



*Protection from reprisal.
Your Right. Our Mission.*

ADJOURNMENT POLICY

July 2013

Adjournment Policy

1. Purpose

Subsection 21(1) of the *Public Servants Disclosure Protection Act* states that the Public Servants Disclosure Protection Tribunal (Tribunal) conducts its proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. The *Rules of Procedure* of the Tribunal are aimed at making sure that every party is given full and ample opportunity to participate in any proceeding, that evidence and representations are disclosed and presented in a timely and efficient manner and that all proceedings before the Tribunal are conducted as informally and quickly as possible. This policy sets out guidelines to ensure that all parties to a complaint have their matter heard within a reasonable time and that the Tribunal resources are used in an efficient and effective manner.

This policy does not bind the Tribunal as the Tribunal reserves the right to either derogate from or modify this policy.

2. General Principles

There may be instances where the parties will request an adjournment of the hearing for various reasons. Rule 40 of the *Rules of Procedure* allows the Tribunal to adjourn a hearing. Because of difficulties in scheduling hearings, the Tribunal's *Procedural Guide* provides that the Tribunal will only grant adjournments for serious reasons that are beyond the control of the parties.

The Tribunal schedules hearings in consultation with the parties. The Tribunal expects parties to prepare for the hearing and to be ready to attend on the scheduled date. Adjournments may waste both the Tribunal and parties' resources, and may cause significant prejudice (including delay) to the parties and to other parties who are waiting for hearing dates. The Tribunal, therefore, focuses on pre-hearing preparation and the guidelines of this adjournment policy.

Parties who wish to have legal assistance should act as soon as possible to contact a legal representative. Hearings will not be adjourned because of unreasonable or avoidable delays in seeking legal assistance. Moreover, newly retained counsel must abide by the schedule already agreed upon.

Scheduling conflicts or vacations of legal representatives may not be sufficient cause to adjourn a hearing. It is expected that an alternate will attend the hearing on behalf of the party.

Motions for adjournments are not automatically allowed, even when all parties consent to the adjournment. The Tribunal will consider the motion, and determine whether there are serious grounds to adjourn based on, but not limited to, the factors set out in this policy.

The Tribunal will balance the rights of the parties to ensure that matters are resolved quickly while not adversely affecting their right to a fair hearing.

3. Factors Taken Into Consideration

The presiding member or panel may consider any factor relevant to the adjournment motion, including but not limited to:

- a) The effect on the regime that protects public servants against reprisals;
- b) The possible prejudice or harm to each party by proceeding in the absence of evidence and whether the adjournment is necessary to provide a fair opportunity to be heard;
- c) The nature and complexity of the issues relevant to the proceedings;
- d) The nature of the evidence to be presented;
- e) The number of previous adjournments granted and the length of time for which an adjournment has been sought;

- f) The other parties' consent;
- g) Whether the adjournment would needlessly delay or impede the conduct of the proceedings;
- h) The amount of time already afforded to the parties for preparation of the case;
- i) The demonstrated effort of the parties to proceed expeditiously;
- j) The parties' conduct in being present and ready for the hearing and/or the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party making the motion;
- k) Counsel's knowledge of, and experience with, similar proceedings;
- l) Other specific factors such as scheduling difficulties.

This list is not exhaustive and will vary from case to case. None of these factors are decisive in and of themselves. The weight afforded to relevant factors may change depending on the specific facts of a case.

Where the presiding member or panel grants an adjournment motion, they may impose conditions on the future conduct of the hearing, including a condition that no further adjournment will be permitted except in the most extraordinary circumstances.

Adjournments will normally not be granted for alternative dispute resolution purposes.

Parties should assume that all of their evidence and submissions will usually be heard on the date stated in the Notice of Hearing. This means that the parties should be prepared to present their evidence, call and question witnesses and make their submissions.

4. Procedure to File a Motion for Adjournment

A party may file a motion for adjournment when serious grounds prevent the party from proceeding with the hearing as scheduled. As described in the Tribunal's *Rules of Procedure*, the party should file a motion for adjournment as soon as feasible after it determines there is a need for an adjournment.

The party seeking an adjournment must:

- a) Communicate beforehand with the other parties and attempt to obtain their consent;
- b) File a motion for adjournment with the Registry of the Tribunal and provide the motion to the other parties at the same time, with the following information:
 - i) The serious grounds which are beyond the party's control that justify the request;
 - ii) The position of the other parties regarding the request (i.e. whether they consent or not to the adjournment);
 - iii) Any other criteria that the parties deem relevant to the motion for adjournment.

In some cases, exceptional circumstances arise at the last moment (such as the death of a close family member or other compassionate grounds) which prevents the party from complying with the procedures set out above. In such circumstances, the party should notify the Tribunal Registrar as soon as they become aware of this, and inform the other parties as well. The case will remain for the scheduled time, but the presiding member or panel will be apprised of the situation and, if satisfied that the circumstances are indeed exceptional, may adjourn the hearing.

However, once a hearing has begun, a motion for adjournment for unforeseen reasons can be presented orally. The presiding member or panel will consider whether an adjournment is necessary to provide an opportunity for a fair hearing. The presiding member or panel may refuse an adjournment request where the matter can be addressed by:

- a) A short break;
- b) Post-hearing submissions;
- c) Altering the order of proceedings, or
- d) Such other direction as the presiding member or panel deems appropriate.

A party who does not agree with an adjournment motion, filed before a hearing has begun, shall set out the reasons for opposing the motion in writing. The written response shall be sent to the Tribunal and to the requester. The Tribunal's copy of the response must include information about when and how the party provided the requester with the response.

5. Tribunal's Response

Depending on the time available, the Tribunal may notify the parties in writing of its ruling on an adjournment motion. The Tribunal can also advise the parties that reasons are "to come".

Where the request for adjournment is denied, the parties and any legal representative will be expected to be present and ready to proceed with the hearing.

Where the Tribunal allows an adjournment motion, the Tribunal shall provide written reasons for the ruling that sets out any conditions attached to the adjournment and any other information necessary for rescheduling the hearing (Rule 40 of the *Rules of Procedure*).

If the adjournment motion was presented at the hearing and the presiding member or panel denies the motion, the presiding member or panel may provide written reasons in the final

decision on the merits of the case. If the presiding member or panel allows the motion and deems it necessary, he/it may provide written reasons for the ruling in cases where the motion was opposed by another party and also in cases where the presiding member or panel is of the opinion that written reasons may be useful.

6. Adjournment of Hearing on the Tribunal's Own Initiative

From time to time, the Tribunal may adjourn a hearing due to changes in the hearing schedule, member illness or other circumstances. In these circumstances, the Tribunal may adjourn a hearing on its own initiative.

If the Tribunal determines that it is necessary to adjourn a hearing to a different date in order to ensure that a party is properly accommodated, if so required by one of the parties, the original hearing will be cancelled and the parties and their representatives will be notified.