

## Human Resources Professionals Association Capacity Committee Rules of Procedure

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

### Rule 1 – Definitions

**1.0** In these Rules, unless the context requires otherwise,

“Association” means the Human Resources Professionals Association.

“Association Counsel” means the lawyer or lawyers retained by the Association to represent it in the capacity process.

“Chair” means the Chair of the Committee.

“Committee” means the Capacity Committee of the Association.

“Deliver” means serve every Party (and, where applicable, a Motion Participant) and file with proof of service at the Association, in accordance with the provisions of these Rules.

“Hearings Coordinator” means the Association staff member assigned to the Committee.

“Holiday” means

(a) Saturday;

(b) Sunday;

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

"Independent Legal Counsel" means the lawyer or lawyers advising the Committee or a Panel.

"Member" means a member of the Association who is the subject of a Proceeding and includes an individual, student, or firm.

"Motion" means a request made to a Panel for an order in a Proceeding involving a Member.

"Motion Participant" means a Party or any person who would be affected by an order sought and includes Independent Legal Counsel for the Committee.

"Panel" means a panel of the Committee that is hearing a matter.

"Parties" means the Association and the Member.

"Party" means either the Association or the Member.

“Presider” means a person who is a member of the Committee who does not have a conflict of interest and is designated to preside at a pre-hearing conference.

“Proceeding” means the capacity process including any step in the process.

“Representative” means a person licensed under the *Law Society Act*, RSO 1990, c. L.8 or an agent who is authorized to represent a Party in the Proceeding.

“RHRPA” means the *Registered Human Resources Professionals Act, 2013*, SO 2013, c. 6.

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

“SPPA” means the *Statutory Powers Procedure Act*, RSO 1990, c. S.22.

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

## **Rule 2 – Application of Rules**

- 2.1** These Rules apply to all Proceedings before the Committee or a Panel.
- 2.2** In the case of a Motion involving a person who is not a Party, the provisions of these Rules that refer to a Party or Parties are deemed to include reference to a Motion Participant, if appropriate in the circumstances.

## **Rule 3 – Waiving/Dispensing with Compliance**

- 3.1** Compliance with these Rules may be waived on consent of the Parties or dispensed with upon an order of a Panel.

- 3.2** A Panel may refuse to dispense with compliance with these Rules where a Party does not act on a timely basis.
- 3.3** A Panel may dispense with compliance with these Rules on its own initiative, after giving notice to the Parties and providing an opportunity for submissions to be made.

#### **Rule 4 – Interpretation**

- 4.1** These Rules shall be liberally construed to secure the just, most expeditious, and least expensive determination of every part of the process in the Proceeding.
- 4.2** Where matters are not provided for in these Rules or under the SPPA, the practice shall be determined by analogy to them.

#### **Rule 5 – Computing Time (Deadlines)**

- 5.1** Subject to 5.2, in computing time periods under these Rules,
- (a) where there is a reference to a number of days between events, the days shall be counted by excluding the day on which the first event occurs and including the day on which the second event occurs;
  - (b) where a period of fewer than seven days is prescribed, Holidays shall not be counted;
  - (c) where the time for doing an act under these Rules expires on a Holiday, the act may be done on the next day that is not a Holiday; and
  - (d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a Holiday, it shall be deemed to be received or effective on the next day that is not a Holiday.

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

## **Rule 6 – Representation**

- 6.1** A Member may be self-represented or may be represented by a Representative.
- 6.2** Where a Representative ceases to act for a Member in a Proceeding, the Member shall promptly notify the Committee and the other Parties in writing.
- 6.3** Where a Party to a Proceeding is not represented by a Representative but acts in person, anything that these Rules permit or require a Representative to do shall be done by the unrepresented Party.

## **Rule 7 – Service and Filing**

- 7.1** All documents required to be served under the Rules shall be served by one of the following methods:
- (a) by personal delivery to the Party or the Representative of the Party;
  - (b) by delivery to an adult person at the premises at which the Party resides, is employed, or carries on business;
  - (c) by regular, registered, or certified mail to the last known address of the Party or the Representative of the Party;
  - (d) electronically to the email address of the Party or the Representative of the Party;

(e) by courier to the last known address of the Party or the Representative of the Party; or

(f) by any other means authorized or permitted by the Committee.

**7.2** Service is deemed to be effective when delivered as set out below:

(a) by personal delivery before 4:30 p.m. on the day of the delivery, and, after that time, on the next day that is not a Holiday;

(b) by mail, on the fifth day after the day of the mailing;

(c) electronically, on the same day, provided that confirmation of receipt of the email by the correct Party is provided;

(d) by courier, on the earlier of the date on the delivery receipt or the second day after the document was given to the courier; or

(e) by any other means authorized by the Committee, on the date specified by the Committee.

**7.3** Any document to be filed in a Proceeding shall be filed in the Office of the Registrar by leaving it in person at the Office of the Registrar, mailing it to the Association marked to the attention of the Hearings Coordinator, or emailing it to the Office of the Registrar at [registrar@hrpa.ca](mailto:registrar@hrpa.ca).

**7.4** A document shall not be considered filed until it is actually received by the Office of the Registrar. Where a document is delivered by email, it shall not be considered filed until the recipient of the email acknowledges receipt.

## **Rule 8 – Notice of Application**

- 8.1** The Association Counsel shall cause a Notice of Application to be sent to the Member and to such other persons as a Panel may direct.
- 8.2** Unless otherwise directed, it is sufficient if the Notice of Application is sent no less than 30 days before the hearing date.
- 8.3** The Notice of Application shall be in writing and shall include the following:
- (a) a statement of the purpose of the hearing;
  - (b) a statement of the time and place of the hearing, if known;
  - (c) a reference to the statutory authority under which the hearing will be held;
  - (d) a statement that the Member may have a Representative at the hearing;
  - (e) a statement of the allegations against the Member, including a brief description of the particulars; and
  - (f) a statement that if the Member does not attend at the hearing, the Panel may proceed in the Member’s absence and the Member will not be entitled to any further notice in the Proceeding.

## **Rule 9 – Motions**

- 9.1** Motions shall be initiated by filing a Notice of Motion and shall identify the Parties to the Motion (including any Motion Participant who is not a Party) and describe the relief sought and evidence and authorities that will be relied upon.

- 9.2** All procedural or interlocutory matters and issues shall be raised by way of a Motion as soon as possible and shall be heard on a day and at a time fixed by staff that is convenient to the Chair, the Committee, and the Parties.
- 9.3** Any Party initiating a Motion shall do so at least 14 days before the day upon which a hearing is scheduled to commence, unless the nature of the Motion requires that it be heard during the hearing itself.
- 9.4** The Party or person initiating the Motion shall Deliver the Notice of Motion, and material to support the Motion, by the Monday that is at least 7 days before the Motion is to be heard.
- 9.5** Any Motion Participant who wishes to reply shall Deliver responding material at least 3 days before the Motion is scheduled to be heard.

## **Rule 10 – Evidence, Submissions, and Materials on a Motion**

- 10.1** Evidence on a Motion shall be by affidavit or testimony.
- 10.2** A Motion Participant may not cross-examine the deponent of an affidavit unless the Chair, Vice-Chair, a Committee member designated by the Chair, or the Panel otherwise directs, having concluded that the proper determination of the issues in the Motion requires such cross-examination.
- 10.3** Time limits on oral submissions shall be limited to 30 minutes for the Party or person initiating the Motion, 30 minutes for the responding persons or Parties, and a further and final 10 minutes for the initiating Party or person by way of reply.
- 10.4** The Party or other person initiating the Motion shall Deliver the Notice of Motion, materials in support of the Motion, and any written argument in the form of a Motion Record.



- 10.5** The Motion Record shall contain all materials to be relied upon.
- 10.6** If any other Motion Participant or Party has materials it wishes to rely upon, it shall prepare a Motion Record containing all those materials and Deliver them pursuant to these Rules.

## **Rule 11 – Disclosure**

- 11.1** A Panel may at any time order a Party to provide to another Party such further information or documents as the Panel considers necessary for a proper determination of the issues in the Proceeding.
- 11.2** The Association Counsel shall Deliver to the Member or, if the Member has one, the Member’s Representative copies of all documents that the Association intends to produce or enter as evidence at the hearing as soon as is reasonably practicable after the Notice of Application is served, and in any case, at least 20 days before the commencement of the hearing on the merits or as determined by a Panel as the circumstances require.
- 11.3** The Association Counsel shall provide to the Member or, if the Member has one, the Member’s Representative and file with the Hearings Coordinator, at least 10 days before the commencement of the hearing, a list of the witnesses the Association intends to call to testify on the Association’s behalf at the hearing.
- 11.4** If the Association intends to call an expert witness at the hearing, the Association Counsel shall, at least 30 days before the commencement of the hearing, serve the Member or, if the Member has one, the Member’s Representative with a written report signed by the expert containing the name, address, and qualifications of the expert and the substance of the expert’s

proposed evidence, including a list of all documents to which the expert will refer.

**11.5** The Association's disclosure obligations are not reciprocal.

## **Rule 12 – Request to Issue a Summons**

**12.1** At the request of a Party, a summons to a witness may be issued pursuant to section 12 of the SPPA.

**12.2** The issuance of or a refusal to issue a summons may be reviewed by a Panel by Motion filed in accordance with Rule 9.

**12.3** Once a summons is served, it is effective for the duration of the hearing, provided that the witness is advised of the adjourned dates.

## **Rule 13 – Evidence**

**13.1** The Panel may receive and act on any facts agreed on by the Parties without further proof.

**13.2** The Panel may direct the form in which written evidence shall be filed.

**13.3** The Panel may admit a copy of a document or other thing as evidence at a hearing if it is satisfied that the copy is authentic.

**13.4** Where a document has been filed at a hearing, and the Panel consents, the Party who filed it may cause a photocopy to be made, after which a member of the Panel may certify the photocopy to be a true copy and authorize the release of the original to the Party.

- 13.5** A copy certified by a member of the Panel to be a true copy of a document filed at a hearing is admissible in proceedings in which the document is admissible as evidence.
- 13.6** At a hearing, the Panel may admit any evidence, including hearsay, relevant to the subject-matter of the Proceeding.
- 13.7** Subject to Rule 13.6, the Panel may admit as evidence at a hearing, whether or not it would be admissible as evidence in a court,
- (a) any oral testimony; and
  - (b) any document or thing.
- 13.8** The Panel may exclude any evidence that is unduly repetitious.
- 13.9** The Panel shall exclude any evidence that is inadmissible because
- (a) it would be inadmissible in court by reason of any privilege under the law of evidence; or
  - (b) it is inadmissible under the RHRPA or any other Act.

#### **Rule 14 – Access to Documents**

- 14.1** Documents required to be filed or received in evidence in a Proceeding shall not be available to the public.
- 14.2** Any document filed with the Office of the Registrar, any document received in evidence, and any transcript of the Proceeding shall be kept confidential pursuant to section 9 of the SPPA.

## **Rule 15 – Pre-Hearing Conferences**

- 15.1** The Parties and their Representatives may choose to participate in one or more pre-hearing conferences prior to or during the hearing.
- 15.2** The issues to be dealt with at the pre-hearing conference may include any one or more of the following:
- (a) resolution of any or all of the issues raised by the Application;
  - (b) simplification of the issues;
  - (c) facts or evidence that may be agreed upon;
  - (d) dates by which any steps in the Proceeding are to be taken or begun;
  - (e) estimated duration of the hearing; or
  - (f) any other matter that may assist in the just and most expeditious disposition of the Proceeding.
- 15.3** The pre-hearing conference may be held
- (a) in person; or
  - (b) by electronic conference if the Committee believes that no Party will suffer significant prejudice as a result of the electronic format and both Parties agree to proceed via an electronic hearing.
- 15.4** In order to encourage a full and frank exchange of views, a pre-hearing conference shall be confidential and conducted in private on a without prejudice basis.

- 15.5** The Chair of the Committee shall designate a Presider.
- 15.6** The Presider may make such procedural orders as the Presider considers appropriate in light of the Parties' submissions and applicable legal principles.
- 15.7** Neither the Presider nor any other Committee member who attends the pre-hearing conference shall participate in the hearing.
- 15.8** Subject to these Rules only, the Presider shall not discuss any of the issues or any other matters or make any communication with any person or the Committee, other than through the Presider's report.
- 15.9** The Association Counsel shall complete a Pre-Hearing Conference Memorandum in accordance with the form attached hereto as Form 1, entitled, "Pre-Hearing Conference Memorandum."
- 15.10** The Association shall prepare all documents it deems necessary to assist in achieving the purposes of the pre-hearing conference and addressing the issues described in Rule 15.2.
- 15.11** The Association Counsel shall Deliver to the Member and to the Presider the Association's Pre-Hearing Conference Memorandum and supporting documentation no later than 5 business days in advance of the pre-hearing conference date.
- 15.12** The Member shall Deliver to the Association Counsel and to the Presider the Member's Pre-Hearing Conference Memorandum in accordance with the form attached hereto as Form 1, entitled, "Pre-Hearing Conference Memorandum" and any supporting documentation no later than 2 business days in advance of the pre-hearing conference date.

- 15.13** The purpose of delivery of the Pre-Hearing Conference Memorandum and the supporting documentation in advance of the pre-hearing conference is to provide the other Party and the Presider an opportunity to review the materials prior to the date of the pre-hearing conference.
- 15.14** If appropriate, after the pre-hearing conference, the Presider shall prepare a report in accordance with Form 2 listing every agreement reached and every order made. This report shall be given to the Parties and may be used at the capacity hearing by either Party.

## **Rule 16 – Hearings**

- 16.1** Where a Notice of Application has been served on any Party in compliance with Rule 8 and the Party does not attend the hearing, the Panel may proceed in the Party's absence and that Party is not entitled to any further notice in the Proceeding.
- 16.2** A hearing may be held
- (a) in person; or
  - (b) by electronic conference if the Committee believes that no Party will suffer significant prejudice as a result of the electronic format and both Parties agree to proceed via an electronic hearing.
- 16.3** Capacity hearings shall not be open to the public.
- 16.4** Unless the Panel directs otherwise, at the beginning of the hearing each Party may be asked to give a brief opening statement that describes the issues that the Party will address at the hearing
- 16.5** The opening statements will be made in the following order:

(a) the Association; and

(b) the Member.

**16.6** Evidence at the hearing shall be presented by the Parties in the order directed by the Panel and, in the absence of any such direction, in the following order:

(a) the Association;

(b) the Member; and

(c) the Association, limited to matters properly raised in reply.

**16.7** In addition to any questions asked in examination-in-chief or in cross-examination, the Panel may ask any questions of the witness, subject to the right of all Parties to ask questions of the witness regarding the matters raised by the Panel.

**16.8** Oral examination of witnesses shall be conducted under oath or affirmation that their evidence is true.

**16.9** Witnesses shall be excluded from the hearing until they are called to provide their testimony unless both Parties agree otherwise.

**16.10** If, pursuant to section 47(3) of the RHRPA, the Panel determines that it is necessary to obtain the opinion of a physician or psychologist in order to determine whether a Member is incapacitated, the Panel may, on its own or on Motion, order the Member to undergo a medical or psychological examination.

**16.11** If the Member is ordered to undergo a medical or psychological examination in accordance with section 47(3) of RHRPA, the Panel shall consider the findings or recommendations in the context of the hearing of the Application

and the Parties shall have the opportunity to make submissions regarding same.

## **Rule 17 – Decisions**

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

## **Rule 18 – Corrections and Clarifications**

- 18.1** A Panel may, within 6 months of the release of an order or decision, on the request of a Party or at its own initiative, correct a typographical error, error of calculation, technical error, or other similar error made in an order or decision of that Panel.
- 18.2** A Panel may, within 6 months of the release of an order or decision, on the consent of the Parties, clarify an order or decision of that Panel that contains a



misstatement, ambiguity, or other similar error.

- 18.3** If any member of the Panel that made the original order is unable, for any reason, to participate in the consideration of a request for a correction or clarification, a quorum of the original Panel will suffice for the purpose of this rule.

**IN THE MATTER OF** a Hearing of a Panel of the Capacity Committee of the Human Resources Professionals Association (HRPA) held pursuant to the provisions of the *Registered Human Resources Professionals Act, 2013*, respecting [Member Name] of the city of [Member's city of residence] in the Province of Ontario.

**PRE-HEARING CONFERENCE MEMORANDUM  
OF HRPA [or of the Member, as the case may be]**

**Date of the Pre-Hearing Conference:**

**Association Counsel:**

**Member Representative:**

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**BACKGROUND INFORMATION**

1. Please attach a copy of the Notice of Hearing to this memorandum.
2. Set out a brief statement of the Association's case, as you understand it, including factual contentions.
3. Set out a brief statement of the Member's case, as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

## **SETTLEMENT AND AGREEMENTS**

7. What are the prospects for settlement?
8. Have the representatives discussed the matter and sought instructions?
9. Would this be a suitable matter for which to attempt information resolution?
10. Set out the facts in numbered paragraphs that you believe should be agreed to.
11. Set out a numbered list of documents that you believe should be admitted on agreement.

## **ADDITIONAL STEPS BEFORE THE HEARING**

12. On the subject of motions:
  - Will you be bringing any motions before or during the hearing?
  - If so, what order will you seek and on what grounds?
  - When do you intend to bring each motion?
13. On the subject of disclosure:
  - Are there any issues with respect to disclosure?
  - Has the Association made full disclosure to the member?
  - Have you produced all of the expert reports upon which you intend to rely?
  - If you have not yet made all required disclosure, why not and by what date will it be done?
14. On the subject of a documents brief:
  - Who will prepare and deliver a brief containing the notice of hearing, the documents admitted by agreement, and the presiding officer's report?
  - By what date will the brief be delivered?

15. On the subject of written arguments:

- Are there any issues that should be the subject of written argument? If so, identify them.
- When should the written arguments be delivered by?

16. On the subject of a book of authorities:

- Will you be referring to any authorities other than the [Registered Human Resources Professionals Act, 2013](#), the [HRPA By-laws](#), and the [HRPA Code of Ethics and the Rules of Professional Conduct](#)? If so, list them.
- Should those authorities be copied for the Capacity Committee or for Independent Legal Counsel?
- If so, who should prepare the authorities brief and when should it be delivered?

## PLANNING THE HEARING

17. On the subject of scheduling the hearing:

- Are you ready for the hearing?
- Are there any special considerations affecting the setting of a date arising from the availability of witnesses or otherwise?
- How long will the hearing last?
- Other than the motions listed above, the witnesses listed above, and the normal submissions, is there anything else that will have to be dealt with during the hearing itself?
- Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Capacity Committee.
- In numbered paragraphs, list your witnesses in the order that you will call them and the estimated length of time it will take to hear their entire evidence, including cross-examination and questions from the Capacity Committee.

Number	Witness' Name	Estimated Time
1.		
2.		
3.		

- How long will it take you to make your opening and closing submissions on the issue of finding?

18. List the witnesses you intend to have available to testify for each day of your case:

Day	Witnesses Available Beginning that Day
1	
2	

19. Do you believe the Capacity Committee would be assisted by hearing expert evidence by a panel of experts on any particular issue?

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[Date]

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[Signature of main representative who will be attending at the hearing]

**IN THE MATTER OF** a Hearing of a Panel of the Capacity Committee of the Human Resources Professionals Association (HRPA) held pursuant to the provisions of the *Registered Human Resources Professionals Act, 2013*, respecting [Member Name] of the city of [Member's city of residence] in the Province of Ontario.

**REPORT OF PRESIDING OFFICER**

A pre-hearing conference was held in this matter on [date]. In attendance were [list of people and their capacity].

**AGREEMENTS**

The parties agree that the following facts can be assumed to be correct for the purpose of the hearing: [list facts]

The parties agree that the following documents can be admitted in the hearing on consent: [list documents]

**DIRECTIONS AND ORDERS**

The outstanding pre-hearing motions and the dates that they will be heard are as follows:

Motion Number	Nature of Motion	Date to be Heard
1.		
2.		
3.		
4.		

The following motions will be argued at the hearing itself:

Motion Number	Nature of Motion	Estimate Length of Argument
1.		
2.		
3.		
4.		

Other than for information that is discovered after the conference, disclosure is now complete [or will be completed by (date)].

The following document brief(s) will be delivered before the hearing:

<b>Number</b>	<b>Description</b>	<b>Party Preparing</b>	<b>Date to be Delivered</b>
1.			
2.			
3.			
4.			

The Capacity Committee may/should not [choose one] review them before the hearing.

The following written arguments and book of authorities will be delivered before the hearing:

<b>Arguments/Book of Authorities Number</b>	<b>Description</b>	<b>Party Preparing</b>	<b>Date to be Delivered</b>
1.			
2.			
3.			
4.			

The Capacity Committee may/should not [choose one] review them before the hearing.

The hearing is scheduled to begin on [date] for [number] day(s).

The proposed schedule for the hearing is as follows:

<b>Date</b>	<b>Motions/Arguments/Witnesses</b>	<b>Estimated Length of Time</b>

The witnesses will be immediately available when their evidence is reached on the day scheduled for their testimony and will be available on any following days. There are no other matters anticipated to occur during the hearing itself.

**OTHER MATTERS**

[Insert any other matters the parties should be aware of]

\_\_\_\_\_

[Date]

\_\_\_\_\_

[Signature of Presiding Officer]

To: [list of parties' representatives]