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ADMINISTRATIVE
TRIBUNALS

MODEL RULES

FOR TRIBUNALS AND OTHER ADMINISTRATIVE BODIES

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INTRODUCTION TO THE MODEL RULES

What is the purpose of these model rules?

This document is a resource for developing procedural rules to ensure fair and just processes for an administrative body to resolve matters. It is designed to assist an administrative body's chair, members, staff and others to create or update procedural rules that:

- satisfy the requirements of natural justice and procedural fairness,
- are clear and easily understood, and
- are tailored to meet the needs of the administrative body and persons involved in its processes.

These rules can be adapted for use by a variety of different administrative bodies, such as arms-length independent tribunals and in-government decision-makers, when making quasi-judicial decisions. In these model rules, the term "administrative body" is used to identify the entity responsible for resolving matters.

Why have procedural rules?

Many administrative bodies have legislative responsibility to resolve disputes between persons or to make decisions that affect the rights or benefits of persons. Whether the administrative body uses a panel of adjudicators or an individual decision-maker, the rules of natural justice will apply.

Natural justice requires procedural fairness. This means:

- the administrative body must consider matters objectively, and must act fairly and without bias, and
- persons directly affected must know what is being considered, the case they have to make or the case against them, and be provided with an opportunity to be heard.

The rules adopted by an administrative body to meet these procedural requirements will depend on the nature of the administrative body and the impact of its decisions.

Well-crafted rules provide a clear procedural structure that is responsive to the needs of the administrative body and the participants in the process, and meets the requirements of natural justice and procedural fairness. A clear structure ensures that participants know the process and are better prepared to participate in it. It will also assist the administrative body to reach timely and effective solutions and address the reasonable expectations of all involved.

What are the best practices for developing rules?

The emphasis in this document is on the development of rules that match the needs of an administrative body as identified by its chair, members, staff and others. This introduction and these model rules address the most common process issues and situations faced by administrative bodies and are intended as a guide in choosing the processes and rules appropriate for an administrative body.

These rules are model rules as no one set of rules is suitable for all administrative bodies. The rules of an administrative body should establish processes that fit the situations the administrative body is asked to resolve. As well, the administrative body's unique circumstances may require rules to deal with matters not addressed in these model rules.

A few things to consider before developing rules:

- a) The role of an administrative body is to resolve disputes in a fair, efficient and objective manner. Unless the governing legislation expressly requires a hearing process be conducted, an administrative body has a fair degree of latitude to resolve disputes using a variety of problem solving mechanisms.
- b) The rules of an administrative body should not be court-like. Participants involved in the process will often not be represented by legal counsel. The rules should allow the administrative body to operate in a less formal manner than a court and to respond quickly and efficiently to the parties and the issues.
- c) An administrative body has authority to determine its processes both generally, through rules, and specifically, as each situation requires. The rules are a guide and the administrative body must be flexible in the application of the rules when necessary.
- d) The rules do not need to anticipate every problem that the administrative body may face. Overly long rules will interfere with the ability of the administrative body to be flexible.
- e) The rules do not need to repeat requirements set out in legislation unless it is necessary to describe the process in more detail. For example, if the administrative body is subject to provisions of the *Administrative Tribunals Act*, the rules do not need to repeat these provisions. However, if the participants involved in the process are not familiar with reading legislation, it may be helpful to set out those requirements in the rules. When doing so, take care not to expand or limit the powers of the administrative body.
- f) The rules should be clearly written, logically organized and include few, if any, legal terms.
- g) Most importantly, the rules must be appropriate for the work of the particular administrative body. The rules must conform to the authority given to the administrative body in its enabling legislation. If in doubt about whether the administrative body has certain powers and authority, seek legal advice.

The first step in developing procedural rules is to understand the legislative context and operational requirements of the administrative body and its users. This is critical to the development of efficient and effective rules. Begin by reviewing the legislative mandate of the administrative body and the nature of the issues considered by the administrative body. Consider, for example:

- the factual, technical or legal complexity of the matters under review
- the expertise of the decision-makers
- the operational resources available to the administrative body, and
- the powers and authority of the administrative body under its enabling legislation.

In addition to understanding the work of the administrative body, consider the participants in the process and other persons affected by the actions of the administrative body. Review, for example:

- the nature of the rights or benefits affected, and
- the sophistication, available resources and expectations of those affected.

Before beginning to draft rules, think about who should be involved in the process and when they will be involved. It can be very effective for a small group of board members and/or staff of the administrative body to draft the rules. The group should consult with others, both internal and external to the administrative body, at various stages in the process in order to ensure that all issues, processes and options are fully considered.

The drafting stage should begin with a review of these annotated model rules. Questions to consider are:

- What processes in these model rules are currently being used by the administrative body and can the model rules be adopted or modified for the administrative body's purposes?
- What processes in these model rules are not being used by the administrative body but, if adopted or modified, may create greater fairness, efficiencies and consistency?

Not all of the model rules and processes will be needed. For example, some administrative bodies have a relatively simple process and do not need to stream matters (see Part 8 for a discussion on streaming). For these administrative bodies, it might be more effective to simply focus the rules on mediation or dispute resolution mechanisms.

Keep in mind the principles (see the first part of these model rules) which guide the development process. These principles are common to all administrative bodies, although there may be others relevant to the particular work of the administrative body that should be added. The principles reinforce for participants and the administrative body itself that the objective of the rules is to provide for fair and efficient processes. These principles set the framework for the rules including the principle that fairness requires flexibility when necessary.

Next, begin a draft of a proposed set of rules, using the model rules selected and modified as appropriate. When a comprehensive and clear draft of the rules has been prepared, consult with stakeholders. Provide stakeholders with a copy of the draft rules and include relevant questions and explanatory notes to help focus the stakeholders' comments. Consultation questions should be clear and direct to ensure responses are helpful to the drafting process. Allow sufficient time for stakeholders to make their comments, and for the administrative body to consider those comments and revise the rules where appropriate. If time permits, a second consultation on the revised rules may be advisable.

Consider what further internal or external steps may be necessary to finalize the rules. For example, some administrative bodies may be required to enact their rules by a formal regulation.

When finalized, make the rules readily available to the public by posting the rules on the administrative body's webpage and sending copies to participants or other interested persons by mail or other methods when requested.

The effectiveness of the rules should be regularly evaluated. The administrative body should establish a regular review period and track the issues that arise between reviews by keeping a record or log. A review will help identify any rules or processes that need to be modified or clarified to achieve the overall objectives of the administrative body. Regular evaluation, review and consultation will help ensure that the rules continue to work for all involved and will take into account changes in available technology that may impact the rules.

What is the nature of the administrative body?

The term "administrative body" may not be suitable to describe the decision maker for which the rules are being considered. As with any of the rules or terms in these model rules, a term that suits the administrative body and is understandable to participants in the process should be used. The best solution may be to refer to the administrative body by its name or statutory description throughout the rules.

ANNOTATED MODEL RULES

Part 1 – Guiding Principles

Overview

An administrative body's rules commonly begin with a purpose statement and guiding principles. The guiding principles describe how the rules will be applied by the administrative body.

The guiding principles identify that the focus of the rules is a simple and fair process leading to a just resolution. Although fairness generally requires consistency, the guiding principles make it clear that fairness may also require flexibility. Rules are not meant to be rigidly applied if doing so will result in unfairness or a reasonable perception of unfairness in the conduct of the proceedings.

Rule 1.1 Guiding principles

1.1.1 The purpose of these rules is to make it as easy as possible to resolve matters brought to the administrative body for resolution.

1.1.2 These rules:

- a) facilitate the fair and just resolution of matters before the administrative body
- b) ensure the conduct of a proceeding is proportional to the complexity of the matter before the administrative body
- c) allow flexibility in the conduct of a proceeding, when fair and just to do so
- d) facilitate the timely resolution of matters.

[option] Rule 1.2 Power of the administrative body

The powers of the administrative body include:

- a) accepting or rejecting an application for review
- b) using dispute resolution processes
- c) directing pre-hearing conferences be held
- d) directing the matter be resolved by written submissions or oral hearing, or a combination of both.

Comments

1. Other principles that may be specifically adopted by an administrative body in its rules include that:
 - the rules must be understandable to the participants
 - the rules must be responsive to the needs of the participants.

These model rules reflect the concept of proportionality – this means the type and amount of process to be applied to any particular matter should reflect how serious or complicated the issues are. The model rules adopted by an administrative body do not need to specifically address proportionality if the matters to be resolved are all very similar in terms of how serious or complex they are and if only one type of process is required. (See the discussion on ‘streaming’ in Part 8). If, however, the matters vary in terms of seriousness or complexity, the processes available may include more than one option or “process stream”, and proportionality will be a factor in deciding which of those processes is appropriate to a particular matter before the administrative body.

The following is an example rule describing the factors the administrative body will take into account when considering the process that is appropriate to a particular proceeding.

Proportional proceedings

The administrative body will take the following factors into account when considering the process that is appropriate for the proceedings:

- a) the needs and interests of the participants
 - b) the resources of the participants and the administrative body, including a consideration of the financial cost of the process
 - c) the importance of the issues in dispute to the participants and the public generally, and
 - d) the complexity of the proceeding.
2. The optional rule 1.2, stating the powers of the administrative body, may be useful if participants in the process are not familiar with reading legislation. A plain language statement of the administrative body’s powers may assist the participants’ understanding of its authority. However, that statement of powers must be accurate and must not expand or limit the authority of the administrative body as set by the legislation.

Not all administrative bodies will have the powers described in Rule 1.2.1. Some administrative bodies will have additional powers, such as the power to initiate a review, reconsider decisions, or the power to investigate. The description of the powers set out in the rule must be customized to reflect the powers actually given to the administrative body. Note that Rule 1.2.1 does not need to be a full list of the powers of the administrative body. The rule can describe the key powers of the administrative body without limiting the existence of other powers.

Part 2 – Definitions

Overview

If the rules are clear and unambiguous, definitions will not be needed for most of the words or terms used. Some words or terms, however, will need to be defined. For example, definitions are needed for acronyms (e.g. BCCAT means British Columbia Council of Administrative Tribunals) or words with a particular meaning (see the definitions of “address of delivery” and “applicant” below). This part of the rules should be created as the rules are drafted and should be the last section finalized. Before finalizing the rules, review the definitions to ensure that the words and terms are used consistently through the rules and that the meaning has not shifted as the rules have developed.

The words and terms defined in these model rules are designed for use with this sample process. If a definition used in these model rules does not fit with the administrative body’s applicable legislation or conflicts with how a term may be commonly used in the specific circumstances, it should be changed to suit the circumstances of the administrative body. There may be other words and terms that are particular to the administrative body’s working environment and process that need to be defined.

A word or phrase defined in this part must be used throughout the rules consistent with its definition. If a word or term is not always used consistent with that same meaning, the rules will be confusing. For example, don’t use the word “party” to mean the applicant, the respondent and any other parties in one section of the rules and then use the same word to apply only to the applicant and the respondent in other sections.

Rule 2.1 Glossary

2.1.1 In these Rules:

Act means [...enabling legislation...]

address for delivery means contact information consisting of a postal address, phone number and, when available, e-mail address

applicant means the person who makes the request to the administrative body under Part 4

[*option*] **chair** means the individual who is the Chair of the administrative body

document includes a photograph, film, recording of sound, any record of a permanent or semi-permanent nature and any information recorded or stored by means of any device

[*option*] **filed** means to have delivered the application, the response [*option*: the reply] or other material to the administrative body

[*option*] **other party** means a person who delivers a reply to the administrative body as required under Rule 13.4

party means the applicant(s), the respondent(s) and, if any, the other party(ies)

potential respondent means any person to whom the administrative body has sent a copy of the application under Part 7

respondent means any person who responds to the application under Part 7

witness includes an expert witness [*option*];, unless expressly excluded].

- 2.1.2 A requirement to provide a document or communication “in writing” or to provide “written notice” or a “written request” is met if the document, communication or notice is sent by email, unless these rules provide otherwise.

Comments

1. The definitions part of the rules can be placed either at the beginning or the end of rules. If the participants are generally represented by lawyers, putting the definitions at the beginning of the rules, like most legislation, may be preferred. On the other hand, a glossary of terms located in an appendix or schedule at the end of the rules may work better if participants are generally self-represented. The question of where to place the definitions could be part of the consultation with the stakeholders as the rules are developed.
2. The definitions required to be included in the rules will depend on the processes of the administrative body. For example, if there is no application process, the rules do not require a definition of applicant. However, a term or terms will be needed to identify the various participants in the process.

Part 3 – Compliance with rules

Overview

The rules are intended to provide a consistent structure within which an administrative body will resolve matters. The expectation is that parties will comply with the rules. However, in some circumstances the administrative body will need to consider not applying a rule (“waiving”) or possibly applying a rule in a slightly different manner (“varying”). Waiving or varying a rule may be at the request of a party (see Rule 8.3 Requests) or initiated by the administrative body (see Rule 3.1.2).

If regular requests to waive or vary a rule are made, this may indicate that a rule is not meeting the parties’ or the administrative body’s needs. As noted in the introduction to these model rules, the administrative body should maintain a log of issues that arise. This includes a log of requests to waive or vary a rule. This information will be useful to the administrative body when it next reviews its rules.

The administrative body will also need to consider the consequences that should apply if a rule is not followed or an order not complied with. In some cases, the administrative body may take no action, for example if notice is delivered a few days late with no resulting disadvantage or unfairness. In other cases, the disadvantage or unfairness resulting from non-compliance may be so great that the only fair outcome is for the matter to be dismissed. A range of other options between these actions may also apply.

Rule 3.1 Application of rules

- 3.1.1 All parties must comply with these Rules and any practice directives issued under these rules unless the administrative body otherwise orders.
- 3.1.2 At any time, the administrative body [*options: the chair of the administrative body; a member of the tribunal; the ...identify individual such as registrar or adjudicator...*] may waive or vary a requirement in these Rules on its own initiative or at the request of a party.

Rule 3.2 Effect of non-compliance

- 3.2.1 A failure to comply with a requirement in these Rules does not invalidate a proceeding of the administrative body.
- 3.2.2 Where there has been a failure to comply with a requirement in these Rules or a direction of the administrative body [*option: , or an order of the administrative body*], the administrative body may take any action it considers appropriate in the circumstances.

Comments

1. The range of actions that may be taken by the administrative body if a rule, order or direction is not followed may be described in more detail in the rules. For example, see the B.C. Human Rights

Tribunal Rules of Practice and Procedure, Rule 4 Effect of Non-Compliance for a detailed rule on non-compliance: see www.bchrt.gov.bc.ca/rules-practice-procedure.

2. An administrative body may order a party to pay costs for failure to comply with a rule, order or direction if the body's enabling legislation provides that authority. For administrative bodies authorized to order costs under section 47 of the *Administrative Tribunals Act*, the Information Bulletin entitled "Orders for the Payment of Costs", prepared by the Administrative Justice Office is a good source of information. See the website of the Administrative Justice Office, Tribunal Tool Kit at www.gov.bc.ca/ajo.

Part 4 – Starting the proceedings

Overview

Proceedings before an administrative body may be started in a variety of ways, depending on the enabling legislation. In many legislative schemes, proceedings are started by a person seeking resolution of a dispute or the review or appeal of a decision made by another authority. In these cases, an application is an appropriate means to start proceedings before the administrative body. In other legislative schemes, the administrative body will begin the proceedings. For example, a regulatory body may initiate a review following an investigation of a potential contravention of legislation.

This part of the model rules will be relevant if proceedings are started by a request to the administrative body for a review, an appeal or dispute resolution. The purpose of a formal application process is to ensure that the administrative body receives sufficient information to consider:

- *its jurisdiction with respect to the matter, and*
- *the appropriate process.*

Rule 4.1 Information required in an application

An application must include:

- a) the name [*option: and signature*] of the applicant
- b) the applicant's address for delivery in British Columbia
[*option: the contact information of the applicant*]
- c) [*option*] the email address of the applicant, if available
- d) a statement of facts
[*option: a description of the situation that led to this application; the basis of the review or appeal*]
- e) [*option*] the name and file number of the decision to be reviewed or being appealed
- f) [*option*] the outcomes the applicant is seeking
- g) the name of any other person with an interest in the application and their address or contact information, if known.

Rule 4.2 Application form

An application to the administrative body may be made using the application form provided in Schedule A of these Rules.

Rule 4.3 Delivery of application

4.3.1 An application must be delivered to the administrative body as described in Rule 13.5.

4.3.2 [*option*] An application must be delivered in both paper form and in electronic form as a PDF file.

Comments

1. The administrative body should be very careful about personal information that is collected, retained and, potentially, distributed by it. All rules, forms and Practice Directives should be drafted with privacy considerations in mind. Only necessary information should be requested by the administrative body. The administrative body should consider seeking legal advice on the implications of any privacy legislation that applies to its activities.
2. The option in Rule 4.1(a) requires the applicant to sign the application. The requirement to sign the application may reduce the number of frivolous or vexatious applications sent to the administrative body. This requirement should be considered by an administrative body that receives or anticipates it may receive a high number of frivolous or vexatious applications. The downside of requiring a signature is that it makes e-filing an application more difficult. To allow for e-filing when a signature is required (if an electronic signature is not available), the applicant may be directed to e-file their application and deliver a signed paper application to the administrative body.
3. Rule 4.1(b) requires an address for delivery in British Columbia. A home address in British Columbia is not necessary. The applicant can provide the address of an agent, law firm or other person that agrees to accept delivery of documents on the applicant's behalf.
4. Once an application is received, the administrative body will want to determine whether the matter is within its jurisdiction and otherwise meets the minimum requirements before taking any other steps. See Rule 5 of these model rules for the steps the administrative body may take if a preliminary review indicates the application is incomplete or not within its jurisdiction.
5. If the administrative body makes the initial contact with the respondent and provides the respondent with a copy of the application, the contact information required by Rule 4.1(g) will assist in this task. When contacting the respondent, the administrative body should clearly identify the information it requires from the respondent (see Rule 7.2 Responding to an application) and the timeframe to respond (see Rule 7.3 Time limit for responding).

6. If, instead, the applicant is required to notify the respondent of the application (for example, when a decision is being appealed), the rules will need to specify this and include:
- the timeframe for the applicant to notify the respondent
 - the content of the notice to the respondent - for example, the requirement to send a response form in addition to a copy of the application, or to otherwise notify the respondent of their obligations in the process including the timeframe for reply
 - the delivery method to be used by the applicant to accomplish this – for example, by registered mail to a postal address and proof of delivery.

The following is an example:

Within (...*number of* ...) days of filing the application, the applicant must deliver to the respondent [, by registered mail,] a copy of the application [along with a copy of the response form provided in Schedule B of these Rules].

The administrative body may also want to consider making a Practice Directive to provide more detailed directions to the applicant about delivering the application and the information that must be provided to the respondent.

7. The administrative body's enabling legislation may include a timeframe for filing an application. While requirements in the legislation do not need to be repeated in the rules, the timeframe may be included as it can be a fundamental requirement of the process. The rules cannot change the time set in the legislation unless the legislation allows the change. The following is an example of a rule describing the time requirement:

Time limit for an application

[*option when the matter is a dispute*] An application to the administrative body must be made within [... *time set by legislation or, if not set by the legislation, by the administrative body...*] of the situation that led to the application.

[*option when the matter is a review or appeal of a decision*] An application to the administrative body must be made within [...*time limit e.g. 30 days...*] of the decision of [...*the body making the initial decision...*].

If the administrative body has discretion whether to accept an application delivered or filed outside of any legislated timeframe, the rule may be stated as follows:

Extending the time limit for an application

The administrative body may determine whether to accept an application delivered [*option: filed*]after the time limit set in Rule [... *identify rule number...*].

8. Some administrative bodies allow applications to be submitted on behalf of another person. For example, in a complaint process, the complainant may ask another person to prepare and submit the application for her/him. The administrative body will want to ensure that the person submitting the application represents the interests of the complainant and may require evidence of the consent of the complainant or other person interested in the process, as well as information on the nature of the applicant's interest and involvement in the application.

Submitting an application on behalf of another person

An application may be submitted on behalf of another person [*option: submitted on behalf of another person with that person's consent*].

If the process allows an application submitted on behalf of another person, the rules should expand upon the requirements of Rule 4.1 to ensure that the application identifies both that person (for example, in the case of a complaint process, the complainant) and the applicant. The rules should request information on:

- the name of the applicant
- the contact information of the applicant
- the name of the person for whom the applicant is submitted [*or the name of the aggrieved person or the name of the complainant*] and their contact information, if available
- the reason why the person is submitting the complaint on behalf of the complainant.

9. If the administrative body has the power to charge a fee for an application, Rule 4.1 should include the fee requirement (also see the following comment #10 for a discussion of the provisions of the *Administrative Tribunals Act*). For example:

4.1.2 An application to the administrative body must be accompanied by the [*fee amount*] fee set out in [*...identify the schedule or authority for the fee...*].

10. If the enabling legislation of an appeal tribunal adopts *either* section 22 or section 23 of the *Administrative Tribunals Act* and/or sections 24 and 25 of the Act (all sections are set out below), the rules of the administrative tribunal cannot change those requirements and any rule addressing these issues must reflect the requirements of the legislation.

Notice of appeal (inclusive of prescribed fee)

22 (1) *A decision may be appealed by filing a notice of appeal with the tribunal.*

(2) *A notice of appeal must*

- (a) be in writing or in another form authorized by the tribunal's rules,*
- (b) identify the decision that is being appealed,*
- (c) state why the decision should be changed,*
- (d) state the outcome requested,*

- (e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,*
- (f) include an address for delivery of any notices in respect of the appeal, and*
- (g) be signed by the appellant or the appellant's agent.*

(3) A notice of appeal must be accompanied by payment of the prescribed fee.

(4) Despite subsection (3), if a notice of appeal is deficient or if the prescribed fee is outstanding, the chair or the chair's delegate may allow a reasonable period of time within which the notice may be corrected or the fee is to be paid.

Notice of appeal (exclusive of prescribed fee)

23 *(1) A decision may be appealed by filing a notice of appeal with the tribunal.*

(2) A notice of appeal must

- (a) be in writing or in another form authorized by the tribunal's rules,*
- (b) identify the decision that is being appealed,*
- (c) state why the decision should be changed,*
- (d) state the outcome requested,*
- (e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,*
- (f) include an address for delivery of any notices in respect of the appeal, and*
- (g) be signed by the appellant or the appellant's agent.*

(3) If a notice of appeal is deficient the chair or the chair's delegate may allow a reasonable period of time within which the notice may be corrected.

Time limit for appeals

24 *(1) A notice of appeal respecting a decision must be filed within 30 days of the decision being appealed, unless the tribunal's enabling Act provides otherwise.*

(2) Despite subsection (1), the tribunal may extend the time to file a notice of appeal, even if the time to file has expired, if satisfied that special circumstances exist.

Appeal does not operate as stay

25 *The commencement of an appeal does not operate as a stay or suspend the operation of the decision being appealed unless the tribunal orders otherwise.*

11. These provisions refer to the application being “delivered” to the administrative body. An alternative is to refer to the application being “filed”. If the participants in the administrative process are familiar with legal terms, “filed” may be a suitable word to use in the rules. In either circumstance, the rules should explain how and when a document is “delivered” or “filed”. See Part 13 for a sample rule and further discussion on delivery of documents.

12. The provisions in Part 4 include options so that the administrative body can use electronic files and electronic documents. Using email allows the administrative body and the parties more flexibility when communicating and may encourage the electronic exchange of information and documents which can save time and costs for all involved. If the rules adopt the definition of “address for delivery” from these model rules, it is not necessary to include Rule 4.1(c).

Before setting rules for accepting electronic documents, the administrative body should ensure it has the capacity to store and retrieve electronic documents. In the rules or a Practice Directive, the administrative body should set the standard format for electronic documents, for example, that all electronic documents must be in a PDF format.

Before making it a requirement for parties to submit documents in an electronic format, the administrative body should consider the resources and skills of the parties, as well as the potential benefits and burdens of using an electronic format. A requirement to submit documents in an electronic format will be unfair if the requirement creates a financial burden or other barrier to participation in the process. The administrative body should only require the submission of electronic documents when all parties have the resources and skills to comply and all parties are likely to have at least some benefit.

13. Administrative bodies may choose to develop forms to guide applicants, respondents and others when delivering information and material to the administrative body. As each administrative body has different needs, forms have not been developed for these model rules. Care should be exercised to ensure that any requirement to use a form does not create a barrier to some participants.

Part 5 – Review of application

Overview

This part establishes the process for accepting an application as part of the administrative body's caseload and the reasons an administrative body may refuse to accept or dismiss an application on a preliminary review. An administrative body will only require this part if the matters before it begin with an application. For administrative bodies that initiate their own proceedings, such as regulatory bodies initiating proceedings following an investigation, the basis to determine whether to bring a matter before the administrative body should be set out in policy.

Where a matter starts with an application, the administrative body needs to set minimum standards for accepting applications. A requirement common to all administrative bodies is that the application sets out sufficient information:

- *for the administrative body to determine whether it has the legal jurisdiction to consider the matter*
- *for the administrative body to contact the applicant and others connected with the matter, and*
- *for the respondent to know to what they must respond.*

In addition, an administrative body may set rules to ensure its processes are being used in good faith and for a proper purpose throughout the process.

Rule 5.1 Preliminary review of application

The administrative body will review an application to ensure:

- a) [option] the application has been delivered [option: filed] in time
- b) [option] the required fee has been paid
- c) the application is complete, and
- d) the matter for review [options: the application; the request] is within the jurisdiction of the administrative body.

Rule 5.2 – Incomplete applications

5.2.1 If on review of an application the administrative body is of the opinion the application is incomplete or determines the fee has not been paid, the administrative body may request that the applicant send further information or pay the fee within 30 days of the date of the request.

5.2.2 If the applicant does not provide the requested information or pay the fee within the 30 day period, the administrative body may refuse the application.

Rule 5.3 Summary dismissal

The administrative body may refuse an application or part of an application at any time for one or more of the following reasons:

- a) the matter for review [*options*: the application request; the appeal] is not within the administrative body's jurisdiction
- b) the application is frivolous, vexatious or trivial or gives rise to an abuse of process
- c) the application was made in bad faith or for an improper purpose or motive
- d) there is no reasonable prospect the application will succeed
- e) the substance of the application has been appropriately dealt with in another proceeding.

Rule 5.4 – Notification of intention to refuse application

5.4.1 If on review of the application, the administrative body is of the opinion that the application or part of the application should be refused for one or more of the reasons set out in Rule 5.3, the administrative body will notify the applicant that it intends to refuse the application or part of the application and the basis for the intended refusal.

5.4.2 Within 30 days of the date of the notice, the applicant may make a submission to the administrative body in response to its intention to refuse the application.

5.4.3 After reviewing a submission made under Rule 5.4.2, the administrative body may:

- a) accept the application
- b) refuse the application, or
- c) request more information.

Rule 5.5 Notifying the applicant

The administrative body will notify the applicant, in writing:

- a) of a request for further information under Rule 5.2.1 or Rule 5.4.3
- b) of an intention to refuse an application under Rule 5.4.1
- c) of a decision to accept or refuse an application under Rule 5.4.3 and give reasons for that decision.

Comments

1. Rule 5.1 provides two optional requirements for a complete application: delivery of the application in time and payment of a fee. Only include these requirements in the rules if they are authorized by the enabling legislation. See the discussion of time limits and fees under Rule 4, Comment #7.

If the legislation creates a right to apply but does not establish a time limit for an application, the administrative body should seek a legal opinion before setting a time limit in its rules. The rules should be clear about the flexibility of the administrative body to extend the time limit in special cases or situations.

2. An administrative body may have additional filing requirements, such as the inclusion of certain documents, which are specific to it and should also be included in Rule 5.1.
3. If the enabling legislation of an administrative body adopts section 31 of the *Administrative Tribunals Act*, it is not necessary to include Rule 5.4 in the rules.

Other administrative bodies should consider including this Rule as it makes it clear that the administrative body may refuse to accept an application after an initial review. An administrative body may opt for a narrower version of this Rule:

The administrative body may refuse to accept an application or part of an application at any time if the matter is not within the jurisdiction of the administrative body.

Part 6 – Changing or withdrawing an application

Overview

Once an application has been made to an administrative body and the administrative process begins, an amendment to the application or its withdrawal may have important implications for other participants, the administrative body and, in some circumstances, the public. For this reason, amending or withdrawing an application is not always a simple process.

Fairness may require that the administrative body ensure other participants are not disadvantaged by a proposed amendment to an application. A respondent is entitled to know the matter they are being asked to respond to and to be given an opportunity to respond. Permitting an amendment to an application may not always be fair if significant additional time and effort will be required to respond to that amendment. Any request for an amendment to an application may need to be carefully considered and balanced in the context of the impacts for all participants, not just the applicant. The timing of the request for the amendment may be a significant consideration, but not always the only consideration.

A request to withdraw an application may also have impacts on others, including the public, who may have an interest in the matter being resolved by the administrative body. In some circumstances, an application may need to proceed, even if the applicant has no interest in continuing. In limited circumstances, the administrative body may need to proceed, even if the applicant no longer participates.

Rule 6.1 Amendments to application

- 6.1.1 The applicant may make amendments to the application before a response has been delivered to [option: filed with] the administrative body by delivering to [option: filing with] the administrative body a revised application with the amendments highlighted or marked.
- 6.1.2 The administrative body must forward the amended application to the respondent and may extend the time for responding.

Rule 6.2 Withdrawal of an application

- 6.2.1 An applicant may withdraw an application or part of an application before a response has been delivered to the administrative body by sending a notice of withdrawal to the administrative body.
- 6.2.2 An applicant may only withdraw an application or part of an application after a response has been delivered to the administrative body, with the consent of the administrative body.

- 6.2.3 If the administrative body consents to the withdrawal of the application under Rule 6.2.2, the administrative body will send written notice of the withdrawal of the application to the respondent.

Comments

1. Rule 6.1.1 allows the applicant to amend the application before the response has been delivered to the administrative body. One variation is to require the applicant to seek the consent of the administrative body before making an amendment. This rule could be stated as follows:

The applicant may only make amendments to an application after the application has been delivered to [*option: filed with*] the administrative body, with the consent of the administrative body.

A Practice Directive may set out the details of the process to request an amendment and the rights and role of the respondent in that process.

2. If an amendment to the application is proposed before the administrative body or the applicant (see Rule 4, Comment #6) has sent the application to the respondent, the amendment will not cause the respondent any disadvantage provided the amendment is made within the time limit for an application. However, the administrative body should be cautious of accepting any substantial amendments to an application after the legislated time limit for filing an application has expired. A substantive amendment may, in effect, be the same as making a new application which may not be permitted if the time limit has passed. An alternative to Rule 6.1.1 is the following:

The applicant may only make amendments to the application if the amendments are made before a response has been delivered to [*option: filed with*] the administrative body and the revised application is delivered to [*option: filed with*] the administrative body within [*...legislative timeframe for filing an application...*].

3. If an amendment is proposed after the application was sent to the respondent but before the time limit for responding, the administrative body may want to consider extending the time for responding and should notify the respondent of the extended time for responding, when sending the notice under Rule 6.1.2.
4. Rule 6 does not provide a process for changing an application after a response has been delivered to the administrative body. In that circumstance, the applicant must rely on the provisions in Rule 8.3, Requests, to seek an amendment to the application.

5. The consent of the administrative body is required in Rule 6.2.2 to ensure it retains control over its process and to ensure the public interest is appropriately considered when necessary. The administrative body may also want to know if the respondent agrees with or objects to the withdrawal. In many cases, a withdrawal is appropriate because the applicant and respondent settled or resolved the dispute.
6. If the enabling legislation of a tribunal adopts section 17 of the *Administrative Tribunals Act* the tribunal must follow the terms of that section:

Withdrawal or settlement of application

17 (1) *If an applicant withdraws all or part of an application or the parties advise the tribunal that they have reached a settlement of all or part of an application, the tribunal must order that the application or the part of it is dismissed.*

(2) *If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with its enabling Act.*

(3) *If the tribunal declines to make an order under subsection (2), it must provide the parties with reasons.*

7. If the process allows an application on behalf of another person, the rules will need to address how an application can be withdrawn by the applicant. The administrative body will want assurance that the application is being withdrawn with the consent of that other person or on terms acceptable to that person. The following is an example rule:

Rule 6.3 Withdrawal of an application on behalf of another person

If an application was filed on behalf of another person, the administrative body may require the applicant to demonstrate the consent of the other person to withdraw the application before the administrative body will accept the withdrawal.

8. These provisions refer to the response being “delivered” to the administrative body. An alternative is to refer to the response being “filed” with the administrative body. “Filed” may be a more suitable word if the participants in the administrative process are familiar with legal terms. See Part 13 for a sample rule and further discussion on delivery of documents.

Part 7 – Responding to an application

Overview

The rules need to provide guidance to other persons involved in the matter, such as the potential respondent, on how to respond to an application. The rules for responses are similar to the rules for applications. A potential respondent needs to know the information the administrative body requires and how to communicate or deliver that information to the administrative body and the applicant. The potential respondent also needs to know the possible outcomes for not responding to the application.

Rule 7.1 Notifying a potential respondent

The administrative body will send a copy of the application to any person it believes may be a potential respondent.

Rule 7.2 Responding to an application

7.2.1 A potential respondent may deliver a response to [option: file a response with] the administrative body. The response must be delivered [option: filed] in the manner provided in Rule 13.5.

7.2.2 The response must include:

- a) a list of any statements or other matters set out in the application that the respondent disputes and why
- b) a statement of the facts the respondent says the administrative body should consider in its review of the application
[options: a reply to the allegations in the application; a response to the outcome requested; submissions in response to the matters raised by the applicant]
- c) the outcomes the respondent believes should happen in relation to the application
- d) the address for delivery of the respondent, if different from the address set out in the application
- e) [option] the email address of the respondent, if available
- f) [option] the name of any other person(s), other than the applicant, with an interest in this application that is (are) not listed in the application [options: appeal; dispute] including their address , if known.

7.2.3 The response may be made using the response form in Schedule B of these Rules.

7.2.4 [*option*] The response must be in both paper form and in electronic form as a PDF file.

Rule 7.3 Time limit for responding

A response must be delivered to [*option*: filed with] the administrative body within [...*time limit*, e.g. 30 days, or the legislative time limit, if any...] of the postmarked date on the package containing the copy of the application [*option*: the appeal; the recommendation of the investigative officer] sent to the potential respondent by the administrative body.

Rule 7.4 Failure to respond

If a response is not delivered [*option*: filed] within the time limit, the administrative body may take any action it considers appropriate including:

- a) extending the time for responding
- b) applying case management processes
- c) setting a hearing date
- d) making a final or other decision or order based on the information provided by the applicant
- e) [*option*] ordering costs.

Comments

1. Generally, a potential respondent is the person or persons identified by the applicant in the application as an interested person. The rule gives the administrative body flexibility to include other persons that it believes may have an interest in a proceeding. However, if the respondent is clearly known and identified and there are no other potential respondents, then that flexibility may not be needed.
2. It may not be appropriate to refer to the responding party as the “respondent” in the rules. If the matter is in relation to a license or permit, the rules should identify the “respondent” as the licensee or permit holder. Use the term that best suits the process.
3. If the administrative process is being initiated as a result of an investigation, the respondent is the person being investigated. In this case, the respondent may be required to respond to an

investigator's report or other initiating documents sent to them by the administrative body. In these circumstances, consider the following to describe what the respondent may be required to do:

- a) Would the administrative process benefit from using a response form? If there is specific information the administrative body needs from the respondent, the form can set out the information to be included in the response.
 - b) Modify Rule 7.2.2 to ensure the respondent focuses the response in the manner the administrative body requires. For example, does the administrative body want the respondent to respond only to the facts alleged or to the facts alleged and the potential outcomes?
 - c) Modify Rule 7.4 to describe the actions the administrative body may take if the respondent does not respond. For example, if the process is the result of an investigation, the investigation results may be accepted and any sanctions recommended by the investigator may be imposed.
4. Rule 7.1 contemplates that the administrative body will initiate contact with the respondent. The alternative is to require the applicant to send a copy of the application (and a blank response form, if to be used) to the respondent. For a discussion of this option, see Rule 4, Comments #6.
 5. Rule 7.3 contemplates that the time limit for responding is counted from the postmark date on the package sent to the respondent by the administrative body. If it is appropriate to send a copy of the application (or other material) to the respondent by email, the rule could be revised as follows:

A response must be delivered to [option: filed with] the administrative body within [...time limit, e.g. 30 days, or the legislative time limit, if any...] of the date the email containing the copy of the application [option: the appeal; the recommendation of the investigative officer] was sent to the potential respondent by the administrative body.
 6. Rule 7.4 identifies the administrative body's possible actions if a response is not delivered in time. The language of this paragraph makes clear that the list of actions, (a) through (e), is not closed. The administrative body can take the action it determines to be reasonable and fair in the circumstances. While the administrative body may want to add other specific actions or modify the actions in this list, it is better to keep the list short. A long list of all possible actions may limit the flexibility, or perceived flexibility, of the administrative body to take action specific to the circumstances. Note that the option of ordering costs is only available to administrative bodies authorized by their enabling legislation to order costs in these circumstances.
 7. The provisions in Part 7 include options to facilitate the creation of electronic files and the use of electronic documents in the administrative process. See the discussion in of this option under Rule 4, Comment #12.

8. These provisions refer to the application being “delivered” to the administrative body. An alternative is to refer to the application being “filed”. See Part 13 for a sample rule and further discussion on delivery of documents.

9. Administrative bodies may choose to develop forms to guide applicants, respondents and others when delivering information and material to the administrative body. As each administrative body has different needs, forms have not been developed for these model rules.

Part 8 – Case Management

Overview

In case management rules, the administrative body determines the best process(es) to apply to a specific matter to resolve that matter. Case management rules provide processes that move a case to resolution, which may not necessarily include a hearing. In most cases, adversarial hearings should only be used to resolve matters when all other alternatives have been tried unsuccessfully.

In developing case management rules, the need for flexibility is especially important, and the principles of proportionality and timeliness play an important role. These model rules present a number of case management options, which begin with the “streaming” of cases into the most appropriate of those options. Options may include streaming into a collaborative dispute resolution process such as mediation or settlement conference, or simply a pre-hearing conference. Most administrative bodies and their users can benefit from the availability of a variety of resolution processes.

Case management includes processes that are intended to help to define, clarify and simplify the matter at issue, to assist the parties to communicate clearly and effectively use resources. Case management may also be used to effectively deal with similar issues raised in different cases, to the benefit of all.

Effective case management can promote early resolution of matters but if a matter must proceed to a hearing, case management will help set clear expectations for the hearing process. This will benefit the parties in the hearing process as well as assist the administrative body in making timely decisions.

Some of these options may not suit an administrative body’s process if its enabling legislation requires certain steps or stages. As well, the administrative body may have other processes it uses that should be reflected in the rules. The goal is to structure the process to meet the needs of the administrative body and its users, not to squeeze them into using a particular model.

Rule 8.1 Streaming

8.1.1 At any time, the administrative body may direct an application into one or more of the following process streams:

- a) pre-hearing conference (*Rule 8.2*)
- b) collaborative dispute resolution (*Rule 9*)
[options: mediation; settlement conference]
- c) hearing (*Rule 10*)

d) any other alternative dispute resolution process adopted by the administrative body.

8.1.2 At any time, the administrative body may use more than one process stream or change the process stream being used if it considers using an additional stream or making the change may assist conducting the proceedings or resolving the matter.

Rule 8.2 Pre-hearing conference

8.2.1 The administrative body may

- a) on its own initiative, or
- b) on the written request of a party

require the parties to attend a pre-hearing conference.

8.2.2 At a pre-hearing conference, the administrative body may direct the parties to consider and discuss one or more of the following, and may make orders or directions about:

- a) the issues
- b) amendments or changes to the application or response
- c) documents to be disclosed and the method and timing of disclosure
- d) production of lists of witnesses, including expert witnesses, and summaries of the anticipated evidence of witnesses
- e) *[option]* joint retaining of expert witnesses by two or more of the parties
- f) production of any written reports that may be relied upon
- g) conduct of and date for mediation, settlement conference or a hearing
- h) any other matter relevant to the conduct of the proceeding or resolution of the matter.

Rule 8.3 Requests

8.3.1 At any time after the response has been delivered to the administrative body, a party may make a written request to the administrative body for a direction or decision:

- a) to permit an amendment to the application or the response, or

b) on any other aspect of the conduct of the proceedings or any other matter.

8.3.2 After considering the request and any information the administrative body considers relevant in the circumstances, the administrative body will notify the parties, in writing, of its direction or decision.

Rule 8.4 Directions

At any time, the administrative body may make directions requiring a party to take action the administrative body considers may assist the conduct of the proceedings or the matter being resolved, including directions on one or more of the following:

- a) to disclose documents and the method and timing of disclosure including disclosure by persons who are not parties
- b) to produce lists of witnesses, including expert witnesses, and summaries of the anticipated evidence of witnesses
- c) [option] the joint appointment of expert witnesses by two or more of the parties
- d) to prepare, exchange and deliver [option: file] written submissions
- e) to prepare, exchange and deliver [option: file] a statement of the facts agreed on and facts in dispute.

Comments

1. Rule 8.1.1 sets out four process streams for dealing with a matter before an administrative body. There may be other processes the administrative body may want to consider adding. The language of Rule 8.1.1 provides that the administrative body may direct an application into one or more process stream and may change the process stream at any time. The language is intended to provide flexibility. The administrative body may stream a matter to a pre-hearing conference and then find that a settlement conference or mediation would be the best next step. In another situation, the administrative body may find that the parties are not far apart and facilitating better communication between them may resolve the matter without moving to a more formal stage in the process. The general category of alternative dispute resolution in Rule 8.1(d) confirms the goal of the rules is to work to resolution, not to a hearing process.
2. If it appears a hearing will be held, the streaming process should require a pre-hearing conference. At a pre-hearing conference the parties are encouraged to clarify and agree, to the extent possible, on the issues and facts that are in dispute. This allows the administrative body to focus the hearing on only those matters and provides for the efficient use of hearing resources. Depending on the complexity of the process, a pre-hearing conference can assist parties to agree or for the

administrative body to give directions on such things as the exchange of documents and the witnesses (including experts) to be called. It may be necessary to hold more than one pre-hearing conference.

At a pre-hearing conference, the administrative body can make binding directions for how the hearing is to be conducted but will not make any final determination on the specific issues. Pre-hearing conferences can also encourage the resolution of the matter as a result of the discussion at the conference.

3. If the enabling legislation of a tribunal adopts sections 14-16 of the *Administrative Tribunals Act*, the legislation provides authority to make orders. Under section 18 of the Act, the failure to follow an order of the tribunal can lead to the dismissal of the matter or a decision based on the information before the tribunal.
4. All administrative bodies have the authority to control their process and make directions for that purpose. These rules describe some of the matters that may be considered at a pre-hearing conference for which the administrative body may make a direction. There may be other matters, perhaps unique to the administrative body's process that should also be included in the rules. As with any list in the rules, the language should be clear that the administrative body is not limited to those things specifically listed.

For a more detailed example of the matters that may be considered during a pre-hearing conference see rule 9 of the Rules of Proceedings of the B.C. Mediation and Arbitration Board (Ministry of Energy, Mines and Petroleum Resources), www.empr.gov.bc.ca/OG/MAB.

5. Some administrative processes can assist the administrative body when similar facts or issues are raised in different applications by the same or different persons. Applications made to the administrative body on the same facts or question of law may be heard together ("consolidated") to ensure the facts or issues are fully considered and to reduce potential duplication of time and effort. An example of a rule to do that is:

Rule 8.5 Consolidation

If two or more applications involve the same or similar questions of fact or law, the administrative body [option: , with the consent of all parties,] may direct those proceedings be consolidated for the purposes of case management, hearing or resolution.

6. When dealing with matters involving a significant number of documents, the administrative body may want to facilitate the delivery of documents in an electronic form. Note the discussion of the electronic delivery of the application in Rule 4, Comment #12.

The administrative body may establish the requirements for the delivery of documents, between parties and with the administrative body, in a Practice Directive. In addition to or alternatively, the administrative body and the parties may discuss the requirements for the delivery of electronic documents at a pre-hearing conference.

The Supreme Court of British Columbia has a Practice Direction on the delivery of electronic evidence (see: www.courts.gov.bc.ca/sc). If the proceeding requires the delivery of many documents, this Practice Direction may provide the administrative tribunal with a framework to assist parties in developing an agreement to exchange documents in electronic format. However, the parties must ensure that the administrative body has the technology and capacity to accept and store material in the proposed format.

If a party wishes to present information in electronic form at a hearing, that party should be required:

- a) to provide or arrange any necessary equipment or technology and maintain it during the hearing, and
- b) to ensure the administrative body and the parties can access the information.

The requirements of using technology at a hearing may be set out in a Practice Directive.

7. Tribunals dealing with complex matters may want to establish a Practice Directive for the presentation of expert evidence. For example, if the parties wish to retain experts to give evidence, the administrative body may require parties to agree on retaining the same expert(s). When a joint expert is retained, that expert provides the same reports and evidence to all parties and is the only expert allowed to provide evidence on that issue. The administrative body may need to give some direction to deal with the scope of the appointment, the selection of the expert, and cost sharing. This can be done in a pre-hearing conference.

If the parties have their own experts, the administrative body may require the experts to meet before the hearing to confer and report back on the points they agree on and the differences between their opinions. The Federal Court of Australia, Rules of Court, Order 34A, Evidence of Expert Witnesses provides other models for hearing the evidence of expert witnesses: see www.comlaw.gov.au.

Part 9 – Collaborative dispute resolution

Overview

Collaborative dispute resolution is any process that assists the parties in reaching agreement on one or more aspects of a matter so that a hearing is not required, or if required, is shorter and more focussed. Collaborative dispute resolution provides parties with an opportunity for direct involvement in the final resolution of the matter.

In these model rules, two collaborative dispute resolution process options are provided – mediation and settlement conferences. One or both of these options may suit the administrative body’s administrative process. Even without specific rules the administrative body may use dispute resolution processes to assist the parties in reaching agreement.

In mediation, the parties work toward a mutually acceptable solution with the assistance of a trained mediator. An outcome is not imposed on the parties in mediation. Much has been written about the principles and advantages of mediation. This document only provides information on rules for an administrative body. For further information on mediation see the website of the B.C. Dispute Resolution Office (Ministry of Attorney General) and its publication “Guide to Mediation in British Columbia” at www.aq.gov.bc.ca/dro.

In a settlement conference, a third person, or facilitator, is more direct in leading the parties to resolve the matter without a hearing. That person may discuss the strengths and weaknesses of the position of each party and may provide an opinion as to the possible outcome if a hearing is held.

A settlement conference is different from a pre-hearing conference but the administrative process should be flexible and, if in a pre-hearing conference the parties are close to a resolution, the administrative body may proceed to a settlement conference as the next step, instead of a hearing.

The following collaborative dispute resolution rules are straightforward. The nature of the matters before the administrative body and the types of parties will dictate whether more comprehensive rules are needed.

Mediation Rules

Rule 9.1 Commencing mediation

9.1.1 The administrative body may direct an application to mediation:

- a) on its own initiative , or
- b) on the written request of a party.

9.1.2 The administrative body will select the mediator.

9.1.3 The administrative body will notify the parties, in writing, of the scheduled date of the mediation.

Rule 9.2 Confidentiality

9.2.1 The proceedings of mediation are confidential and may not be raised before the administrative body during any other proceeding without the consent of all parties.

9.2.2 Parties must sign a confidentiality agreement before mediation begins.

Rule 9.3 Failure to attend mediation

If a party fails to attend mediation, the administrative body may:

- a) stream the application into another process without providing notice to that party, and
- b) continue with a new process in the absence of that party.

Rule 9.4 Post mediation action

At any time after a proceeding has been directed to mediation, the administrative body, on its own initiative or at the request of a party, may:

- a) dismiss the application, or
- b) continue with a new process.

Comments

1. These rules assume an administrative process where the administrative body selects the mediator. The mediator may be a member of the staff, or a member of the administrative body. If the administrative body provides mediation services, the mediator should not take part in a hearing on the matter after the mediation. The rules could provide the following:

9.1.2 The mediation will be conducted by a member of the administrative body. The mediator will not preside or participate at a hearing of the matter without the written consent of all parties.

2. An alternative, if the administrative body does not have the resources to provide a mediator, is for the parties to agree on a mediator and notify the administrative body of the dates for mediation. The BC Dispute Resolution Office (Ministry of Attorney General) maintains a roster of mediators at www.ag.gov.bc.ca/dro. The rules may be modified as follows for this process:

- 9.1.2 The parties will select a mediator with the assistance of the administrative body or by mutual agreement.
 - 9.1.3 The parties will notify the administrative body in writing of the scheduled date of the mediation.
3. Rule 9.4 confirms the authority of the administrative body to conclude its process. The administrative body will need to be kept current as to the status of the matter so that, if the mediation is successful the file can be closed or, if the mediation does not resolve all the issues, the administrative body can proceed to the next stage in the process.

If the administrative body is not informed of the outcome of mediation within a reasonable amount of time, the administrative body may be able to assume the matter is settled. The length of time the administrative body should wait will depend on the complexity of the issues being dealt with at mediation. Before closing the file, the administrative body must send a letter to each party noting the date the file will be closed unless the administrative body hears otherwise.

4. The mediation process should not provide a means for a party to avoid or delay the administrative process. The consequences of failing to attend mediation should be set out in the rules. If the administrative body has the authority to order costs, Rule 9.3 could be expanded as follows:

9.3.2 If a party fails to attend mediation, the administrative body may award costs to the attending party.

5. If the enabling legislation of a tribunal adopts sections 16 and 17 of the *Administrative Tribunals Act*, the tribunal should be aware that the parties may want the administrative body to make an order following mediation:

Consent orders

16 (1) *On the request of the parties to an application, the tribunal may make a consent order if it is satisfied that the order is consistent with its enabling Act.*

(2) If the tribunal declines to make a consent order under subsection (1), it must provide the parties with reasons for doing so.

[Note: Section 16 (2) may apply if the parties request an order that is not within the administrative body's authority to make]

Withdrawal or settlement of application

17 (1) *If an applicant withdraws all or part of an application or the parties advise the tribunal that they have reached a settlement of all or part of an application, the tribunal must order that the application or the part of it is dismissed.*

(2) If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with its enabling Act.

(3) If the tribunal declines to make an order under subsection (2), it must provide the parties with reasons.

6. The administrative body may want to develop mediation or settlement policies that describe the collaborative dispute resolution process, and what is expected of the parties and the administrative body. For an example policy see Guide 4 – The Settlement Meeting Policy, British Columbia Human Rights Tribunal, Tribunal Guides and Information Sheets at www.bchrt.bc.ca.

Settlement Conference Rules

Rule 9.1 Commencing a settlement conference

The administrative body may direct an application to a settlement conference:

- a) on its own initiative , or
- b) on the written request of a party

Rule 9.2 Conduct of a settlement conference

- 9.2.1 A settlement conference will be conducted by the administrative body. The member of the administrative body who conducts the settlement conference will not preside or participate at a hearing of the matter without the written consent of all parties.
- 9.2.2 The proceedings at a settlement conference are confidential and may not be raised before the administrative body during any other proceeding without the consent of all parties.
- 9.2.3 The administrative body may direct the parties to bring evidence or documents to the settlement conference and be prepared to discuss all issues.
- 9.2.4 A person attending a settlement conference on behalf of a party must have authority to resolve and reach agreement on all issues.
- 9.2.5 If the parties do not resolve the matter at the settlement conference, the administrative body may stream the application into another process.

Rule 9.3 Failure to attend a settlement conference

If a party fails to attend a settlement conference, the administrative body may:

- a) stream the application into another process without providing notice to that party, and
- b) continue with the new process in the absence of that party.

Comments

1. These model rules are designed for when an administrative body conducts settlement conferences using its own staff or members. A settlement conference could be conducted by an external facilitator if the parties agree. In this case, the mediation rules could be modified for that purpose. For example, the rules would include a reporting back provision similar to Rule 9.4 under the Mediation Rules.
2. The rules may provide more detail as to the conduct of a settlement conference. For example, see Rule 16 Settlement Conferences, Rules of Practice and Procedure, Property Assessment Appeal Board www.assessmentappeal.bc.ca.
3. If the administrative body is empowered under its enabling legislation to issue consent orders, the parties may seek a consent order on the terms of the settlement agreement. The administrative body should require the parties to provide the terms of such an order. See Mediation rules, Comment #4.
4. Also note the Mediation Rules, Comments 5 and 6.

Part 10 – Hearing

Overview

An administrative body has the authority to determine the format of its hearings, unless expressly restricted by its enabling legislation. This authority is confirmed in Rule 13.1, General Provisions, below.

A hearing may be conducted in more than one form, such as the oral presentation of evidence and the written presentation of submissions. A hearing may be held in-person or using technology like telephone or video conferencing or the internet. The requirements of fairness and natural justice will guide what is required in any proceeding before the administrative body.

The hearing provisions in this part presume an oral hearing will be held. At an oral hearing, each party is provided the opportunity to present evidence and make submissions on their position. Parties must also be given an opportunity to hear what is presented by the other parties and to respond to their submissions.

The administrative body should not need to modify these provisions for a hearing to be held by video or teleconference. Some modifications will be necessary for meetings held over the internet or for a written hearing process. However, the principles of the hearing are the same - the parties will each present their position in writing and have an opportunity to review the submissions of the other parties and to respond, in writing, to them.

If the administrative process does not involve “applicants” and “respondents”, the hearing will begin with the presentation of the evidence that led to the administrative process, e.g. the investigation report and recommendation. At an oral hearing or in written response, the party will be provided the opportunity to respond to the evidence, present further evidence and make submissions.

In the situation where the hearing is to consider, for example, the qualifications of an individual for a licence or permit, the hearing will involve the presentation of the applicant’s evidence or submissions on their qualifications and the examination of that evidence.

Rule 10.1 Commencing a hearing

The administrative body may direct the matter to a hearing:

- a) on its own initiative, or
- b) on the written request from a party.

Rule 10.2 Hearing Notice

10.2.1 The administrative body will inform the parties, in writing, of the date, time and location of the hearing.

10.2.2 If it is impracticable to give notice to each party in writing, the administrative body may give notice to the parties by other means determined by the administrative body.

Rule 10.3 Hearing Procedures

10.3.1 Unless otherwise decided by the administrative body, hearings are open to the public.

10.3.2 The administrative body may determine the order of proceedings at a hearing.

10.3.3 During a hearing, the administrative body, on the request of a party or on its own initiative, may:

- a) require the production of documents or other material
- b) require the attendance of witnesses
- c) make a determination as to the admissibility of evidence
- d) adjourn the hearing
- e) proceed in the absence of a party who has had notice of the hearing
- f) ask questions
- g) require written submissions
- h) schedule a site visit and determine the terms of participation for a site visit
- i) make any direction [*option*: order] the administrative body considers necessary for the conduct of the proceeding, or for a just and timely resolution of the matter.

Rule 10.4 Adjournments

At any time, the administrative body, on its own initiative or on the request of a party, may adjourn a hearing and may set a date for the hearing to resume.

[*option*] Rule 10.5 Composition of hearing panel

10.5.1 A hearing may be conducted by one or more members of the administrative body.

10.5.2 If two or more members of the administrative body are designated to conduct the hearing, the hearing will be chaired by the member designated as such by the chair of the administrative body. [*option*: If more than one member of the administrative body conducts the hearing, the hearing members will appoint a chair to conduct the hearing.]

Rule 10.6 Recording

10.6.1 Unless otherwise decided by the administrative body, the administrative body will not record the hearing.

10.6.2 If the administrative body makes a recording of the hearing, the recording will form part of the official record of the proceeding. The proceeding is not invalidated as a result of a malfunction of the recording equipment, the failure to record the whole or part of the hearing, or the destruction of the recording.

10.6.3 Parties, and any other person in attendance at the hearing, may record the hearing only with the consent of and on the terms set by the administrative body. A recording made by a party or other person is not part of the official record of the proceedings.

[option] Rule 10.7 Requiring attendance of a witness

10.7.1 A party may request that the administrative body issue an order requiring a person to attend at the hearing as a witness.

10.7.2 If the administrative body issues the order requested under Rule 10.7.1, the party requesting the order must, at least fourteen (14) days before the hearing, deliver a copy of the order to:

- a) the person whose attendance is required by the order, and
- b) all other parties.

Rule 10.8 Failure to attend hearing

If a party fails to attend a hearing, the administrative body may:

- a) proceed in the absence of that party
- b) adjourn the hearing
- c) decide the matter solely on the material before it
- d) [option] make an order for costs
- e) make any direction [option: make any order] the administrative body considers necessary for the conduct of the proceedings or for a just and timely resolution of the matter .

Comments

1. If the enabling legislation of a tribunal adopts section 21 of the *Administrative Tribunals Act*, the rules do not need to include Rule 10.2.2. The notice provision in Rule 10.2.2 is similar to section 21 of the *Administrative Tribunals Act* which reads:

***21** If the tribunal is of the opinion that because there are so many parties to an application or for any other reason it is impracticable to give notice of a hearing to a party by a method referred to in section 19 (1) (a) to (c), the tribunal may give notice of a hearing by public advertisement or otherwise as the tribunal directs.*

2. Rule 10.3.1 provides that, in most cases, hearings will be open to the public. This rule reflects the principle of the open administration of justice and transparency in the decision-making process. However, in some circumstances, the administrative body may be called on to balance the principle of transparency with the privacy needs of the parties and other individuals participating in the hearing.

If the enabling legislation of a tribunal adopts section 41 of the *Administrative Tribunals Act*, the rules do not need to include Rule 10.3.1. Other administrative bodies may want to note subsection 41(2) which provides some guidance for balancing the competing public and the private needs:

- 41** (1) An oral hearing must be open to the public.
(2) Despite subsection (1), the tribunal may direct that all or part of the information be received to the exclusion of the public if the tribunal is of the opinion that
(a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or
(b) it is not practicable to hold the hearing in a manner that is open to the public.
(3) The tribunal must make a document submitted in a hearing accessible to the public unless the tribunal is of the opinion that subsection (2) (a) or section 42 applies to that document.*

If section 41 is not adopted by the enabling legislation of the administrative body and the matters before the administrative body involve private and personal interests, the rules can remain silent on the openness of the hearings and the administrative body can decide with each hearing whether it is open. However, advance policies on this point will be helpful if the issue does arise.

3. Section 39(2) of the *Administrative Tribunals Act* provides guidance on when to allow an adjournment for both those administrative bodies governed by this provision and those not subject to that Act or this section of the Act:

***39** (1) An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.*

(2) In considering whether an application should be adjourned, the tribunal must have regard to the following factors:

- (a) the reason for the adjournment;*
- (b) whether the adjournment would cause unreasonable delay;*
- (c) the impact of refusing the adjournment on the parties;*
- (d) the impact of granting the adjournment on the parties;*
- (e) the impact of the adjournment on the public interest.*

4. If the administrative body records the proceedings, that recording will become part of the official record of proceedings. The administrative body should anticipate requests from parties to access the recording or a transcript of it, or for a digital or other copy of the recording. Before releasing a copy, the administrative body should carefully consider any conditions that it may wish to place on its use. For example, any transcript produced by a party will not be part of the official record of the proceedings; the recording must only be used for specific purposes such as preparing written submissions subsequent to the hearing or preparing appeal arguments; the recording must not be shared, distributed or broadcast in any manner; the recording must be destroyed or returned to the administrative body. A Practice Directive setting out the policy on access to recordings or transcripts of recordings should be considered.

The administrative body may wish to permit the release of the recording to a transcriber to prepare an official transcript when requested by a party and at that party's expense. The following example rule comes from the Rules of Practice and Procedure, Property Assessment Appeal Board

www.assessmentappeal.bc.ca:

18 (7) If a hearing is recorded, the registrar may release a tape recording of the hearing to a transcriber, approved by the registrar, to prepare a transcript of all or part of a hearing. Unless otherwise ordered by the panel, the person requesting the transcript will arrange for payment of all costs of transcription and delivery directly with the transcriber. The board will retain a copy of any transcription produced. Copyright in the transcription remains with the transcriber. A person may obtain any subsequent copy of a transcript directly from the transcriber.

Section 35 of the *Administrative Tribunals Act* deals with the recording of proceedings:

- 35** *(1) The tribunal may transcribe or tape record its proceedings.*
- (2) If the tribunal transcribes or tape records a proceeding, the transcription or tape recording must be considered to be correct and to constitute part of the record of the proceeding.*
- (3) If, by a mechanical or human failure or other accident, the transcription or tape recording of a proceeding is destroyed, interrupted or incomplete, the validity of the proceeding is not affected.*

5. If the administrative body receives requests from parties or other persons to record hearings, a Practice Directive can describe who can apply to record a hearing and the conditions of recording. The administrative body may want to consider whether a member of the media can record the

hearing and under what conditions. For an example policy, see the Public Access and Media Policy, British Columbia Human Rights Tribunal, Policies at www.bchrt.bc.ca/policies.

6. If the administrative body has the authority to order someone to attend the hearing, Rule 10.7 provides procedures for issuing the order. Some tribunals have discretion under section 34(3) of the *Administrative Tribunals Act* to issue a summons to appear at a hearing. Note, however, not all tribunals have enabling legislation that adopts this section 34(3) authority.
7. For those tribunals whose enabling legislation has adopted section 34, a party may simply request a summons form for a person to appear. Section 34 reads:

34 (1) *A party to an application may prepare and serve a summons in the form established by the tribunal, requiring a person*

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in the application, or

(b) to produce for the tribunal, that party or another party a document or other thing in the person's possession or control that is admissible and relevant to an issue in the application.

(2) *A party to an application may apply to the court for an order*

(a) directing a person to comply with a summons served by a party under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with a summons served by a party under subsection (1).

(3) *Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person*

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.

(4) *The tribunal may apply to the court for an order*

(a) directing a person to comply with an order made by the tribunal under subsection (3), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (3).

6. The optional Rule 10.7 provides that a party may request an order for the attendance of a witness from the administrative body. For an example of a rule requiring a party to apply to the administrative body before issuing a summons, see Rule 20 of the Rules of Practice and Procedure, Property Assessment Appeal Board www.assessmentappeal.bc.ca. Rule 8.3.1 also refers to making a request to the administrative body. If Rule 10.7 is included in the administrative body's rules, consider modifying Rule 8.3.1(b) as follows to avoid a conflict between the two rules:

b) for a decision on any aspect of the conduct of the proceedings or any other matter, other than a request under Rule 10.7.

The administrative body may want to develop a Practice Directive describing the information required in a request under Rule 10.7. For example, the administrative body may want the requesting party to explain the basis for the request.

Part 11 – Evidence

Overview

These rules provide that the administrative body will admit evidence it considers relevant and appropriate, subject to the rules of fairness and natural justice. This means that evidence which may not be admissible under the legal rules of evidence may be taken into account by the tribunal. This is because the legal rules of evidence applied by the courts can be highly technical and an administrative body is intended to be a simpler, less complex process. However, an administrative body must be mindful of the reliability and materiality of evidence that is brought before it. In making a determination on reliability and materiality, the administrative body must look to the legal rules of evidence for guidance.

Rule 11.1 Admission of evidence

11.1.1 Subject to Rule 11.1.2, the administrative body is not bound by the legal rules of evidence and may admit any evidence it considers relevant to the matter before it and appropriate in the circumstances.

11.1.2 The administrative body will not admit evidence that is privileged in law.

Rule 11.2 Witnesses

11.2.1 [optional] The administrative body may require that a witness give testimony under an affirmation.

11.2.2 Subject to any directions of the administrative body, a party may:

- a) call persons as witnesses and ask them questions
- b) submit written reports, statements, documents or recordings of any kind
- c) ask questions of any persons called as witnesses by another party.

11.2.3 The administrative body may ask questions of a witness.

(note: the definition of “witness” in Part 2.1 Glossary includes expert witness)

Comments

1. If the enabling legislation of a tribunal adopts section 38 of the *Administrative Tribunals Act*, most of the provisions in Rule 11.2 are covered in the legislation:

38 (1) *Subject to subsection (2), in an oral or electronic hearing a party to an application may call and examine witnesses, present evidence and submissions and conduct cross*

examination of witnesses as reasonably required by the tribunal for a full and fair disclosure of all matters relevant to the issues in the application.

(2) The tribunal may reasonably limit further examination or cross examination of a witness if it is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the application.

(3) The tribunal may question any witness who gives oral evidence in an oral or electronic hearing.

2. If the enabling legislation of a tribunal adopts the provisions of the *Administrative Tribunals Act* permitting the issuing of a summons, section 49 allows the tribunal, on application to the court, to request a contempt order. For further information, see the website of the Administrative Justice Office, Tribunal Tool Kit, A Guide for Tribunals: Obtaining compliance with tribunal processes at www.gov.bc.ca/ajo.

Contempt proceeding for uncooperative witness or other person

49 *(1) The failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:*

- (a) attend a hearing;*
- (b) take an oath or affirmation;*
- (c) answer questions;*
- (d) produce the records or things in their custody or possession.*

(2) The failure or refusal of a person to comply with an order or direction under section 48 makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the court in respect of conduct by a person in a proceeding before the tribunal.

3. Some administrative rules have very detailed provisions around calling and questioning expert witnesses or introducing expert reports. These model rules define witness to include an expert witness. They also provide, in Rule 8.2 Pre-hearing conference, that the administrative body and the parties may consider a requirement to produce a list of witnesses and a summary of their evidence, as well as a requirement to exchange expert reports. The rule allowing a party to call witnesses and present reports at the hearing, Rule 11.2, is subject to the direction of the administrative body. The pre-hearing conference is an ideal time to consider and make directions on witnesses and reports, however, these directions may be made at any time by the administrative body.

The administrative body may provide direction on a number of issues relating to expert witnesses and reports including:

- a) the number of expert witnesses,

- b) the topic the expert witnesses will speak to,
- c) the qualifications of the expert witnesses, and
- d) the pre-filing of expert reports.

Also see:

- a) the discussion of expert witnesses under Rule 8, Comment #7
 - b) for information on what is expert evidence and who is an expert see Information Sheet #6, *Evidence in an Arbitration* of the Mediation and Arbitration Board at www.empr.gov.bc.ca/OG/MAB.
4. Rule 11.1.2 refers to documents that are privileged in law. The question of whether a document is, in fact, privileged in law may be a complicated legal question requiring the advice of legal counsel.

Part 12 – Decision

Overview

An open and transparent process means that the parties know the basis on which the administrative body reached its decision. An administrative body should provide parties with a written decision that includes the reasons for making the decision.

Unless there are compelling privacy reasons for individuals affected by or referred to in a decision, an administrative body should make its decisions available to the public. Transparency ensures greater public understanding of the process and greater acceptance of the results, and greater accountability by the administrative body. For a discussion of the competing public and private needs, see the discussion paper on Open Courts, Electronic Access to Court Records and Privacy, prepared by the Judicial Technology Committee for the Canadian Judicial Council, at www.cjc-ccm.gc.ca.

In any case, there may be a need to consider eliminating any unnecessary references to personal information in the written reasons. The members of an administrative body should only include in decisions the information necessary to demonstrate the reasons for that decision. For information on use of personal information in decisions, see the discussion paper on Use of Personal Information in Judgments and Recommended Protocol, Canadian Judicial Council, at www.cjc-ccm.gc.ca.

Rule 12.1 General

12.1.1A decision of the administrative body (except a ruling on procedural and other similar matters) will be made in writing and include reasons.

12.1.2The administrative body will provide each party with a copy of the decision.

12.1.3The decision will be effective on the date it is issued, unless otherwise specified in the decision.

12.1.4All written decisions concluding a matter before the administrative body will be made available to the public.

Rule 12.2 Corrections

The administrative body may correct a typographical error, an error of calculation, an omission or any other similar error in its decision.

Comments

1. If the enabling legislation of the tribunal adopts the following provisions of the *Administrative Tribunals Act*, the administrative body may decide not to include rules on the decision.

Decisions

50 (1) *If the tribunal makes an order for the payment of money as part of its decision, it must set out in the order the principal sum, and if the tribunal has power to award interest and interest is payable, the rate of interest and the date from which it is to be calculated.*

(2) *The tribunal may attach terms or conditions to a decision.*

(3) *The tribunal's decision is effective on the date on which it is issued, unless otherwise specified by the tribunal.*

(4) *The tribunal must make its decisions accessible to the public.*

Final decision

51 *The tribunal must make its final decision in writing and give reasons for the decision.*

Notice of decision

52 (1) *Subject to subsection (2), the tribunal must send each party and any interveners in an application a copy of its final decision.*

(2) *If the tribunal is of the opinion that because there are so many parties to an application or for any other reason that it is impracticable to send its final decision to each party as provided in subsection (1), the tribunal may give reasonable notice of its decision by public advertisement or otherwise as the tribunal directs.*

(3) *A notice of a final decision given by the tribunal under subsection (2) must inform the parties of the place where copies of that decision may be obtained.*

Amendment to final decision

53 (1) *If a party applies or on the tribunal's own initiative, the tribunal may amend a final decision to correct any of the following:*

(a) *a clerical or typographical error;*

(b) *an accidental or inadvertent error, omission or other similar mistake;*

(c) *an arithmetical error made in a computation.*

(2) *Unless the tribunal determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.*

(3) *Within 30 days of being served with the final decision, a party may apply to the tribunal for clarification of the final decision and the tribunal may amend the final decision only if the tribunal considers that the amendment will clarify the final decision.*

(4) *The tribunal may not amend a final decision other than in those circumstances described in subsections (1) to (3).*

(5) *This section must not be construed as limiting the tribunal's ability, on request of a party, to reopen an application in order to cure a jurisdictional defect.*

Enforcement of tribunal's final decision

54 (1) *A party in whose favour the tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the court.*

(2) *A final decision filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court.*

2. Many administrative bodies post decisions on their website. If this is done, the administrative body may want to take steps to avoid its decisions being searchable by a party's name in order to protect the privacy of individuals. The administrative body's rules should include Rule 12.1.4 to alert parties that decisions are publicly available.

3. If the enabling legislation of a tribunal adopts section 50 of the *Administrative Tribunals Act*, take note of its provisions regarding a monetary award:

50 (1) *If the tribunal makes an order for the payment of money as part of its decision, it must set out in the order the principal sum, and if the tribunal has power to award interest and interest is payable, the rate of interest and the date from which it is to be calculated.*

4. If decisions of the administrative body are made by a panel of members, the rules should clarify that the decision of the majority is the decision of the administrative body.

Rule 12.3 Majority decision

12.3.1 If more than one member of the administrative body presides over the hearing, the decision of the majority is the decision of the administrative body.

12.3.2 At the discretion of the administrative body, a dissenting member's reasons may be included with the decision of the administrative body.

5. If the administrative body has the authority to award costs, the rules may include the following:

Rule 12.4 Costs

12.4.1 Subject to rule 12.4.2, the administrative body may award costs to a party or parties in the decision.

12.4.2 Parties will be provided an opportunity to speak to costs before the administrative body makes an award for costs.

For information on making cost orders, see the Administrative Justice Office, Tribunal Tool Kit, A Guide for Tribunals: Obtaining compliance with tribunal processes, at www.gov.bc.ca/ajo.

6. Many administrative bodies have the legal authority to reconsider a decision that goes beyond the correction of an error (see Rule 12.2) and that may result in a revised decision. For those administrative bodies, that authority is expressly stated in their enabling legislation, and any limitations must be carefully followed. The following sets out a process for a party to request a reconsideration that assumes there are at least two parties in the process. If the process does not involve two parties, adjust this to fit within the administrative body's legislative scheme and mandate to reconsider.

Rule 12.5 Reconsideration

- 12.5.1 With 30 days of the decision, a party may request that the administrative body reconsider the decision.
- 12.5.2 The request must be in writing and must identify the basis on which the reconsideration request is made.
- 12.5.3 The administrative body will notify, in writing, all parties of its decision whether to accept or reject the request for reconsideration.
- 12.5.4 If the administrative body accepts the request for reconsideration, the notice will describe the process for reconsideration.

If there is a fee for submitting a request for reconsideration, Rule 12.5.2 could read as follows:

A request to the administrative body for reconsideration:

- a) may be made using the form provided in Schedule C of these Rules , and
- b) must be accompanied by the [fee amount] fee authorized in [...identify the schedule or authority for the fee...].

The Rules or a Practice Directive could specify the basis (or "grounds") upon which the administrative body will accept a request for reconsideration. The grounds for reconsideration may be set out in the enabling legislation and, if so, must be closely followed. Common grounds for reconsideration are:

- a) natural justice error
- b) material error in the facts upon which the decision was made
- c) admission of evidence at the hearing that was false or misleading, or
- d) introduction of new evidence that was not available through reasonable diligence at the time of the hearing.

Part 13 – General provisions

Overview

This part contains provisions that apply throughout the rules.

Rule 13.1 confirms that the administrative body will conduct the proceedings in the manner that suits the circumstances of that particular matter. This provision provides a wide range of options for the administrative body. When determining what suits a particular matter, consider the guiding principles in Rule 1.1.2. In addition, bear in mind the requirements of natural justice. While it may be appropriate in a relatively simple matter to conduct the proceeding through written submissions, another situation may require an in-person meeting to ensure that each party has full opportunity to hear and respond to the submissions of the others.

Rule 13.2 sets out the authority of an administrative body to issue Practice Directives on matters addressed in the rules. A Practice Directive does not change a rule. The purpose of a Practice Directive is to provide more detail on a process established by a rule or to provide additional context or clarity about how the administrative body will meet its mandate. For example, the model rules provide that a hearing may be conducted by teleconference. A Practice Directive could be prepared to expand on when a teleconference may be appropriate, how it may be requested and how it will be conducted. A Practice Directive can also be issued to deal with an omission in the rules. The Practice Directive should be converted into a rule when the rules are next updated and revised.

Rule 13.3 deals with representation. The administrative process should not be as formal as the court process. The guiding principles include the precept that the conduct of the proceedings be proportional to the matters before the administrative body. While some of the more complex and technical matters may benefit from legal counsel and/or the evidence of experts, many other matters can be concluded without the parties needing legal representation. The processes used by administrative bodies should be sufficiently straight forward and clear that parties can represent themselves throughout the process. In cases where a party has representation or is accompanied by another person, the administrative body may develop requirements for the participation of that person, for example, that the representative cannot attend proceedings without the party being present.

Rule 13.4 addresses the inclusion of parties, other than the applicant and the respondent, in the proceedings. If the administrative process involves two parties, for example, a landlord and tenant, the parties should be clearly known and easily identified. However, in some circumstances, a third party may be significantly affected by the outcome of an application such that notice of the proceedings is necessary to provide them with an opportunity to participate. The administrative rules need to provide the mechanism for the parties to identify any such person and for the administrative body to consider whether, and if, that person should be included in the process and the extent of their participation.

Some administrative bodies will also allow the participation of interested parties. For example, if broad public interest issues are being reviewed by the administrative body, it may be appropriate to allow organizations to participate, if they can demonstrate their interest in the outcome of the public interest issue and the contribution they can make to the administrative process.

Rules 13.5 and 13.6 describe how parties communicate with the administrative body and with other parties. These model rules provide a few options for communicating. With the exception of the application, which under this model is delivered by hand or mail to the administrative body, the rules allow for e-mail communication. Access to a computer and use of email and the internet are now more widespread and can be both inexpensive and efficient. While parties should continue to have the option to receive written communications by mail, many parties will expect the option of communicating by email. For those tribunals with enabling legislation that adopts section 19 of the Administrative Tribunals Act, email and fax are approved methods of delivery.

Rule 13.1 Format of proceedings

The administrative body may direct, on its own initiative or on the request of a party, that a proceeding be conducted in-person, in writing, or by using an electronic format such as video or teleconference or by internet, or any combination of these formats.

Rule 13.2 Practice Directives

The administrative body [*option*: chair] may issue practice directives to provide information or set requirements for the practices and procedures of the administrative body.

Rule 13.3 Representation

13.3.1A party may represent themselves in a proceeding or be represented by legal counsel [*option*: or agent].

13.3.2Legal counsel [*option*: or the agent] must notify the administrative body if they cease to represent the party and must provide the administrative body with the most current contact information they have for the party.

13.3.3With the permission of the administrative body, a party may be assisted by a friend, family member or other person while representing themselves in the proceeding.

13.3.4Legal counsel [*option*: or agent] for a party or any person permitted by the administrative body to assist the party under Rule 13.3.3 may appear without the party only with the permission of the administrative body.

Option: Rule 13.4 Other parties

13.4.1 The administrative body may, on its own initiative or on the request of a party, forward a copy of the application, response, or any other information the administrative body considers relevant, to a person the administrative body believes may have an interest in the proceedings.

13.4.2 If a person receives information from the administrative body under Rule 13.4.1, that person may deliver to [*option: file with*] the administrative body a reply that contains the following:

- a) a list of any statements or other matters set out in the application and/or response that the other party disputes and why
- b) statement of the facts the other party says the administrative body should consider in its review of the application
[*options: a reply to the allegations in the application and/or response; a reply to the outcome requested; submissions in response to the matters raised by the applicant and/or respondent*]
- c) the outcomes the other party believes should happen in relation to the application
- d) the address for delivery of the other party
- e) [*option*] the email address of the other party, if available.

13.4.3 A reply must be delivered to the administrative body, in the manner required by these rules, within [...*time limit, e.g. 30 days, or the legislative time limit, if any...*] of the postmarked date on the package containing the copy of the application, response and other information or documents sent to the other party.

13.4.4 A reply may be made using the form provided in Schedule D.

13.4.5 If a reply is not delivered [*option: filed*] within the time allowed, the administrative body may take any action it considers appropriate in the circumstances including:

- a) extending the time for replying
- b) applying case management processes
- c) setting a hearing date
- d) making a final or other decision or an order based on the information before the administrative body.

Rule 13.5 Delivering a document to the administrative body [option: Filing a document with the administrative body]

13.5.1A document may be delivered to [option: filed with] the administrative body as follows:

- a) by hand to the offices of the administrative body at [...*address of the administrative body...*]
- b) by mail [option: registered mail] to the offices of the administrative body at [...*address of the administrative body...*]
- c) by email at [...*email address of the administrative body...*], or
- d) by any other means allowed by the administrative body.

13.5.2A document sent by mail is delivered [option: filed] the day it is received by the administrative body.

[option: A document sent by registered mail is delivered [option: filed] when it is signed for by the administrative body].

13.5.3A document sent by email to the administrative body is delivered [option: filed] on the day it is sent, if sent on or before 4:00 p.m., or, if sent after 4:00 p.m., on the next business day.

Rule 13.6 Delivering a document to participants in the process

13.6.1A document may be delivered to an applicant, respondent [option: or other party] as follows:

- a) by mail [option: registered mail] to the address for delivery provided in the application, response [option: or reply of other party]
- b) by email to the email address for delivery provided in the application, response [option: or reply of other party], or
- c) by any other means permitted by the administrative body.

13.6.2A document sent by mail to an applicant, respondent [option: or other party] is delivered:

- a) five (5) days after the post mark date, if that day is a business day, or
- b) the next business day five (5) days after the post mark date, if the fifth (5th) day falls on the weekend or a holiday.

[option: A document sent by registered mail is delivered when it is signed for by the applicant, respondent or other party].

13.6.3A document sent by email to an applicant, respondent [option: or other party] is delivered on the day it is sent if sent on or before 4:00 p.m., or, if sent after 4:00 p.m., on the next business day.

Comments

1. If the enabling legislation of a tribunal adopts section 12 of the *Administrative Tribunals Act*, the tribunal is required to issue Practice Directives on:
 - (a) the usual time period for completing an application and for completing the procedural steps within an application, and
 - (b) the usual time period within which the tribunal's final decision and reasons are to be released after the hearing of the application is completed.

If the administrative body is required to issue Practice Directives, the directives must be consistent with the *Administrative Tribunals Act*, the enabling legislation of the tribunal and the rules of the tribunal. A tribunal may issue Practice Directives on other matters in addition to the directives required by the legislation (see section 13, *Administrative Tribunals Act*). For model Practice Directives, see the website of the Administrative Justice Office, Tribunal Tool Kit at www.gov.bc.ca/ajo/down/atas_12_model_practice_directive.pdf.

Even if the administrative body is not required by legislation to issue Practice Directives, directives can help persons involved in the process and the public better understand the administrative body's processes.

2. If the administrative body has a person designated as the chair, Rule 13.2 may authorize the chair to issue Practice Directives instead of the administrative body as a whole. There are advantages to having one person issue the Practice Directives. It is administratively easier both to implement the Practice Directives and to amend the Practice Directives from time-to-time as necessary.
3. If the matters before the administrative body involve parties in other jurisdictions, the rules may set out the requirement of legal counsel or agents in Rule 13.3. For example:

13.3.1 A party may represent themselves in the proceedings or be represented by a lawyer licensed to practice law in British Columbia or eligible to practice temporarily in British Columbia, or an agent with offices in British Columbia.

4. Rule 13.3.3 allows a party to be accompanied at a proceeding with the permission of the administrative body. For lay participants, it may be advantageous to allow them to attend with a

friend or family member who can offer moral or other support. In other instances, a party may be assisted by a lay advocate or other support worker from a community organization. However, the administrative body will want to control who appears at proceedings and avoid any subsequent complaints that the party was unaware or did not authorize the actions of the person accompanying them. When agreements are being reached or submissions are being made, the administrative body needs to feel confident that each party is directing the presentation of their position in the proceedings.

5. Rule 13.4 sets out the procedure for including another party in the proceedings. If the rules include a provision for other parties, remember to include the definition of “other party” (see Rule 2.1) in the rules.

The administrative body may want to develop a Practice Directive setting out the test or describing the factors that will be considered to determine if a person has an interest in the proceedings.

Tribunals with enabling legislation that adopts section 33 of the *Administrative Tribunals Act* and administrative bodies looking for principles to guide whether to admit other parties, should note the provisions of section 33:

33 (1) *The tribunal may allow a person to intervene in an application if the tribunal is satisfied that*

(a) the person can make a valuable contribution or bring a valuable perspective to the application, and

(b) the potential benefits of the intervention outweigh any prejudice to the parties caused by the intervention.

(2) *The tribunal may limit the participation of an intervener in one or more of the following ways:*

(a) in relation to cross examination of witnesses;

(b) in relation to the right to lead evidence;

(c) to one or more issues raised in the application;

(d) to written submissions;

(e) to time limited oral submissions.

(3) *If 2 or more applicants for intervener status have the same or substantially similar views or expertise, the tribunal may require them to file joint submissions.*

6. These model rules use the term “deliver” when communicating with both the administrative body as well as the parties. Provided there are clear provisions on when a document is delivered, there is no need to recreate court-style rules that differentiate between “filed” and “delivered”. If the rules use “filed”, remember that a document is “filed” with the administrative body and “delivered” to the parties.

7. Tribunals with enabling legislation that adopts section 19 of the *Administrative Tribunals Act* will be subject to the delivery date provisions in that legislation.

19 (1) *If the tribunal is required to provide a notice or any document to a party or other person in an application, it may do so by personal service of a copy of the notice or document or by sending the copy to the person by any of the following means:*

- (a) ordinary mail;*
- (b) electronic transmission, including telephone transmission of a facsimile;*
- (c) if specified in the tribunal's rules, another method that allows proof of receipt.*

(2) If the copy is sent by ordinary mail, it must be sent to the most recent address known to the tribunal and must be considered to be received on the fifth day after the day it is mailed, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(3) If the copy is sent by electronic transmission it must be considered to be received on the day after it was sent, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(4) If the copy is sent by a method referred to in subsection (1) (c), the tribunal's rules govern the day on which the copy must be considered to be received.

(5) If through absence, accident, illness or other cause beyond the party's control a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2), (3) or (4), that subsection does not apply.

8. Administrative bodies may choose to develop forms to guide applicants, respondents and others when delivering information and material to the administrative body. As each administrative body has different needs, forms have not been developed for these model rules.

For an example set of rules created with these Model Rules, see the Sample Administrative Rules, British Columbia Council of Administrative Tribunals, June 1, 2009.