

York Regional Police



Rules for Discipline Hearings under Part V the *Police Services Act*

September 2014

Rules

for Discipline Hearings under Part V the *Police Services Act*

Application and General

- 1.0 These Rules apply to York Regional Police discipline hearings, conducted by Adjudicators appointed by the Chief of Police pursuant to the Act, whether generated through a public or Chief's complaint or both and are made pursuant to section 25.1 of the *Statutory Powers Procedure Act*.
- 1.1 In these Rules,
- (a) "*Act*" means the *Police Services Act*, as amended;
 - (b) "*disability*" is as defined in section 2 of the *Accessibility for Ontarians with Disabilities Act, 2005*, as amended;
 - (c) "*deliver*" means to serve and file with proof of service in accordance with Rules 4 and 5;
 - (d) "*document*" includes information stored or recorded by means of any device, including written or pictorial communications, audio or visual recordings, and electronically stored data;
 - (e) "*hearing*" means that part of the proceeding before the Adjudicator where evidence or submissions are heard, and includes a motion hearing and means a hearing or part of a hearing during which the parties or their representatives attend in person, by telephone conference or other electronic technology including video conferencing allowing persons to hear one another before the Adjudicator and, with necessary modifications may include a hearing or part of a hearing held by the exchange of documents, whether in written form or by electronic means;
 - (f) "*order*" means a decision or a ruling;
 - (g) "*representative*" means a legal counsel or agent who is authorized to represent a person in the proceeding pursuant to the Act;
 - (h) "*ruling*" means a finding or order of the Adjudicator which is not a decision, and may include interim rulings, motion rulings, rulings concerning evidence or procedure, and other directions of the Adjudicator.

Defects in Form

- 2.1 No proceeding is invalid by reason only of a defect or other irregularity in form.
- 2.2 The forms contained in the Appendix to these Rules provide a guideline to required content or information, and reasonable compliance with the forms shall be sufficient.

Service of Documents

- 3.1 Service may be effected by sending the document,
- (a) by personal delivery;
 - (b) by regular, registered or certified mail to the last known address of the person or their representative;
 - (c) by fax to the last known fax number of the person (or representative), but only if the document, inclusive of the cover sheet, does not exceed twenty pages, or where longer, if the receiving party consents;
 - (d) by courier, including Priority Post, to the last known address of the person or their representative;
 - (e) by email where the person or party receiving the document consents to email delivery; or
 - (f) by any other means authorized or directed by the Adjudicator.
- 3.2 If it is impractical to effect service in accordance with Rule 3.1, the Adjudicator may give such directions for substituted service as it considers appropriate or, where necessary, may dispense with service.
- 3.3 Service is deemed to be effective,
- (a) by personal delivery, before 4:00 p.m., on the day of delivery, and after that time, on the next day;
 - (b) by mail, on the fifth day after the day of mailing;
 - (c) by fax, on the day after it was sent;
 - (d) by courier, on the second day after the document was given to the courier;
 - (e) by email, on the day after it was sent; or
 - (f) by any means authorized or directed by the Adjudicator, on the date specified by the Adjudicator in its direction.
- 3.4 Rule 3.3 does not apply where a person who acts in good faith does not receive the notice until later or at all.
- 3.5 Where there is a requirement to serve other parties, the serving party must file an affidavit of service with the Adjudicator, or provide a supporting letter indicating who has been served, what documents have been served, when they were served and by what method, or provide such other proof as the Adjudicator may require.

Motions

- 4.1 A party may bring a motion before the hearing at a date, time and place set by the Adjudicator. A motion may also be brought at the commencement of the hearing or during the hearing if leave is sought and obtained from the Adjudicator and where it has been established that the facts or issues upon which the motion is based were not, actually or through the exercise of reasonable due diligence, previously known or available to the moving party.

- 4.2 The Adjudicator may direct that the motion be dealt with in writing or by any other means, and may direct the procedure to be followed.
- 4.3 Unless the Adjudicator otherwise permits, a party bringing a motion shall serve the other party/parties and any third party that would be affected by the order and file with the Adjudicator a notice of motion (Form 2), a factum and a brief of authorities at least thirty days before the Adjudicator deals with any motion regarding,
- (a) the jurisdiction of the Adjudicator;
 - (b) a stay of proceeding;
 - (c) constitutional issues, including the Charter of Rights and Freedoms (which shall also be brought on notice to the Attorney General regarding the challenge of all or part of an act or regulation and, if potentially affecting the powers or authority of the Independent Police Review Director, the Director);
 - (d) production of particulars, documents or things;
 - (e) standing or party status;
 - (f) the extension or abridgement of the time provided for service of an expert report or supplementary report under Rule 13; or,
 - (g) any matter with significant legal issues or significant disputes in fact.

Any other motions shall be served and filed within the timelines set by and pursuant to the direction of the Adjudicator.

- 4.4 A notice of motion shall set out the grounds for the motion and the relief requested, and shall be accompanied by any evidence to be relied upon, which may include an affidavit setting out the facts.
- 4.5 A party who wishes to respond to the motion shall deliver any evidence to be relied upon, which may include an affidavit setting out the facts, together with a factum and a brief of authorities at least fourteen days before the Adjudicator deals with the motion.
- 4.6 Where a motion is made on notice, proof of service in accordance with Rule 3 of the required motion materials shall be filed with the Adjudicator.
- 4.7 Where the motion is brought at or during a hearing and it is impractical to deliver evidence relied upon, either party may call viva voce evidence, subject to leave and direction of the Adjudicator.
- 4.8 A party may cross-examine another party's affiant (or where the evidence filed is based on information and belief from another person, that person) on matters contained in or arising out of the other party's filed affidavit, with the party filing the evidence responsible for assisting and/or arranging attendance of the person to be cross-examined. Such cross-examination shall take place before the Adjudicator, subject to any direction provided.

Production and Witnesses

- 5.1 At least fourteen days before the hearing, all parties shall provide the other parties with a list of their potential witnesses, along with a brief summary of their anticipated evidence, a will state and/or their notes or interviews related to or arising out of the issues in the proceeding. The prosecution may rely upon productions provided to comply with this requirement and the subject officer need not supply a summary, will state, etc. for his or her anticipated evidence.
- 5.2 The Adjudicator may upon a motion, at any time or at any stage in the proceeding before all hearings are complete and pursuant to section to s. 5.4 of the *Statutory Powers Procedure Act*, order any party to provide to the other party/parties such further information or documents as the Adjudicator considers necessary for and relevant to a full and satisfactory understanding of the issues in the proceeding.

Summons To Witness

- 6.1 The Adjudicator, at the request of a party or on its own motion, may issue a summons to require a person to attend at a hearing to give evidence and to produce documents or things, relevant to the subject-matter of the proceeding and admissible at a hearing.
- 6.2 The Adjudicator may question whether the person summoned is the appropriate person to provide evidence, documents or things to the hearing and/or whether such evidence, documents or things are relevant to the subject matter of the proceeding or admissible at the hearing. In such cases, the Adjudicator may, on notice to the other parties, request submissions from the requesting party and make a determination on whether a summons will be issued.
- 6.3 A summons to a witness (Form 1) shall be signed by the Adjudicator.
- 6.4 The issuance of a summons may be reviewed by the Adjudicator (in writing unless otherwise directed by the Adjudicator), if requested, on notice to all parties, by the summonsed party or another party.
- 6.5 A party requesting a summons shall,
- (a) write to the Adjudicator with the name and address of the witness, along with a draft proposed summons including all the required particulars (Form 1);
 - (b) ensure that the summons is personally served on the witness, with reasonable notice prior to the hearing;
 - (c) pay the witness the same fees or allowances, for attending or otherwise participating in the hearing, as are paid to a person summoned to attend before the Ontario Superior Court of Justice [see Tariff A in the Rules of Civil Procedure]; and,
 - (d) where directed by the Adjudicator, file an affidavit or other satisfactory proof of service.

- 6.6 When the Adjudicator issues a summons on his/her own motion, the costs of serving the summons and witness fees will be borne by the Service.

Pre-Hearing Conference

- 7.1 The hearing Adjudicator may direct parties or their representatives to attend one or more pre-hearing conferences, which may be held by conference telephone call or any other manner directed by the Adjudicator for the purpose of simplifying issues, the possibility of obtaining admissions that may facilitate the hearing, the estimated duration of the hearing and any other procedural or evidentiary matter that may assist in the just and expeditious disposition of the proceedings.
- 7.2 The Adjudicator may designate another qualified Adjudicator (“Pre-Hearing Adjudicator”) to preside at a pre-hearing conference for the purpose of settling any or all of the issues, simplifying issues or the possibility of obtaining admissions that may facilitate the hearing.
- 7.3 An Pre-Hearing Adjudicator who presides at a pre-hearing conference at which the parties attempt to settle the issues pursuant to 7.2 shall not be the Adjudicator at the hearing of the proceeding unless all parties consent.
- 7.4 A pre-hearing conference (including settlement discussions) shall be held in the absence of the public.
- 7.5 Evidence filed or statements made for the purpose of settlement or otherwise filed or made “without prejudice”, shall not be revealed or communicated to the Adjudicator who is conducting the hearing, except with the consent of the parties.
- 7.6 The Adjudicator who presides at a pre-hearing conference pursuant to 7.2 shall cause to be recorded and provided to all parties and the hearing Adjudicator, in writing, any binding orders agreements or undertakings which are made at the pre-hearing conference. The Pre-Hearing Adjudicator shall not make binding orders regarding the substantive issues(as opposed to procedural) without the consent of the parties.

Joint Hearings

- 8.1 If two or more proceedings involve the same or similar questions of fact or law, the parties may consent to an order, made by the Adjudicator, to combine the proceedings or any part of them or to hear them at the same time.
- 8.2 Where two or more proceedings are heard together in a joint hearing,
- (a) the individual proceedings remain separate, each with their own set of parties; and

- (b) the evidence at a joint hearing shall be considered as the evidence of each of the individual proceedings, unless otherwise ordered by the Adjudicator with respect to that Adjudicator's proceeding.
- 8.3 Where the combining of proceedings or the hearing of proceedings together unduly complicates or delays the proceedings or causes prejudice to a party, the Adjudicator may order that the proceedings or the hearing be continued separately.

Special Needs

- 9.1 The Adjudicator will make every reasonable effort to meet the needs of individuals with disabilities who are participating in or attending the hearing and the parties shall notify the Adjudicator as early as possible of any special needs.

Electronic Hearings

- 10.1 The Adjudicator may, on his/her own motion or on the motion of a party or on consent of the parties, order that any part or all of the proceeding be heard as an electronic hearing.
- 10.2 In accordance with section 5.2 of the *Statutory Powers Procedure Act*, the Adjudicator shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
- 10.3 In an electronic hearing, all the parties and the members of the tribunal participating in the hearing must be able to hear one another and any witnesses throughout the hearing.

Written Hearings

- 11.1 The Adjudicator may, on his/her own motion or on the motion of a party or on consent of the parties, order that any part or all of the proceeding be heard as a written hearing.
- 11.2 In accordance with section 5.1 of the *Statutory Powers Procedure Act*, the Adjudicator shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.
- 11.3 The parties are entitled to receive every document that the Adjudicator receives in the proceeding.
- 11.4 An Adjudicator may, in a proceeding, hold any combination of written, electronic and oral hearings.

Rules of Examination

12.1 Parties will have an opportunity to cross-examine witnesses. Subject to the discretion of the Adjudicator, the order will be as follows:

In the case of witnesses called by the Prosecution:

1. Prosecution examination-in-chief
2. Complainant cross examination
3. Defence cross-examination
4. Prosecution redirect

In the case of witnesses called by a Complainant:

1. Complainant examination-in-chief
2. Prosecution cross-examination
3. Defence cross-examination
4. Complainant redirect

In the case of witnesses called by the Defence:

1. Defence examination-in-chief
2. Prosecution cross-examination
3. Complainant cross-examination
4. Defence redirect

Expert Evidence

13.1 For the purpose of this section, “expert evidence” includes but is not limited to:

- (a) medical reports, letters and notes (including those expressing diagnosis or medical opinion on issues arising in the hearing);
- (b) the necessary technical or scientific basis upon which to properly assess the evidence presented; and
- (c) inferences and opinions made by an expert in a special field or with special or peculiar knowledge.

13.2 A party who intends to call an expert witness at the hearing shall, not less than 90 days before the hearing, serve on every other party a report, signed by the expert, containing the information listed in Rule 13.4.

13.3 A party who intends to call an expert witness at the hearing to respond to the expert witness of another party shall, not less than 60 days before the hearing, serve on every other party a report, signed by the expert, containing the information listed in Rule 13.4.

13.4 A report provided for the purposes of Rules 13.2 and 13.3 shall contain:

- (a) The expert’s name, address and area of expertise.

- (b) The expert's qualifications, employment and educational experiences in his/her area of expertise.
- (c) The instructions provided to the expert in relation to the proceeding.
- (d) The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
- (e) The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
- (f) The expert's reasons for his/her opinion, including,
 - a. a description of the factual assumptions on which the opinion is based,
 - b. a description of any research conducted by the expert that led him or her to form the opinion, and
 - c. a list of every document, if any, relied on by the expert in forming the opinion.
- (g) An acknowledgement of expert's duty (Form 3) signed by the expert.

- 13.5 An expert witness may not testify with respect to an issue, except with leave of the Adjudicator, unless the substance of his/her testimony with respect to that issue is set out in,
- (a) a report served under this rule; or
 - (b) a supplementary report served on every other party not less than 30 days before the commencement of the hearing.

- 13.6 The Adjudicator may, on motion, extend or abridge the time provided for service of a report or supplementary report under this rule.

- 13.7 Where a party intends to submit and rely upon the expert evidence, the onus is on that party to establish the relevancy and necessity for such and to properly qualify the expert witness.

Adjudicator Powers

- 14.1 The Adjudicator may exercise any of his/her powers on his/her own initiative or at the request of a party.
- 14.2 The Adjudicator may issue general or specific procedural or practice directions at any time.
- 14.3 The Adjudicator may make such rulings and orders as he/she deems necessary for the proper functioning of proceedings and processes, including interim rulings and orders. Such interim rulings or orders may contain conditions that the Adjudicator considers appropriate.
- 14.4 The Adjudicator at any time may waive or vary any of these Rules, including time limits set out in these Rules, on such conditions as the Adjudicator considers appropriate.

14.5 Where matters are not covered by these Rules, the practice will be decided by the Adjudicator as he/she considers just.

FORM 1
Hearing under Part V of the *Police Services Act*
SUMMONS TO A WITNESS BEFORE AN ADJUDICATOR

In The Matter Of:

and

_____ Police Service

To: *(full name and address)*

(For an oral hearing)

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on _____ (day), _____ (date) at _____ (time) at _____ (place), and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: (Set out the nature and date of each document and give sufficient particulars to identify each document and thing.)

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE ONTARIO SUPERIOR COURT (formerly the Ontario Court (General Division)) MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

(For electronic hearing)

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING on _____ (day), _____ (date) at _____ (time), in the following manner: (give sufficient particulars to enable witness to participate.)

IF YOU FAIL TO PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THE SUMMONS, THE ONTARIO SUPERIOR COURT (formerly the Ontario Court (General Division)) MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

DATED: _____ Adjudicator Member _____
Print Name:

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Ontario Superior Court (formerly the Ontario Court (General Division)).

Summons requested by (name party): _____

Counsel/Representative (if any) for: _____

Phone number: _____

FORM 2
Hearing under Part V of the Police Services Act

In The Matter Of:

Notice of Motion

THE _____ (*the party making the motion*) will make motion to the Adjudicator, _____ on _____ (*date and time, if known*) [or: a date to be set by the Adjudicator] at _____ (*location*).

THE MOTION IS FOR:
(*state the relief or order which you are requesting*)

THE GROUNDS FOR THE MOTION ARE:
(*state the reasons supporting your motion*)

THE FOLLOWING EVIDENCE WILL BE RELIED ON AT THE HEARING OF THIS MOTION:
(*list the affidavits or other documentary evidence to be relied upon*)

Date:

[insert Moving Party or Representative
Current Address and Contact Information]

TO:

(*names and addresses of other parties or representatives, who must be served this notice of motion and supporting materials; file copies with the Adjudicator in accordance with Rules.*)

FORM 3
Hearing under Part V of the *Police Services Act*

In The Matter Of:

and

_____ Police Service

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is *(name)*. I live at
..... *(city)*, in the *province of*
..... *(name of province)*.
2. I have been engaged by or on behalf of
..... *(name of party/parties)* to
provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding
as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my
area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to
determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I
may owe to any party by whom or on whose behalf I am engaged.

Date

Signature:

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of Rule 10.