



The Professional Institute
of the Public Service of Canada
Office of the President

L'Institut professionnel
de la fonction publique du Canada
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Subject: Comments on CHRT Draft Rules of Procedure on Pay Equity

The introduction of a new federal proactive pay equity legislation has been a valuable progressive step toward the elimination of gender-based discrimination in public and private federally-regulated workplaces. Although the *Pay Equity Act* and related regulations have been enacted and been in effect since September 2021, there is a pressing need to design a set of flexible and effective rules of procedure applicable to pay equity proceedings before the Canadian Human Rights Tribunal (CHRT).

The Professional Institute of Public Service of Canada (PIPSC), the national union that represents some 60,000 public service professionals employed principally by the federal government, has carefully reviewed the draft rules of procedure on pay equity and developed a number of new proposals and amendments. Our objective is to help the CHRT design a fair and effective proceedings process for pay equity referrals and complaints.

More specifically, we propose several definitions of key concepts, clear rules for service and filing, as well as a new time calculation method. Our submission also includes new proposals on hearing adjournment rules, mediation during case management conferences and more reasonable timelines related to parties' participation in inquiries to referrals. Finally, we propose specific procedural rules related to reconsideration requests intended to revoke or vary decisions or orders issued by the Tribunal.

We developed our proposals based on an excellent knowledge of pay equity rules of procedure and based on a deep understanding of bargaining agents' need for a flexible, fair, and effective set of procedural rules. Please see our comments in the Annex below.

Sincerely,

Jennifer Carr
President

Annex:
Summary of PIPSC Proposed Additions and Amendments
Draft Rules of Procedure on Pay Equity

Section of the Rules of Procedure	Proposed changes or Additions	Comments / Justification
Definitions	<p><u>Additions:</u></p> <p><i><u>Day</u> means working day and excludes Saturday, Sunday, a statutory holiday and any other day the Tribunal is closed.</i></p> <p><i><u>Response</u> means a response to a motion or an application filed in accordance with these Rules.</i></p> <p><i><u>Service</u> means the delivery of documents which are required to be served under these Rules or by order of the Tribunal.</i></p> <p><i><u>Tribunal</u> means the Canadian Human Rights Tribunal (CHRT).</i></p>	<p><i>For more clarity, we propose adding these definitions to avoid interpretation conflicts between parties.</i></p>
General Principles	<p>Non-exhaustive</p> <p>4. (1) A member or panel may decide any matter of procedure that is not provided for by these Rules.</p> <p><u>Additions:</u></p> <p>4. (2) <i>The procedure shall be determined by analogy to these Rules.</i></p> <p><i>Time Calculation</i></p> <p>5. <i>The time periods prescribed by these Rules are calculated as follow:</i></p>	<p><i>We suggest that the Tribunal decides on matters of procedure by making analogies to these rules. This would help build a consistent interpretation of these rules.</i></p>

	<p><i>(a) where there is a reference to a number of days between two events, the count shall exclude the day on which the first event happens;</i></p> <p><i>(b) where the time frame for doing anything required by the Rules of the Tribunal expires on a day which is not a working day as defined by these Rules, the act may be done on the next working day.</i></p> <p>Representative Change</p> <p><i>6. When a representative ceases to act on behalf of a party, the representative or the party must immediately notify the Tribunal and all other parties in writing providing the name, email, address, phone and facsimile numbers of the representative's replacement or, where there is no replacement, confirm the name, email, address, phone and facsimile numbers of a contact person for the party.</i></p>	<p><i>This addition brings more clarity to the current rules and aims to avoid confusion and conflicting interpretation of the time calculation method.</i></p> <p><i>This proposal helps clarify the parties' obligations when a representative change occurs during the proceedings of appeal or inquiry into referral.</i></p>
<p>Consequences of Non-compliance</p>	<p>Non-compliance with Rules or orders</p> <p>7. (1) If a party does not comply with these Rules, an order of a member or panel or a time limit established under these Rules, the member or panel may, on the motion of another party or on its own initiative, proceed with or dismiss the appeal or inquiry into a referral or order the party to remedy the noncompliance.</p>	

	<p><u>Additions:</u></p> <p><i>7. (2) Notwithstanding 7(1), the Tribunal may exercise leeway in its application of procedural and format rules when doing so renders the process more accessible. An appeal or inquiry shall not necessarily be declared invalid because of a minor procedural/format irregularity or other deviation from the prescribed rules.</i></p>	<p><i>This proposal provides the member of a panel more flexibility in the application of the rules of procedure.</i></p>
<p>Service and Filing</p>	<p>Documents to be served and filed</p> <p>9. (1) Every document that must be served and filed under these Rules must be served on all parties and filed with the Registrar.</p> <p><u>Additions:</u></p> <p><i>9. (2) When delivered before 5 pm. (time zone of the CHRT)., the effective date for service of documents is the date of delivery. When delivered after 5 p.m. the effective date of service is the next day. The effective date of service for documents delivered by regular mail is five (5) days after mailing.</i></p> <p><i>9. (3) A member or panel may, at any time, order that a party provide proof of service of a document.</i></p>	<p><i>This proposed addition aims to bring more clarity to the timeline rules governing the service of documents and its proof.</i></p>
<p>Case Management Conference</p>	<p><u>Additions:</u></p>	

	<p>Mediation</p> <p><i>21. (1) Where all parties agree, the Tribunal may convene a mediation session for the purpose of resolving some or all the issues in dispute.</i></p> <p><i>The mediation session may be conducted by a member of the Tribunal or a third-party expert appointed by the Tribunal. The parties to mediation must agree to keep the mediation process confidential and only disclose that which is described in a mediated agreement.</i></p> <p><i>21. (2) No person conducting a mediation process shall be invited to give testimony or produce documents in the proceeding before the Tribunal.</i></p>	<p><i>We suggest that a case management conference be a relevant forum for an optional mediation process that might help the parties resolve some or all issues in dispute.</i></p>
Hearing	<p><u>Additions:</u></p> <p>Scheduling of Public Hearing</p> <p><i>25. The Registrar shall set the date and time of a hearing. Ordinarily, a hearing shall be open to the public unless otherwise decided by the member or panel.</i></p> <p><i>Adjournments</i></p> <p><i>26. (1) Once a hearing has been scheduled, it may not be adjourned except with the Tribunal's permission.</i></p>	<p><i>We suggest that the current rules include clear procedures for requesting an adjournment of a hearing. The proposed addition offers the parties the possibility to request hearing adjournment when needed, particularly in case of exceptional circumstances such as unexpected medical emergencies.</i></p>

	<p>26. (2) When a party becomes aware that an adjournment is required, it must seek the consent of the other parties and advise the member or panel in writing of the request and the positions of the other parties.</p> <p>26. (3) When a party objects to a request for an adjournment, it shall provide written reasons to the Tribunal as soon as possible and in any event no later than three (3) days after receiving the request for the adjournment.</p> <p>26. (4) When an unexpected medical or other emergency arises for a party or its representative, the Registrar may grant an adjournment without seeking the positions of the other parties.</p>	
Inquiry Into a Referral	<p><u>Amendments:</u></p> <p>Participation by parties before the Commissioner</p> <p>28. Within seven ten (10) days after being served with a notice of referral and request for directions, a party before the Commissioner to the matter in dispute, objection or complaint from which the referral derives may elect to participate in the inquiry into the referral by filing a notice of intention to participate.</p> <p>Referrals posted online</p> <p>29. Within seven ten (10) days of receipt of a notice of referral and request for directions, the Tribunal will post a summary of the referral to the Tribunal's website soliciting the participation of</p>	<p><i>These proposed amendments are intended to offer the parties a sufficient and reasonable timeframe to decide on their future participation in the inquiry to referral proceedings.</i></p>

	potential interested parties. The summary of the referral will remain posted online for at least 30 days.	
Request for Reconsideration	<p><u>Additions:</u></p> <p><i>Reconsideration</i></p> <p><i>27. (1) A member or panel may, at any time, reconsider any decision or order made by it and vary or revoke the decision or the order.</i></p> <p><i>27. (2) A party seeking reconsideration shall complete a written request for reconsideration explaining the reasons for the request, and serve it on all other parties.</i></p> <p><i>27. (3) Except with the permission of the Tribunal, a written request for reconsideration must be filed no later than thirty (30) days after the decision or order issued by the Tribunal.</i></p> <p><i>27. (4) Any party may respond to the request for reconsideration by serving its written submissions on all parties within five (5) days after the date of effective service of the request.</i></p> <p><i>27. (5) The Tribunal will decide the request for reconsideration on the basis of written submissions.</i></p>	<p><i>This proposed addition offers the members or panel more flexibility in changing or revoking any decision or order. This proposal clarifies the rules applicable to a reconsideration request made by interested parties.</i></p>