Time limit for responding if added as a respondent.....	15
Obtaining an extension of time to file a Response to Complaint Form	15
Screening the response to complaint.....	15
Failure to respond.....	16

Rule 14 – Complaints Filed Outside Time Limit	16
Completing a request to file a complaint outside time limit	16
Tribunal may accept complaint	16
Tribunal will deliver notice of request to file complaint outside time limit.....	16
Opportunity to respond to request	17
Opportunity to reply to response	17
Tribunal decision	17
 PART 4 – Management and Streaming of Complaints	 18
Rule 15 – Deferral of Complaint	18
Other proceedings.....	18
Tribunal may defer complaint	18
Rule 16 – Complaint Resolution Alternatives	18
Rule 17 – Complaint Streams	19
Complaint streams	19
Early streaming.....	19
Criteria for streams	19
Notification of stream.....	20
Complaint may be reassigned.....	20
Priority scheduling.....	20
Rule 18 – Standard Stream Complaints.....	20
Setting of dates	20
Disclosure by complainant	21
Disclosure by respondent	21
Disclosure requirements suspended if jurisdictional challenge.....	21
Changing disclosure dates by agreement	21
On-going obligation to disclose.....	22
Cost of copies	22
Exchange of witness lists.....	22
Pre-hearing conference	22
Additional pre-hearing conferences	23
Rule 19 – Case-Managed Stream Complaints	23

Pre-hearing conference.....	23
Rule 20 – Expedited Hearing	25
Expedited hearing is available.....	25
Request for an expedited hearing.....	25
PART 5 – Settlement Meetings.....	26
Rule 21 – Settlement Meetings	26
Settlement Meeting Options.....	26
Early settlement meetings	26
Scheduling settlement meetings.....	27
Request for settlement meeting.....	27
Confidentiality of settlement discussions.....	27
Settlement meeting agreement	27
Rule 22 –Withdrawal and/or Settlement of a Complaint	27
How to withdraw a complaint.....	27
How to withdraw if complaint settles	27
Tribunal will dismiss complaint.....	28
Rule 23 –Enforcement of Settlement Agreements.....	28
PART 6 – Applications	29
Rule 24 – Applications.....	29
Application of this rule.....	29
Requirements before making an application.....	29
Making an application.....	29
Schedule for submissions.....	30
Surreply	30
Extension of time	30
Rule 25 – Amending a Complaint or Response to a Complaint	31
Amendments permitted up until two months before hearing.....	31
Amendments within two months of the hearing	31
Time limit for filing a response to an amended complaint	31
Rule 26 – Deferral or Dismissal of Complaints	32

Time limit for deferral application	32
Time limit for dismissal application.....	32
Extension of time for dismissal or deferral application.....	32
No repeat applications	33
Required information in deferral application	33
Required information in dismissal application.....	33
Rule 27 – Adding Parties.....	33
Adding a complainant.....	33
Adding a respondent.....	34
Rule 28 – Intervenors	34
Rule 29 – Disclosure.....	35
Disclosure by a party	35
Disclosure by a non-party.....	35
Rule 30 – Adjournments.....	35
Required information in adjournment application	35
Time limit for filing adjournment application.....	35
Adjournment application filed after time limit.....	36
Rule 31 – Costs.....	36
 PART 7 - Hearings	 37
Rule 32 – Ordering Witnesses to Attend a Hearing	37
Tribunal power	37
How to require a person to come to a hearing.....	37
Member may order further information	37
Participant must serve the Order to Attend Hearing within a reasonable time	37
Rule 33 – Expert Evidence	37
Expert witness	37
Expert report.....	38
How to respond.....	38
How to reply to response.....	38
If participant wants expert to testify	38
Proving an expert’s qualifications	38

Participants may change dates.....	38
Rule 34 – Constitutional Questions [deleted]	39
Rule 35 – Hearings	39
Notice of hearing.....	39
Interpreters and other accommodations	39
Hearing open to public	39
If participant does not appear	39
Hearing is not recorded	39
Evidence	40
Solemn affirmation or oath	40
Legal authorities	40
Power of member	40
Power of member to maintain order at hearings	41
 PART 8 – Post-hearing Matters	 43
Rule 36 – Decisions and Orders	43
Decisions and orders of tribunal.....	43
Effective date of decision and orders	43
Final decisions and orders	43
Rule 37 – Modifying Final Orders	43
Rule 37.1 – Correcting Decisions and Orders.....	43
Rule 38 – Enforcing Final Orders	44
Rule 39 – Judicial Review of Tribunal Decisions and Orders	44
Judicial review available	44
Time limit for judicial review	44

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 through 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;
- (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 opinion.
- (3) Without limiting rule 4(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), 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 opinion was not disclosed as required, without leave of a member;
 - (c) a member may make any decision or order the member considers appropriate in the circumstances, including:

adjourning a settlement meeting, pre-hearing conference or hearing; and

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 will notify 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 for failing to diligently pursue the complaint 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 represent themselves.

Withdrawal of lawyer or agent

- (2) A lawyer or agent who withdraws or ceases to represent a participant must immediately:
 - (a) file a completed Notice of Withdrawal of Lawyer or Agent Form (Form 9); and
 - (b) advise the other participants in writing.

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 settle 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) tribunal notices regarding the hearing of the complaint; and
 - (e) any preliminary decision regarding the complaint.
- (4) Preliminary and final decisions of the tribunal may be published on the tribunal's website and in legal journals or on law-related websites.
- (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.
- (6) If the participants are actively involved in settlement discussions, they may make a written request to the registrar to defer the application of rule 6(3).

PART 2 – Filing and Delivery of Communications

Rule 7 – Address for Delivery

Address for delivery

- (1) Every participant must provide notice in writing of an address for delivery to the tribunal and all other participants.

Address if lawyer or agent

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

Change of address

- (3) A participant must immediately, in writing, notify the tribunal and other participants of a change of address for delivery, and may use the Change of Address for Delivery Form (Form 10).

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 after business day

- (2) A communication received by the tribunal after 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

- (3) 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

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

Communications addressed to registrar

- (5) A participant must address any communication filed to the registrar, unless the tribunal directs otherwise.

Delivery to other participants

- (6) If a participant files a communication with the tribunal, the participant must:
- (a) include in the communication the names of the participants who will receive a copy of it; and
 - (b) the same day as the communication is filed, send a copy of the communication to the other participants by a method of delivery set out in rule 9(1).

Communications between participants

- (7) A participant who delivers a communication to another participant must not file a copy of the communication with the tribunal, unless the participant is making an application to the tribunal and the communication is filed to support the participant's application.

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 it to the participant's address for delivery by regular or registered mail;
 - (b) delivering it by hand, courier or process server to the participant's address for delivery; or

- (c) faxing it 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, subject to rule 9(5).
- (4) If a communication is delivered after a business day, the communication is deemed to be delivered on the next business day.

If participant does not receive communication

- (5) Even though a communication has been delivered in accordance with this rule, a participant may show that the communication did not come to their notice or was received after the deemed date of delivery:
 - (a) in an application under rule 24:

to set aside the consequences of a failure 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);

for an extension of time to file a form;

for an adjournment; or

- (b) in a request for an extension of time to file a submission or other communication.

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

- (6) 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

- (7) 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.

Time limit for filing complaint

- (2) 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.
- (3) 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 for complaints filed after the time limit].

How to file a complaint

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

Complaints filed on behalf of another person

- (5) A person may make a complaint alleging that another person was discriminated against. To make a complaint on behalf of another person, a person must also:
 - (a) complete a Representative Complaint Form – Individual (Form 2); and
 - (b) file the completed Representative Complaint Form – Individual with the completed Complaint Form by mail, fax, hand, courier, process server, or email.

Group or class complaints

- (6) A person may make a complaint alleging that a group or class of persons was discriminated against. To make a complaint on behalf of a group or class of persons, a person must also:
 - (a) complete a Representative Complaint Form – Group or Class (Form 2); and
 - (b) file the completed Representative Complaint Form – Group or Class with the completed Complaint Form by mail, fax, hand, courier, process server, or email.

Filing by email [Please note email filing is not currently functional]

- (7) If a person files a complaint by email, the person must file the signed copy of the Complaint Form and, if applicable, Representative Complaint Form by mail, fax, hand, courier, or process server within 21 days from the date the unsigned complaint was filed by email.
- (8) If the person does not file the signed Complaint Form and, if applicable, Representative Complaint Form within 21 days, the tribunal may refuse to accept the complaint for filing.
- (9) If the person files the signed Complaint Form and, if applicable, Representative 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 complaint was filed.

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 a copy of the incomplete form to the complainant, identifying the part of the form that is incomplete, and providing relevant amendment forms.

- (3) The complainant must file the completed amendment forms within the time allowed by the tribunal.
- (4) If the complainant does not file the completed amendment forms within the time allowed, the tribunal may refuse to accept the complaint for filing.
- (5) If the complainant files the completed amendment forms 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 amendment forms were filed.

Screening for lack of jurisdiction

- (6) If it is clear that the tribunal does not have jurisdiction to proceed with the complaint or part of the complaint, the tribunal will refuse to accept the complaint or that part of the complaint for filing and will give reasons for its refusal.
- (7) If the tribunal accepts a complaint for filing, this is not a final decision that the tribunal has jurisdiction over the complaint.

Rule 12 – Notice to Respondents

When the tribunal has accepted all or part of the complaint under rule 11, the tribunal will notify the respondent of the complaint by letter, and provide copies of:

- (a) the Complaint Form;
- (b) the Representative Complaint Form, if applicable;
- (c) any amendment forms; and
- (d) any decision made refusing to accept part of the complaint for filing under rule 11(6).

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) file the completed Response to Complaint Form [see rule 8 for how to file]; and

- (c) deliver a copy of the completed Response to Complaint Form to the other participants [see rule 9 for how to deliver].

Time limit for responding to complaint accepted after initial screening

- (2) A respondent must respond to a complaint within the time allowed in the tribunal’s letter to the participants advising that it has accepted the complaint. [see rule 11 and rule 14(3) and (4)]

Time limit for responding to complaint accepted after time limit decision

- (3) A respondent must respond to a complaint within the time allowed in the tribunal’s letter to the participants advising of the decision to accept the complaint. [see rule 14(8) and (9)].

Time limit for responding if early settlement meeting

- (4) The tribunal may extend the time for filing the respondent’s Response to Complaint Form if:
 - (a) the complainant wants to participate in an early settlement meeting;
 - (b) the respondent has advised the tribunal within the time allowed by the tribunal that they are interested in an early settlement meeting; and
 - (c) the tribunal has confirmed a date for the early settlement meeting.
- (5) The tribunal will advise the parties of the maximum length of the extension that it will permit under rule 13(4).
- (6) If the conditions in rule 13(4) are met, a respondent must file its Response to Complaint Form by the earliest of the following dates:
 - (a) 35 days from the date that the tribunal advises the respondent that the early settlement meeting is cancelled;
 - (b) 35 days from the date the tribunal is advised that the early settlement meeting did not result in resolution of the complaint; or
 - (c) the date specified by the tribunal under rule 13(5).

Time limit for responding if added as a respondent

- (7) If the tribunal decides to add a respondent, the respondent who is added must respond to the complaint within 35 days from the date on the tribunal's decision to add the respondent.

Obtaining an extension of time to file a Response to Complaint Form

- (8) A respondent who requires an extension of time to file a Response to Complaint Form must advise the case manager of:
 - (a) the reasons the respondent requires the extension;
 - (b) the length of the extension requested; and
 - (c) the position of the other parties if the respondent has asked for their consent.
- (9) The tribunal will advise whether the extension is granted.

Screening the response to complaint

- (10) When a Response to Complaint Form is filed, the tribunal will screen the form to ensure that it is complete.
- (11) 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, and providing relevant amendment forms.
- (12) The respondent must file the completed amendment forms within the time allowed by the tribunal.
- (13) If the respondent does not file the completed amendment forms within the time allowed, the tribunal may:
 - (a) proceed based on the incomplete form; or
 - (b) proceed under rule 13(15) as though the respondent failed to respond to the complaint.
- (14) If the respondent files the completed amendment forms within the time allowed, the tribunal will treat the Response to Complaint Form as if filed on the day it was first filed rather than the day the completed amendment forms were filed.

Failure to respond

- (15) If a respondent does not file a Response to Complaint Form within the time allowed:
- (a) the tribunal will set a hearing date without consulting the respondent regarding availability;
 - (b) the tribunal will assign the complaint to the case-managed stream; and
 - (c) a member may:

order the respondent to pay the costs incurred by any other participant as a result of the failure to respond within the time allowed; and

make any other decision or order the member considers appropriate in the circumstances.

Rule 14 – Complaints Filed Outside Time Limit

Completing a request to file a complaint outside time limit

- (1) The complainant must complete section G of the Complaint Form if any of the acts or omissions complained of occurred more than six months before the complaint was filed.
- (2) If the complainant is required to complete section G of the Complaint Form, this does not mean that the complaint is filed outside the 6-month time limit.

Tribunal may accept complaint

- (3) If it appears that the complaint is filed within the 6-month time limit, the tribunal may accept the complaint for filing.
- (4) If the tribunal accepts a complaint for filing under rule 14(3), this is not a final decision that the complaint is filed within the 6-month time limit.

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

- (5) If it appears that all or part of the complaint may be filed outside the 6-month time limit, 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

- (6) 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 the time allowed by the tribunal:
 - (a) complete a Time Limit Response Form (Form 4);
 - (b) file the completed Time Limit Response Form [see rule 8 for how to file]; and
 - (c) deliver a copy of the completed Time Limit Response Form to the complainant [see rule 9 for how to deliver].

Opportunity to reply to response

- (7) If a complainant wants to reply to the respondent's Time Limit Response Form, the complainant must within the time allowed by the tribunal:
 - (a) complete a Time Limit Reply Form (Form 5);
 - (b) file the completed Time Limit Reply Form [see rule 8 for how to file]; and
 - (c) deliver a copy of the completed Time Limit Reply form to the respondent [see rule 9 for how to deliver].

Tribunal decision

- (8) 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) a member will decide whether to accept all or part of the complaint; and
 - (b) the tribunal will deliver a copy of that decision with written reasons to the complainant and respondent.
- (9) A decision whether to accept all or part of the complaint under rule 14(8) 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 section H of the Complaint Form and section E of the Response to Complaint Form, as applicable:
 - (a) whether another proceeding has been commenced 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 and any further information or submissions requested by the tribunal are filed, a member may decide to 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

- (1) The tribunal may manage a complaint by:
 - (a) assigning the complaint to an appropriate stream [see part 4 of these rules];
 - (b) using settlement meetings [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].
- (2) The tribunal may require the parties to attend a case management meeting at which settlement of the complaint may be discussed.

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.

Early streaming

- (2) The tribunal may assign a complaint to the case-managed stream before a Response to Complaint Form is filed if it appears from the complaint that it would be more appropriately case-managed by a member.

Criteria for streams

- (3) 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;
 - (b) the tribunal decides that a complaint would be more appropriately case-managed by a member under rule 19; or
 - (c) the complaint is assigned to the case-managed stream under rule 13(15).
- (4) 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;
- (l) the potential for any constitutional challenges; and/or
- (m) whether the complaint is filed on behalf of a group or class of persons.

Notification of stream

- (5) The tribunal will notify the participants by letter of the stream to which it has assigned the complaint.

Complaint may be reassigned

- (6) 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

- (7) 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 may set a date for a settlement meeting and will set a date for the hearing of the complaint:
 - (a) at a pre-hearing conference; or
 - (b) after otherwise giving the parties an opportunity to provide their available dates.

- (2) If a participant does not attend the pre-hearing conference under rule 18(1)(a) or does not provide their available dates under rule 18(1)(b), the tribunal may set hearing dates without further consultation.
- (3) The tribunal will deliver to the participants notice of the dates set for a settlement meeting, and for the hearing of the complaint.

Disclosure by complainant

- (4) Within 60 days from the date of the tribunal's letter advising that the complaint is assigned to the standard stream, a complainant must deliver [see rule 9 for how to deliver] to each respondent:
 - (a) particulars of the remedy sought under section 37 of the *Code*; and
 - (b) copies of all documents in their possession or control that may be relevant to the complaint or response to the complaint.

Disclosure by respondent

- (5) Within 90 days from the date on the tribunal's letter advising that the complaint is assigned to the standard stream a respondent must deliver [see rule 9 for how to deliver] to the complainant:
 - (a) a response to the particulars of the remedy sought by the complainant; and
 - (b) copies of all documents in their possession or control that may be relevant to the complaint or response to the complaint.

Disclosure requirements suspended if jurisdictional challenge

- (6) If an application to dismiss is made under s. 27(1)(a) of the *Code*, the disclosure requirements in rules 18(4) and 18(5) are suspended until a decision on the application is rendered.

Changing disclosure dates by agreement

- (7) A complainant and respondent may, by agreement
 - (a) change the dates for delivery of information and documents under this rule;
 - (b) exchange lists of all documents that may be relevant to the complaint or response to the complaint to determine what copies must be delivered;

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 documents that may be relevant to the complaint or the response to the complaint that are subsequently acquired; and
 - (b) any other changes to the information delivered under this rule.

Cost of copies

- (9) Each participant bears their own cost of copying documents for another participant.

Exchange of witness lists

- (10) At least 60 days before the hearing of the complaint, a complainant must deliver [see rule 9 for how to deliver] to the other participants a list of the witnesses the complainant intends to call at the hearing.
- (11) At least 30 days before the hearing of the complaint, a respondent must deliver [see rule 9 for how to deliver] to the other participants a list of the witnesses the respondent intends to call at the hearing.

Pre-hearing conference

- (12) 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.
- (13) The tribunal will deliver to the participants notice of the date, time and agenda of issues for the pre-hearing conference.
- (14) The tribunal may hold the pre-hearing conference by telephone or in person.
- (15) 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.
- (16) At the pre-hearing conference, the case manager or registrar may:

- (a) confirm that the participants are prepared to proceed to hearing on the scheduled dates;
- (b) confirm 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 and provide direction to ensure the just and timely resolution of the complaint.

Additional pre-hearing conferences

- (17) A party who wants the tribunal to schedule an additional pre-hearing conference must make a written request to the case manager, outlining the reasons for the pre-hearing conference call.

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 the 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:

a settlement meeting;

future pre-hearing conferences;

submissions on any application;

disclosure of evidence, including disclosure of documents that may be relevant to the complaint or response to the complaint, witness lists, witness statements, and expert reports and summaries of expert opinion;

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
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;
- (k) make orders respecting how documents and issues at the hearing are to be addressed; and/or
- (l) 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 parties agree, the tribunal may schedule a hearing within three months of the date the tribunal accepted the complaint for filing.
- (2) A party may request an expedited hearing if all parties agree that:
 - (a) the hearing of the complaint will require no more than three days;
 - (b) there will be no preliminary applications;
 - (c) they will be prepared to proceed on the dates provided to the tribunal; and
 - (d) they and their witnesses will be available for an expedited hearing.

Request for an expedited hearing

- (3) A party may request an expedited hearing by filing a request, setting out:
 - (a) that all parties 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 parties 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 – Settlement Meetings

Rule 21 – Settlement Meetings

Settlement Meeting Options

- (1) The tribunal will offer settlement meetings for the purpose of assisting the parties to achieve resolution of all or part of the complaint, using any of the following approaches or any combination of them:
 - (a) interest-based mediation, where the parties meet with a mediator to discuss their interests and objectives;
 - (b) early evaluation or rights-based mediation, where a mediator reviews the facts with the parties, provides the parties with an assessment of the strengths and weaknesses of the complaint and advises the parties of an appropriate remedy that would be expected should the matter proceed to hearing and receive a positive determination;
 - (c) structured negotiations, where the tribunal provides a meeting place for the parties and a mediator who may provide limited assistance to the parties to negotiate their own settlement;
 - (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 parties consent.
- (2) A mediator may be a member or other neutral person.
- (3) If a member conducts a settlement meeting and the complaint is not resolved, that member will not hear the complaint without the written consent of the parties.

Early settlement meetings

- (4) To promote opportunities for early resolution of complaints, the tribunal will offer the parties an early settlement meeting before the parties must take any further steps under these rules, including responding to the complaint.
- (5) An early settlement meeting must be held within the time set by the tribunal under rule 13(4).

Scheduling settlement meetings

- (6) The tribunal will request the parties to provide their available dates for a settlement meeting and will schedule dates for that meeting.

Request for settlement meeting

- (7) The parties may request a settlement meeting at any time during the tribunal's proceedings.

Confidentiality of settlement discussions

- (8) 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

- (9) Before the settlement meeting, the tribunal will require that all participants in a settlement meeting sign an agreement to ensure that:
 - (a) the parties are willing to participate in a settlement meeting;
 - (b) any representative of a party has authority to settle the complaint; 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 file written notice of the withdrawal [see rule 8 for how to file], and may use the Complaint Withdrawal Form (Form 6).

How to withdraw if complaint settles

- (2) If a complainant and respondent settle all or a part of a complaint, the complainant must file written notice that a settlement has been reached [see rule 8 for how to file], and may use the Complaint Withdrawal Form (Form 6).

Tribunal will dismiss complaint

- (3) When a written notice of the withdrawal is filed, a member will order that all of the complaint, or that part of the complaint specified, be dismissed 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) respecting an application to intervene in a complaint, only as provided in rule 28;
 - (b) respecting an application to add a respondent to a complaint, only as provided in rule 27(2); and
 - (c) an application made at a hearing of a complaint.

Requirements before making an application

- (2) With the exception of an application to dismiss all or part of a complaint under section 27 or 27.5 of the *Code*, 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.

Making an application

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

Schedule for submissions

- (5) When a completed Application Form is filed, the tribunal will set a schedule for filing a response to the application and a reply to the response, or will schedule a pre-hearing conference where a member may hear oral submissions.

Surreply

- (6) The tribunal will not consider further submissions on an application unless a member allows a request under rule 24(7).
- (7) A participant who wants to file a further submission responding to new issues raised in a reply submission must:
- (a) immediately notify the tribunal and the other participants of their intention to file further submissions; and
 - (b) file, within one week of receiving the reply submission:

a request to consider the further submission, setting out the new issues and why fairness requires that the tribunal consider the further submission; and

the further submission.

Extension of time

- (8) A participant who requires an extension of time for filing a submission must advise the case manager of:
- (a) the reasons the participant requires the extension;
 - (b) the length of the extension requested; and
 - (c) the position of the other participants if the participant has asked for their consent.
- (9) The tribunal will advise whether the extension is granted.

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 must:
 - (a) complete a Complaint Amendment Form (Forms 1B – 1E);
 - (b) file the completed Complaint Amendment Form [see rule 8 for how to file]; and
 - (c) deliver a copy of the completed Complaint Amendment Form to the other participants [see rule 9 for how to deliver].
- (3) A respondent who amends the response to the complaint must:
 - (a) complete a Response to Complaint Amendment Form (Form 3D);
 - (b) file the completed Response to Complaint Amendment Form [see rule 8 for how to file]; and
 - (c) deliver a copy of the completed Response to Complaint Amendment Form to the other participants [see rule 9 for how to deliver].
- (4) Despite rule 25(1), the complainant must apply under rule 24:
 - (a) if the complainant’s amendment to the complaint adds an allegation that occurred outside of the time limit for filing the complaint [see rule 10(2)]; or
 - (b) if there is an outstanding application to dismiss.

Amendments within two months of the hearing

- (5) 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.

Time limit for filing a response to an amended complaint

- (6) A respondent must file and deliver a response to an amended complaint within 21 days of receiving the Amendment to Complaint Form.

Rule 26 – Deferral or Dismissal of Complaints

Time limit for deferral application

- (1) If a party 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) A respondent making an application to dismiss all or part of a complaint under section 27 of the *Code* must have filed a Response to Complaint Form and must apply under rule 24:
 - (a) within 70 days of the date on the tribunal's letter to the participants advising that it accepted a complaint under rule 13(2) or (3);
 - (b) if the tribunal has extended the time for filing the Response to Complaint Form under rule 13(4), at the same time that the respondent must file the Response to Complaint Form under rule 13(6);
 - (c) if the tribunal adds a respondent, at the same time that the respondent must file the Response to Complaint Form under rule 13(7);
 - (d) 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; or
 - (e) if a party has applied to defer the complaint before an application to dismiss is filed,

within 30 days from the date of a decision denying the application to defer; or

if the application to defer the complaint is granted, within 30 days from the date that the deferral is lifted by the tribunal or expires according to its terms.

Extension of time for dismissal or deferral application

- (3) If a respondent wants an extension of time to file a dismissal or deferral application, the respondent must:

- (a) obtain the consent of the other parties and advise the tribunal in writing that the other parties consent and the date on which it will file the application; or
- (b) if any of the other parties do not consent, apply under rule 24 for an extension.

No repeat applications

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

Required information in deferral application

- (5) If a party 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

- (6) If a respondent applies to dismiss a complaint, the respondent must:
 - (a) identify the basis under section 27(1)(a) to (g) or 27.5 of the *Code* for the dismissal; and
 - (b) state why the complaint should be dismissed; and
 - (c) attach all supporting materials.

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 have the complaints joined.

Adding a respondent

- (2) A party who wants to add a person as a respondent to a complaint must comply with rule 24(2) and file a completed Application to Add Respondent Form (Form 8B).
- (3) The Tribunal will notify the participants by letter and will deliver copies of the following documents to the proposed respondent:
 - (a) the Application to Add Respondent Form;
 - (b) the Complaint Form, and the Representative Complaint Form, if applicable;
 - (c) any Response to Complaint Forms;
 - (d) any amendment forms; and
 - (e) any decisions by the Tribunal respecting the scope of the complaint.
- (4) Rules 24(5) to (9) apply to this rule.
- (5) If the proposed respondent does not file a response within the time allowed, and the tribunal is satisfied that the proposed respondent received the documents listed in rule 27(3), the tribunal may decide whether to add that person as a respondent, and will treat the address at which they were notified of the application as their address for delivery.

Rule 28 – Intervenors

- (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 for how to file].
- (2) The tribunal will deliver a copy of the application to the other participants, and will set a schedule for submissions.
- (3) Rules 24(5) to (9) apply to this rule.
- (4) 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

Disclosure by a party

- (1) A participant who wants the tribunal to order a party to deliver a copy of a document must apply under rule 24 and must state in their application how the document requested may be relevant to an issue in the complaint or response to complaint.

Disclosure by a non-party

- (2) A participant who wants the tribunal to order a person who is not a party to produce a copy of a document in that person's possession or control must:
 - (a) apply under rule 24 and must state in their application how the document requested is admissible and relevant to an issue in the complaint or response to complaint;
 - (b) provide the person with a copy of the application and advise the person that they can contact the tribunal to request a copy of the complaint or response to complaint, if required.
 - (c) advise the tribunal in writing of the date, method, and address at which the person was provided a copy of the application.

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 at least two full 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 party who wants the tribunal to award costs against another party must apply under rule 24 and state:
 - (a) how the other party engaged in improper conduct during the course of the complaint; and/or
 - (b) how that party contravened a rule, 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 – Ordering Witnesses to Attend a Hearing

Tribunal power

- (1) The tribunal may order a person in British Columbia to testify before the tribunal and to bring with them documents and other things in their possession or control relevant 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 an Order to Attend Hearing from the tribunal. The request must include:
 - (a) the name and address of the person for whom the request for the Order 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 an Order to Attend Hearing state how the testimony of the person named or the specified documents or things are relevant to an issue in the complaint.

Participant must serve the Order to Attend Hearing within a reasonable time

- (4) The participant who requested the Order to Attend Hearing must serve it on the person named by leaving the Order 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, on receipt of an expert's report, a participant wants that expert to testify, the participant must within 30 days of receipt of the report 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 [deleted]

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 parties 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.

Power of member to maintain order at hearings

- (13) The member hearing the complaint may make orders or give directions the member considers necessary for the maintenance of order at the hearing, including:
 - (a) imposing restrictions on a person's continued participation in or attendance at a proceeding, and
 - (b) excluding a person from further participation in or attendance at a proceeding until the member orders otherwise.

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.

Effective date of decision and orders

- (2) A decision or order is effective on the date on which it is issued, unless otherwise specified by the tribunal.

Final decisions and orders

- (3) 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 party 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 37.1 – Correcting Decisions and Orders

A participant who wants the tribunal to correct a technical error in a written decision or order must file a written request to the attention of the registrar specifying the correction requested.

Rule 38 – Enforcing Final Orders

- (1) A party 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 a party 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

Judicial review available

- (1) 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*.

Time limit for judicial review

- (2) A participant must commence an application for judicial review within the time limit in the *Administrative Tribunals Act*.