

Proposed Rules for Adjudication Hearings

Application and General

1. These rules apply to adjudication hearings under the Act.¹
2. These rules shall be liberally construed to:
 - a. Secure the just, most expeditious and cost-effective determination of every proceeding on its merits;²
 - b. Allow the parties to participate effectively in the process; and
 - c. Ensure that the process for resolving disputes between parties is proportionate to the importance and complexity of the issues in the proceeding.
3. In these rules,

“*Act*” means the *Community Safety and Policing Act, 2019*;

“*Adjudicator*” means an adjudicator appointed by the Commission Chair³ from the roster of adjudicators maintained by the Arbitration and Adjudication Commission, and includes a Pre-Hearing Adjudicator as the context requires;

“*lesser discipline hearing*” means a proceeding before an Adjudicator pursuant to section 201 of the Act;

“*deliver*” means to serve and file with proof of service in accordance with [rules regarding Service];

“*demotion/termination hearing*” means a proceeding before an Adjudicator pursuant to section 202 of the Act;

“*discipline hearing*” means:

- a) a lesser discipline hearing,
- b) a demotion/termination hearing,
- c) a suspension hearing, or
- d) an expungement hearing;

whether held in person, in writing or by electronic means such as a telephone or video conference.

“*document*” includes information stored or recorded by means of any device, including written or pictorial communications, audio or visual recordings, and electronically stored data;

“*electronic hearing*” means a hearing held by telephone or video conference or some other

¹ The regulation-making authority is generally para 58 of s. 261 (1).

² Based on SPPA s. 2

³ This is a defined term in the Act, i.e., Ontario Police Arbitration and Adjudication Commission

form of electronic technology allowing persons to hear one another;⁴

“*expungement hearing*” means a proceeding before an Adjudicator pursuant to section 207 of the Act;

“*hearing*” means a motion hearing or a discipline hearing;

“*motion hearing*” means a proceeding before an Adjudicator where evidence or submissions are heard or received, whether in person, in writing, or by electronic means, such as by phone or video conference, relating to a motion with respect to a discipline hearing;

“*pre-hearing conference*”, in relation to a proceeding, means a meeting for the purpose of considering:

- a) the settlement of any or all of the issues;
- b) the simplification of the issues;
- c) facts or evidence that may be agreed upon;
- d) the dates by which any steps in the proceeding are to be taken or begun;
- e) the estimated duration of the hearing; and
- f) any other matter that may assist in the just and most expeditious disposition of the proceeding.

“*Pre-Hearing Adjudicator*” means an Adjudicator appointed by the Commission Chair to preside at a pre-hearing conference under section [1st under Pre-Hearing Conferences].

“*representative*” means a person authorized under the *Law Society Act*, or an agent, who is authorized to represent a person in the proceeding pursuant to the Act;

“*SPPA*” means *Statutory Powers Procedure Act*, and

“*suspension hearing*” means a proceeding before an Adjudicator pursuant to section 210 of the Act.

Application of *Statutory Powers Procedure Act*

4. For greater certainty, in respect of proceedings to which this Regulation applies, a reference in the SPPA to a tribunal or one or more members of a tribunal, but not the chair of a tribunal, shall be interpreted as a reference to an Adjudicator.⁵
5. Despite anything in the SPPA, the Chair of the Arbitration and Adjudication Commission shall only appoint a single Adjudicator to hear a matter, subject to the rules regarding pre-hearing conferences.⁶

⁴ Based on SPPA s. 1 (1)

⁵ Reference to the chair of a tribunal in the SPPA is not relevant in the context of the CSPA. For example, s. 5.3 (2) of the SPPA says: The chair of the tribunal may designate a member of the tribunal or any other person to preside at the pre-hearing conference. This document would instead give this power to the Chair of OPAAC, but does not specify that this is “despite” s. 5.3 (1) of the SPPA because that SPPA provision wouldn’t apply anyways.

⁶ Note this document would allow for one adjudicator to preside at a pre-hearing conference while a different adjudicator presides at a motion or discipline hearing, but not for multiple adjudicators to hear the same matter simultaneously. Sections 4.2 and 4.2.1 of the SPPA in particular may create ambiguity about the ability to have multiple adjudicators hear the same matter simultaneously if it is not expressly indicated otherwise.

6. For greater certainty, the rules contained in this Regulation are made pursuant to the Act and not pursuant to section 25.1 of the SPPA.

Processing Application for Hearing

7. The rules under this heading apply instead of section 4.5 of the SPPA.
8. Where the Act permits a chief of police, another police officer, a police service board or the Minister to apply to the Commission Chair to appoint an adjudicator to hold a hearing, the chief, officer, board or Minister, as applicable, shall apply to the Commission Chair in writing and include any information required under this Regulation [under Hearing-Specific Rules] or in a form required by the Arbitration and Adjudication Commission, if any.
9. Upon receiving the written information referred to in [provision immediately above], the Commission Chair may decide not to appoint an adjudicator if,
 - a. the information required to be submitted is incomplete; or
 - b. there is some other technical defect in the application.⁷
10. The Commission Chair or the staff of the Arbitration and Adjudication Commission shall give notice of its decision under section [immediately above] to the party who applied to have an adjudicator appointed and shall set out in the notice the reasons for the decision.⁸

Service of Documents

11. Subject to section [immediately below], where this Regulation requires service, service shall be effected by sending a document by email.
12. The Adjudicator may authorize or direct service to be effected by any other means, including the following means, at the request of a party or on the Adjudicator's own initiative:
 - a. by personal delivery;
 - b. by regular, registered or certified mail to the last known address of the person or their representative; or
 - c. by courier, including Priority Post, to the last known address of the person or their representative.
13. If it is impractical to effect service by any means, the Adjudicator may dispense with service.
14. Service is deemed to be effective,
 - a. if sent by email before 4:00 pm, on the day of delivery;

⁷ Based on SPPA s. 4.5 (1)

⁸ Based on SPPA s. 4.5 (2)

- b. if sent by email after 4:00 pm, on the day after it was sent;
 - c. if sent by personal delivery before 4:00 p.m., on the day of delivery;
 - d. if sent by personal delivery after 4:00 pm the day after delivery;
 - e. if sent by mail, on the fifth day after the day of mailing;
 - f. if sent by courier, on the second day after the document was given to the courier;
 - g. if sent by any other means authorized or directed by the Adjudicator, on the date specified by the Adjudicator in its direction.
15. Section [immediately above] does not apply where a person who acts in good faith does not receive the notice until later or at all.
16. Where there is a requirement to serve other parties, the serving party must file an affidavit of service with the Adjudicator, or provide a supporting email or letter indicating who has been served, what documents have been served, when they were served and by what method, or provide such other proof as the Adjudicator may require.

Hearing-Specific Rules

Lesser discipline hearings

17. Subject to section [immediately below], and despite section 5.2 of the SPPA,
- a. lesser discipline hearings shall be held as in-person hearings,
 - b. any motion hearing that is part of lesser discipline proceedings shall be held as electronic hearings,
 - c. any pre-hearing conference that is part of lesser discipline proceedings shall be held virtually, and
 - d. any other steps in a lesser discipline proceeding shall occur virtually or in writing as the Adjudicator determines is appropriate.
18. Despite sections 5.1 and 5.2 of the SPPA, the Adjudicator may order that a lesser discipline hearing or any part of a lesser discipline proceeding shall occur in a different format if:
- a. All of the parties consent;
 - b. It is necessary to accommodate an individual in accordance with the *Human Rights Code*; or
 - c. The format required by section [immediately above] is likely to cause a party significant prejudice and the alternate format is likely to remedy the prejudice.
19. The police officer who is the subject of the disciplinary measure shall include in an application for a lesser discipline hearing:
- a. A description of the disciplinary measure the chief imposed on the officer; and
 - b. The date the disciplinary measure referred to in (a) was imposed.

20. The parties to a lesser discipline hearing shall adhere to the following timelines, unless an Adjudicator orders otherwise as a result of extenuating circumstances:
- a. Within 15 days of the date an Adjudicator was appointed by the Commission Chair, the chief of police, police service board or Minister, as applicable, shall submit the following to the Adjudicator:
 - i. A statement setting out:
 - 1) the misconduct the police officer is alleged to have committed or that the officer is alleged to have had unsatisfactory work performance, as applicable,
 - 2) the particulars of the alleged misconduct or unsatisfactory work performance, and
 - 3) the disciplinary measure imposed;
 - ii. Proof that the statement described in (i) has been served on the police officer whose conduct is the subject of the hearing.
 - b. Within 15 days of the deadline referred to in (a), the chief of police, police service board or Minister, as applicable, shall submit the following to the Adjudicator:
 - i. If the disciplinary measure was imposed in relation to unsatisfactory work performance, any information relating to the steps described in subsection 201 (2) of the Act;
 - ii. Any other information or documents required by this Regulation, including the information required by section [1st provision under Production and Witnesses]; and
 - iii. Proof that the information described in (i) and (ii) has been served on the police officer whose conduct is the subject of the hearing.⁹
 - c. Within 60 days of the date an Adjudicator was appointed by the Commission Chair, the police officer whose conduct is the subject of the hearing shall submit to the Adjudicator:
 - i. any information or documents that are required by this Regulation, including the information and documents required by section [1st provision under Production and Witnesses];
 - ii. Proof that the information and documents described in (i) have been served on the chief of police, police service board or Minister, as applicable.
 - d. Within 30 days of the deadline referred to in (b), the Adjudicator shall ensure a Pre-Hearing Conference takes place.
 - e. At least 30 days before the lesser discipline hearing commences, the police officer who is the subject of the disciplinary measure shall submit to the Adjudicator:

⁹ I.e., in accordance with section above re: affidavit of service.

- i. Any additional information or documents that they intend to rely on at the lesser discipline hearing or that are required by this Regulation; and
 - ii. Proof that the information and documents described in (i) have been served on the chief of police, police service board or Minister, as applicable.
- f. Within six months of the date of the Pre-Hearing Conference, the lesser discipline hearing shall commence.
- g. The lesser discipline hearing shall be completed as soon as reasonably possible after it commences.

21. The lesser discipline hearing shall be bifurcated as follows:

- a. The first part of the hearing shall determine whether it has been proven on clear and convincing evidence that the conduct of the police officer constitutes misconduct or unsatisfactory work performance.
- b. If it has been proven that misconduct or unsatisfactory work performance has occurred, the second part of the hearing shall determine the disciplinary measure or measures to be imposed, if any.

Demotion/Termination Hearings

22. Subject to section [immediately below], and despite section 5.2 of the SPPA,

- a. demotion/termination hearings shall be held as in-person hearings,
- b. any motion hearing that is part of demotion/termination proceedings shall be held as electronic hearings,
- c. any pre-hearing conference that is part of demotion/termination proceedings shall be held virtually, and
- d. any other steps in a demotion/termination proceeding shall occur virtually or in writing as the Adjudicator determines is appropriate.

23. Despite sections 5.1 and 5.2 of the SPPA, the Adjudicator may order that a demotion/termination hearing or any part of a demotion/termination proceeding shall occur in a different format if:

- a. All of the parties consent;
- b. It is necessary to accommodate an individual in accordance with the *Human Rights Code*; or
- c. The format required by section [immediately above] is likely to cause a party significant prejudice and the alternate format is likely to remedy the prejudice.

24. The chief of police, police service board, Minister, or Complaints Director¹⁰ as applicable, shall include in an application for a demotion/termination hearing:
- a. Whether demotion or termination is being sought; and
 - b. A description of the conduct in relation to which demotion or termination is being sought.
25. The parties to a demotion/termination hearing shall adhere to the following timelines, unless an Adjudicator orders otherwise as a result of extenuating circumstances:
- a. Within 15 days of the date an Adjudicator was appointed by the Commission Chair, the chief of police, police service board or Minister, as applicable, shall submit the following to the Adjudicator:
 - i. A statement setting out:
 - 1) the misconduct the police officer is alleged to have committed or that the officer is alleged to have had unsatisfactory work performance, as applicable,
 - 2) the particulars of the alleged misconduct or unsatisfactory work performance, and
 - 3) whether demotion or termination is being sought;
 - ii. Proof that the statement described in (i) has been served on the police officer whose conduct is the subject of the hearing.
 - b. Within 15 days of the deadline referred to in (a), the chief of police, police service board, Minister or Complaints Director, as applicable, shall submit the following to the Adjudicator:
 - i. If demotion or termination is being sought as a result of unsatisfactory work performance, a description of the steps taken for the purpose of subsection 202 (2) of the Act;
 - ii. Any other information or documents required by this Regulation, including the information required by section [1st provision under Production and Witnesses]; and
 - iii. Proof that the information described in (i) and (ii) has been served on:
 1. the police officer whose demotion or termination is being sought; and
 2. if the application arose as a result of an investigation under Part X of the Act, the complainant in that investigation, if any.¹¹
 - c. Within 30 days of the deadline referred to in (b), the Adjudicator shall ensure a Pre-Hearing Conference takes place.

¹⁰ The Complaints Director is automatically a party if the Complaints Director directed the chief of police to initiate the hearing and the chief of police declines to participate as a party, pursuant to s. 202 (5) of the Act.

¹¹ The complainant is automatically a party to the hearing, pursuant to s. 202 (4) of the Act.

- d. At least 30 days before the demotion/termination hearing commences, the police officer whose demotion or termination is being sought and the complainant, if any, shall submit the following to the Adjudicator:
 - i. Any information or documents that are required by this Regulation, including the information and documents required by section [1st provision under Production and Witnesses], and
 - ii. Proof that the information and documents described in (i) have been served on the other parties.
- e. Within nine months of the date of the Pre-Hearing Conference, the demotion/termination hearing shall commence.
- f. The demotion/termination hearing shall be completed as soon as reasonably possible after it commences.

26. The demotion/termination hearing shall be bifurcated as follows:

- a. The first part of the hearing shall determine whether it has been proven on clear and convincing evidence that the conduct of the police officer constitutes misconduct or unsatisfactory work performance.
- b. If it has been proven that misconduct or unsatisfactory work performance has occurred, the second part of the hearing shall determine whether demotion or termination of the officer's employment, or any other disciplinary measure permitted under the Act, should be imposed.

*Suspension Hearings (Expedited)*¹²

27. Subject to section [immediately below], and despite section 5.2 of the SPPA,

- a. suspension hearings shall be held as in-person hearings,
- b. any motion hearing that is part of suspension proceedings shall be held as electronic hearings,
- c. any pre-hearing conferences that is part of suspension proceedings shall be held virtually, and
- d. any other steps in a suspension proceeding shall occur virtually or in writing as the Adjudicator determines is appropriate.

28. Despite sections 5.1 and 5.2 of the SPPA, the Adjudicator may order that a suspension hearing or any part of a suspension proceeding shall occur in a different format if:

- a. All of the parties consent;
- b. It is necessary to accommodate an individual in accordance with the *Human Rights Code*; or

¹² Subsection 210 (12) requires that hearings regarding suspension without pay under s. 210 be held on an expedited basis.

- c. The format required by section [immediately above] is likely to cause a party significant prejudice and the alternate format is likely to remedy the prejudice.
- 29. Despite anything in the SPPA, no party shall introduce evidence at a suspension hearing or bring a motion relating to a suspension hearing unless the Adjudicator determines it is necessary to do so.
- 30. The police officer who is the subject of a suspension without pay shall include in an application for a suspension hearing whether the suspension without pay is under paragraph 2 or paragraph 3 of subsection 210 (1).
- 31. The parties to a suspension hearing shall adhere to the following timelines, unless the Adjudicator orders otherwise as a result of extenuating circumstances:
 - a. Within 30 days of the Adjudicator being appointed by the Commission Chair, the police officer seeking the hearing shall submit the following to the Adjudicator:
 - i. If the suspension without pay is under paragraph 2 of subsection 210 (1), a copy of the conditions of judicial interim release and an explanation of why the officer believes that the conditions of judicial interim release do not substantially interfere with the officer's ability to perform the duties of a police officer;
 - ii. If the suspension without pay is under paragraph 3 of subsection 210 (1) of the Act, a copy of the notice referred to in s. 210 (1) (3) (ii) (B) of the Act, if applicable, and an explanation of why the officer believes the criteria set out in paragraph 3 of subsection 210 (1) of the Act have not been met;
 - iii. The written notice provided to the officer pursuant to subsection 210 (4) of the Act;
 - iv. Any other information or documents that are required by this Regulation; including the information and documents required by section [1st provision under Production and Witnesses]; and
 - v. Proof that the information in (i) to (iv) has been served on the chief of police, police service board or Minister, as applicable.
 - b. Within 30 days of the deadline referred to in (a), the chief of police, police service board, or Minister, as applicable, shall submit to the Adjudicator:
 - i. Any information or documents beyond what is described in section [immediately above] that they intend to rely on at the suspension hearing or that are required by this Regulation; and
 - ii. Proof that the information or documents described in (i) have been served on the police officer who sought the hearing.
 - c. At any point before the hearing commences, the Adjudicator may order the parties to participate in a pre-hearing conference.
 - d. Within 30 days of the deadline referred to in (b), the suspension hearing shall commence.

- e. The suspension hearing shall be completed as soon as reasonably possible after it commences.

Expungement Hearings

- 32. Despite section 5.1 of the SPPA and subject to section [immediately below], expungement hearings shall be held in writing, except that any hearing or part of a hearing in relation to which the Adjudicator has granted leave [pursuant to section two below] to have live witness testimony shall be held as an in-person hearing.
- 33. Despite section 5.2 of the SPPA, the Adjudicator may order that the expungement hearing or any part of it shall be held as an in-person hearing or an electronic hearing if it is necessary to accommodate an individual in accordance with the *Human Rights Code*.
- 34. Despite anything in the SPPA, no party shall introduce evidence at an expungement or bring a motion relating to an expungement hearing without leave of the Adjudicator.
- 35. The chief of police, police service board, or Minister, as applicable, applying for the expungement hearing shall include the following in the application:
 - a. A description of the record they are seeking to retain for longer than five years; and
 - b. The date on which the record would be required to be expunged if the Adjudicator does not order an extension.
- 36. The parties to an expungement hearing shall adhere to the following timelines, unless the Adjudicator orders otherwise as a result of extenuating circumstances:
 - a. Within 15 days of the Adjudicator being appointed by the Commission Chair, the chief of police, police service board, or Minister, as applicable, shall submit to the Adjudicator:
 - i. A statement setting out:
 - 1. A description of the disciplinary record at issue, and
 - 2. The grounds on which the record should be retained for longer than 5 years as a result of extenuating circumstances; and
 - ii. Proof that the statement described in (i) has been served on the police officer whose disciplinary record is at issue.
 - b. Within 60 days of the Adjudicator being appointed by the Commission Chair, the chief of police, police service board or the Minister, as applicable, shall submit the following to the Adjudicator:
 - i. A copy of the record they are seeking to retain for longer than five years;
 - ii. An explanation of the extenuating circumstances referred to in subsection 207 (4) of the Act;
 - iii. Any information or documents the chief of police, police service board or Minister, as applicable, believes the Adjudicator requires to make a decision;

- iv. Any other information or documents that are required by this Regulation, including the information and documents required by section [1st provision under Production and Witnesses];
 - v. Proof that the information in (i) to (iv) has been served on the police officer who is the subject of the record.
- c. Within 60 days of the deadline referred to in (b), the police officer to whom the record relates shall submit to the Adjudicator:
- i. Any information or documents that are required by this Regulation, including the information and documents required by section [1st provision under Production and Witnesses], and
 - ii. Proof that the information and documents described in (i) have been served on the other parties.
- d. Within 60 days of the deadline referred to in (c), the police officer to whom the record relates shall submit to the Adjudicator:
- i. any additional information or documents that they intend to rely on at the expungement hearing or that are required by this Regulation; and
 - ii. Proof that the information and documents described in (i) have been served on the chief of police, police service board or Minister, as applicable.
- e. At any point before the hearing commences, the Adjudicator may order the parties to participate in a pre-hearing conference
- f. The Adjudicator shall render a decision as soon as reasonably possible after receiving all written submissions.

Pre-Hearing Conferences

37. The Commission Chair shall appoint an Adjudicator to preside at a pre-hearing conference where such conference is required by these Rules or ordered by an Adjudicator.¹³
38. Despite anything in the SPPA and subject to section [immediately below], pre-hearing conferences shall be held electronically.
39. Despite sections 5.1 and 5.2 of the SPPA, the Adjudicator may order that the pre-hearing conference or any part of it shall be held in person or in writing if:
- a. All of the parties consent;
 - b. It is necessary to accommodate an individual in accordance with the *Human Rights Code*; or

¹³ This would be a Pre-Hearing Adjudicator as defined. Note the SPPA would give this power to the chair of a tribunal instead (s. 5.3 (2) SPPA).

- c. Holding the pre-hearing conference electronically is likely to cause a party significant prejudice and the alternate format is likely to remedy the prejudice.
- 40. A pre-hearing conference, including any settlement discussions, shall be held in the absence of the public.
- 41. Evidence filed or statements made for the purpose of settlement or otherwise filed or made “without prejudice” for the purpose of a pre-hearing conference shall not be revealed or communicated to the Adjudicator who is conducting the hearing, except with the consent of the parties.
- 42. The Pre-Hearing Adjudicator shall cause any orders, agreements or undertakings that are made at the pre-hearing conference to be recorded and provided to all parties and the Adjudicator at the hearing, in writing.
- 43. Subsection 5.3 (3) of the SPPA shall not be interpreted as permitting the Pre-Hearing Adjudicator to make orders regarding any substantive issues that would otherwise be decided at a hearing, unless all of the parties consent.
- 44. For greater certainty, an Adjudicator may direct the parties to a proceeding to attend a pre-hearing conference even if this Regulation does not require a pre-hearing conference.

Alternative Dispute Resolution

- 45. The rules under this heading apply instead of section 4.8 of the SPPA.
- 46. The Adjudicator may direct the parties to a proceeding to participate in an alternative dispute resolution mechanism for the purposes of resolving the proceeding or an issue arising in the proceeding if all parties consent to participating in the alternative dispute resolution mechanism.¹⁴
- 47. In section [immediately above], “alternative dispute resolution mechanism” has the same meaning as in the SPPA.¹⁵
- 48. For greater certainty, the parties may settle a matter in accordance with subsection 201 (9), 202 (8), or 207 (7) of the Act, as applicable, after participating in alternative dispute resolution in accordance with section [same as previous], but are not required to participate in alternative dispute resolution in order to settle a matter under those subsections of the Act.

Motions and Motion Hearings

- 49. The rules under this heading are subject to the Hearing-Specific Rules in the event of any conflict.
- 50. Where bringing a motion is permitted under this Regulation, a party may bring a motion:

¹⁴ Based on SPPA s. 4.8 (1)

¹⁵ I.e., it includes mediation, conciliation, negotiation or any other means of facilitating the resolution of issues in dispute. Based on SPPA s. 4.8 (2)

- a. At a motion hearing, in accordance with sections [the rules under this heading], or
 - b. At the commencement of the discipline hearing or during the discipline hearing, if permission is sought and obtained from the Adjudicator and where it has been established that the facts or issues upon which the motion is based were not previously known or available to the moving party despite the exercise of due diligence.
51. Despite anything in the SPPA and subject to section [immediately below], motion hearings shall be held as electronic hearings and for greater certainty, any live witness testimony that may be required shall be heard by electronic means.
52. Despite sections 5.1 and 5.2 of the SPPA, the Adjudicator may order that the motion hearing or any part of it shall be held as an in-person hearing or a written hearing if:
 - a. All of the parties consent;
 - b. It is necessary to accommodate an individual in accordance with the *Human Rights Code*; or
 - c. An electronic hearing is likely to cause a party significant prejudice and the alternate format is likely to remedy the prejudice.
53. A party bringing a motion shall file the following with the Adjudicator, in the form provided by the Arbitration and Adjudication Commission, if any, at least 14 days before the motion hearing:
 - a. A notice of motion,
 - b. A factum,
 - c. A brief of authorities; and
 - d. Proof that the documents in (a) to (c) have been served on all other parties to the proceeding and any third party that would be affected by the order.
54. In the case of a motion relating to the powers or duties of the Complaints Director, the Complaints Director is deemed to be a third party that would be affected by the order for the purpose of section [immediately above].
55. For greater certainty, a party bringing a motion raising constitutional issues must also comply with section 109 of the *Courts of Justice Act*, if applicable.
56. A notice of motion referred to in section [three above] shall set out the grounds for the motion and the relief requested, and shall be accompanied by any evidence to be relied upon, which may include an affidavit setting out the facts.
57. A party who wishes to respond to the motion shall file the following with the Adjudicator in accordance with the timelines established by the Adjudicator:
 - a. Any evidence to be relied upon, which may include an affidavit setting out the facts,
 - b. A factum;
 - c. A brief of authorities; and
 - d. Proof that the documents in (i) to (iii) have been served on all other parties.

58. A party may cross-examine another party's affiant, or where the evidence filed is based on information and belief from another person, that person, on matters contained in or arising out of an affidavit, and the party that filed the affidavit is responsible for ensuring the affiant or other person as applicable can attend to be cross-examined. Such cross-examination shall take place before the Adjudicator, subject to any direction provided.

Production and Witnesses

59. All parties shall provide the other parties with the following information:

- a. A list of all arguably relevant documents in their possession, unless the party is the police officer whose discipline, suspension without pay or record is the subject of the hearing, or the party is a public complainant, as applicable;
- b. Where a privilege is claimed over any document referred to in (a), a description of the nature of the document and why privilege is claimed;
- c. A list of documents upon which the party intends to rely; and
- d. A copy of each document referred to in (c).

60. Any party to a proceeding may serve a request for a document referred to in (a) of [section immediately above] on the party having possession of the document, and the party having possession of the document shall provide a copy of it to every other party, subject to any claim of privilege, within 15 days of the request being served.

61. No party may rely on any document that was not included on a list described in clause (c) of section [two above] and provided to the other parties in accordance with section [two above], except with leave of the Adjudicator.

62. If a party intends to introduce evidence and is permitted to do so under this Regulation, the party shall provide the other parties to the proceeding with a list of their potential witnesses and a brief summary of the witnesses' anticipated evidence.

63. The parties may rely upon information or documents produced by other parties to comply with section [immediately above].

64. Despite subsection 5.4 (1) of the SPPA, and subject to sections [the following two] the Adjudicator may, at any time or at any stage in the proceeding before all hearings are complete, make orders for:

- a. the exchange of documents;
- b. the oral or written examination of a party;
- c. the exchange of witness statements and reports of expert witnesses;
- d. the provision of particulars; or
- e. any other form of production of information or documents.¹⁶

65. Section [immediately above] does not authorize the making of an order requiring

¹⁶ Adapted from s. 5.4 (1) SPPA, omitting the condition of having s. 25.1 rules.

production of privileged information.¹⁷

66. Section [two above] does not authorize the making of an order requiring the officer whose discipline, suspension without pay or record is the subject of the hearing to produce anything other than what this Regulation expressly requires the officer to produce.
67. Parties and their representatives shall not use or disclose documents obtained relating to the hearing for any purpose other than in the proceeding before the Adjudicator.
68. If a complainant is a party to a hearing, the complainant and their representative shall complete a written undertaking not to use or disclose documents obtained as a result of the hearing process for any purpose other than the hearing, prior to receiving any such documents.

Production of Documents from Third Parties

69. The Adjudicator may order production of a document that is in the custody or control of a person who is not a party to the proceeding and that is not privileged, after giving the person notice and an opportunity to be heard, if the Adjudicator is satisfied that, the document is important to resolving a material issue in the proceeding.
70. Where privilege is claimed for a document referred to in section [immediately above], or where the Adjudicator is uncertain of the importance of the document to resolving a material issue in the proceeding, the Adjudicator may inspect the document to determine the issue.
71. The moving party is responsible for the reasonable cost incurred by the third party to produce a document referred to in section [two above], unless the Adjudicator orders otherwise.

Summons To Witness

72. Despite subsection 12 (2) of the SPPA, if the Arbitration and Adjudication Commission has required a summons to a witness be in a particular form pursuant to its authority to approve forms and provide for or require their use under subsection 147 (8) of the Act, it shall be in that form and the form shall be signed by the Adjudicator.
73. A party requesting a summons shall, write to the Adjudicator with the name and address of the witness, along with a draft proposed summons.

Rules of Examination

74. In the section below, “police officer” means the police officer whose conduct (in relation to ss. 201 and 202), suspension without pay (in relation to s. 210) or disciplinary record (in relation to s. 207) is the subject of the hearing, as applicable.
75. Subject to the discretion of the Adjudicator, the order of examination of witnesses, where applicable, shall be as follows:

¹⁷ Based on SPPA s. 5.4 (2). Subsection (1.1) was intentionally omitted.

- a) In the case of witnesses called by the chief of police, police service board, Minister or Complaints Director, as the case may be:
 - a. Chief, board, Minister or Complaints Director examination-in-chief
 - b. Complainant cross examination, if there is a complainant
 - c. Police officer cross-examination
 - d. Chief, board, Minister or Complaints Director reply examination
- b) In the case of witnesses called by a complainant, if there is a complainant:
 - a. Complainant examination-in-chief
 - b. Chief, board, Minister or Complaints Director cross-examination
 - c. Police officer cross-examination
 - d. Complainant reply examination
- c) In the case of witnesses called by the subject officer:
 - a. Police officer examination-in-chief
 - b. Chief, board, Minister or Complaints Director cross-examination
 - c. Complainant cross-examination
 - d. Police officer reply examination

Expert Evidence

76. For the purpose of this section, “expert evidence” includes but is not limited to:
- a. Medical reports, letters and notes, including those expressing diagnosis or medical opinion on issues arising in the hearing;
 - b. The necessary technical or scientific basis upon which to properly assess the evidence presented; and
 - c. Inferences and opinions made by an expert in a special field or with special or peculiar knowledge.
77. A party who intends to call an expert witness at a hearing shall serve on every other party a report, signed by the expert, containing the following information:
- a. The expert’s name, address and area of expertise,
 - b. The expert’s qualifications, employment and educational experiences in their area of expertise,
 - c. The instructions provided to the expert in relation to the proceeding,
 - d. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates,
 - e. The expert’s opinion respecting each issue and, where there is a range of

opinions given, a summary of the range and the reasons for the expert's own opinion within that range,

- f. The expert's reasons for his/her opinion, including,
 - i. a description of the factual assumptions on which the opinion is based,
 - ii. a description of any research conducted by the expert that led him or her to form the opinion, and
 - iii. a list of every document, if any, relied on by the expert in forming the opinion, and
 - g. An acknowledgement of expert's duty in the form required by the Arbitration and Adjudication Commission, if any, that is signed by the expert.
78. A party who intends to call an expert witness at the hearing to respond to the expert witness of another party shall serve on every other party a report, signed by the expert, containing the information listed in section [immediately above].
79. An expert witness shall not testify with respect to an issue, except with leave of the Adjudicator, unless the substance of their testimony with respect to that issue is set out in,
- a. A report served under [Expert Evidence heading]; or
 - b. A supplementary report served on every other party in accordance with any timelines required by this Regulation.
80. Where a party intends to submit and rely upon expert evidence, the onus is on that party to establish its relevance and necessity and to properly qualify the expert witness.

Joint Hearings

81. Despite section 9.1 of the SPPA, if two or more proceedings involve the same or similar questions of fact or law, the Commission Chair may only do the following with the consent of the parties:
- a. combine the proceedings or any part of them,
 - b. assign an Adjudicator to hear the proceedings at the same time,
 - c. hear the proceedings one immediately after the other, or
 - d. stay one or more of the proceedings until after the determination of another one of them.¹⁸
82. Where the combining of proceedings or the hearing of proceedings together unduly complicates or delays the proceedings or causes prejudice to a party, the Adjudicator may order that the proceedings or the hearing be continued separately.

Adjudicator Powers

¹⁸ Based on SPPA s. 9.1 (1)

83. The Adjudicator may exercise any of the Adjudicator's powers on their own initiative or at the request of a party unless otherwise specified in this Regulation.
84. Despite subsection 4 (1) of the SPPA, the Adjudicator may waive or vary any rules in this Regulation with the consent of all parties, taking into account the impact of the waiver on procedural expediency and efficiency.
85. Where matters are not addressed by this Regulation, the Adjudicator shall control the process for the proceeding as the Adjudicator considers just.
86. Despite anything in the SPPA, an Adjudicator shall not:
 - a. Make rules under section 25.1 of the SPPA, or
 - b. Establish guidelines under section 16.2 of the SPPA.

Hearings Procedure

87. The oral evidence given at a hearing shall be recorded.
88. Should a party require a copy of a transcript for any reason, the party shall be responsible for the cost of the transcript and shall provide a copy of the transcript to the Adjudicator and each of the other parties.
89. No party shall communicate directly or indirectly with the Adjudicator in relation to the subject matter of the hearing unless all parties to the hearing are present or all parties consent to the communication.
90. If the Adjudicator has decided that a hearing or part of a hearing will be held in the absence of the public in accordance with section 9 of the SPPA, the Adjudicator may make orders the Adjudicator considers necessary to prevent the public disclosure of matters revealed at the hearing, including orders banning the publication or broadcasting of those matters.¹⁹

Accommodation of Human Rights Code Related Needs

91. A party, representative, witness or support person is entitled to accommodation under the *Human Rights Code* by the Adjudicator and should notify the Adjudicator as soon as possible if accommodation is required.

Non-Compliance with the Rules

92. The Adjudicator may take any action that the Adjudicator considers just to remedy non-compliance with this Regulation.
93. For greater certainty, without limiting the generality of section [immediately above], under that section:
 - a. Where a party fails to provide information or documents to another party or

¹⁹ Based on *Regulated Health Professions Act, 1991*, Sched 2 (Health Professions Procedural Code), s. 45 (3)

person as required by this Regulation, the Adjudicator may refuse to consider the information or documents.

- b. The Adjudicator may refuse deal with a motion that is not filed in compliance with this Regulation.
- c. Where a party seeks to present evidence or make submissions at a motion hearing with respect to a fact or issue that was not raised in the motion, the Adjudicator may refuse to allow the party to present evidence or make submissions about the fact or issue unless the Adjudicator is satisfied that there would be no substantial prejudice to any party and no undue delay to the proceedings if the evidence or submissions were heard.

Costs

- 94. The rules under this heading apply despite section 17.1 of the SPPA.
- 95. Subject to section [immediately below], an Adjudicator may order a party to pay all or part of another party's costs in a proceeding and request submissions regarding a party's costs.²⁰
- 96. An Adjudicator shall not make an order under section [immediately above] unless:
 - a. the conduct or course of conduct of a party has been frivolous, vexatious or an abuse of process, or
 - b. a party has acted in bad faith²¹.
- 97. Any submissions for a costs order requested under section [two above] shall be made in writing, unless the Adjudicator is satisfied that this requirement is likely to cause the party significant prejudice and an alternate format is likely to remedy the prejudice.²²

²⁰ Based on SPPA s. 17.1 (1)

²¹ Based on SPPA s. 17.1 (2)

²² Based on SPPA s. 17.1 (7)

For Reference Only – List of Applicable SPPA Provisions

Based on the draft rules set out above, these sections of the SPPA would generally apply, though some of their subsections may not, e.g., if they refer to s. 25.1 rules.

- a) s. 4.6 – dismiss proceedings because frivolous, vexatious, outside jurisdiction, etc.
- b) s. 4.9 – mediators not compellable as witnesses
- c) s. 5 – parties are as specified under Act
- d) s. 5.2.1 – combination of hearing types
- e) s. 6 – notice of hearing
- f) s. 7 – effect of non-attendance at hearing after due notice
- g) s. 8 – where character of party in issue
- h) s. 9 – hearings to be public, exceptions (note the rules in this document would add express publication ban authority in addition to this provision)
- i) s. 10 – representatives
- j) s. 10.1 – examination of witnesses
- k) s. 11 – right of witness to representation
- l) s. 12 – summonses (except with respect to form)
- m) s. 13 – contempt proceedings
- n) s. 14 – protection from incrimination for witnesses
- o) s. 15 – evidence
- p) s. 15.1 – previously admitted evidence
- q) s. 15.2 – witness panels
- r) s. 16 – notice of facts and opinions
- s) s. 16.1 – interim decisions and orders
- t) s. 17 – decisions
- u) s. 18 – notice of decision (note s. 18 (1) (d) and s. 18 (4) will just not be relevant)
- v) s. 19 – enforcement of orders
- w) s. 20 – record of proceedings
- x) s. 21 – adjournments
- y) s. 21.1 – correction of errors
- z) s. 22 – administration of oaths
- aa) s. 23 – powers re control of proceedings
- bb) s. 24 – notice where normal rules impractical

cc) s. 25 – stay pending appeal – note there are only appeals in relation to demotion/termination hearings, to Div Ct (s. 204 CSPA), and the intent (consistent with police associations' position) was always for there to be a stay pending appeal of these decisions

dd) s. 28 – substantial compliance

ee) s. 29 – prohibition on photography, recording, offence