FEDERAL PUBLIC SECTOR
LABOUR RELATIONS AND EMPLOYMENT BOARD

LABOUR RELATIONS PROCEDURAL GUIDE

Referring Grievances to Adjudication

Filing Labour Relations Complaints of Non-compliance or Unfair Labour Practices

Filing Occupational Health and Safety Reprisal Complaints (*Canada Labour Code*, s. 133)

November 2023

Ce Guide de procédure est aussi disponible en français.

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A. INTRODUCTION -

1. Purpose of the guide

This guide has been developed to help parties and their representatives who come before the Federal Public Sector Labour Relations and Employment Board ("the Board") understand the procedures for the most common labour relations proceedings, which are

- referrals of individual grievances to the Board for adjudication;
- referrals of group and policy grievances to the Board for adjudication;
- complaints of failures to comply with collective bargaining duties or of unfair labour practices; and

complaints of employer reprisals for employee actions taken to safeguard occupational health and safety.
The guide is based on

- the *Federal Public Sector Labour Relations and Employment Board Act* (*FPSLREBA*);
- the *Federal Public Sector Labour Relations Act* (*FPSLRA*); and
- the *Federal Public Sector Labour Relations Regulations* (*FPSLR Regs*).

This guide contains only general information. It has no legal status and does not provide legal advice on how to proceed. If you need legal advice, please contact a lawyer or other representative.

Users of the guide should consult the act and regulations that apply to their cases. In the event of any discrepancy between the provisions of the applicable legislation and the information in this guide, the applicable legislation prevails. Users should also consult the Board's website for any recent decisions that may have a bearing on their cases.

This guide applies only to labour relations proceedings before the Board involving persons employed in the public service and RCMP members and reservists.

For matters involving persons employed by Parliamentary employers, please consult the applicable legislation and regulations (the *Parliamentary Employment and Staff Relations Act* and the *Parliamentary Employment and Staff Relations Regulations* as well as the frequently asked questions (FAQ) on the Board's website).

Please note that this guide does not apply to matters arising under the legislation that applied before April 1, 2005 (i.e., the *Public Service Staff Relations Act*). Please contact the Board's Secretariat for any questions about any such cases still before the Board.

For a staffing complaint, please consult the *Procedural Guide for Staffing Complaints*.

2. The Board's labour relations mandate

The Board is an independent administrative tribunal established by the *FPSLREBA.* Under that Act, the Board consists of a full-time chairperson, a maximum of two full-time vice-chairpersons, a maximum of 12 other full-time members, and any part-time members that the Governor in Council considers necessary to carry out the Board's powers, duties, and functions (s. 4(2)).

Under the *FPSLRA*, the Board serves the several hundred thousand federal public service employees. Furthermore, as of June 2017, the Board has jurisdiction over certain labour relations matters for the RCMP's ranking members, reservists, and other employees[1].

Under the *Parliamentary Employment and Staff Relations Act*, the Board also has authority over labour relations matters involving persons employed by Parliamentary employers, which include the Senate, the House of Commons, the Library of Parliament, the office of the Senate Ethics Officer, the office of the Conflict of Interest and Ethics Commissioner, and the Parliamentary Protective Service. However, these procedures are beyond the scope of this guide.

In addition to the Board's federal jurisdiction, under Yukon's *Public Service Labour Relations Act* (s. 6) and *Education Labour Relations Act* (s. 4), the Board also serves as the Yukon Public Service Labour Relations Board and the Yukon Teachers Labour Relations Board. The procedures for those boards are beyond the scope of this guide as well.

The Board does ***not*** provide services to those whose labour relations proceedings are administered by the Canada Industrial Relations Board, such as employees of:

- federal Crown corporations; and
- federal private and para-public works, undertakings, and businesses that come within the legislative authority of Parliament, such as broadcasting, banking, postal services, airports and air transportation, shipping and navigation, interprovincial or international transportation, and telecommunications.

The Board helps parties resolve their issues via mediation (*FPSLRA*, s. 14) or any other method they agree to use (*FPSLREBA*, s. 23; *FPSLRA*, s. 14), but if a grievance or complaint cannot be settled, the Board also provides adjudication services and renders a final, binding decision (*FPSLREBA*, s. 34(1) and (3); *FPSLRA*, s. 233).

The Board provides its mediation and adjudication services to resolve a broad range of matters, such as

[1] *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures*, S.C. 2017, c. 9.

- individual, group, and policy grievances;
- complaints of failures to comply with collective bargaining obligations;
- complaints of unfair labour practices;
- complaints under Part II of the *Canada Labour Code* (*CLC*) of employer reprisals for employee actions taken to safeguard occupational health and safety;
- applications related to bargaining agent certification and decertification issues;
- applications to determine bargaining agent successor rights;
- applications to exclude managerial or confidential positions;
- requests for reviews of Board decisions; and
- requests for extensions of time.

As proceedings before the Board can be complex, we strongly suggest that you seek the advice of your bargaining agent or representative before referring a grievance to adjudication or filing a complaint.

3. Glossary

Board	The Federal Public Sector Labour Relations and Employment Board.
Chairperson	The Chairperson of the Federal Public Sector Labour Relations and Employment Board.
chairperson	A chairperson of a panel of the Board.
complainant	A person, a bargaining agent or an employer that makes a complaint to dispute a matter under Part 1 of the *FPSLRA* (such as an unfair labour complaint or a complaint alleging a violation of the duty of fair representation), as well as a person who makes a complaint under Part 3 of that Act (e.g., for a reprisal under the *CLC*)
grievor	A person who refers a grievance to dispute a matter under Part 2 the *FPSLRA*.
intervenor	A person, employee organization, council of employee organizations, or employer that is not already a party to, but that has a substantial interest in, a grievance or complaint proceeding and that is granted intervenor status by the Board.
panel of the Board	The one Board member or, if the Chairperson considers that the complexity of a matter requires it, the three members that the Chairperson assigns to hear a matter (*FPSLREBA*, s. 25, 37).

	Note: The vast majority of matters brought before the Board are heard by a panel of the Board composed of one member.
party	A grievor or complainant, an employer, an employee organization, a council of employee organizations, or a bargaining agent that takes part in a case and that has the right to present evidence and make arguments to the Board.
representative	A lawyer, bargaining agent representative, or other person who represents a party or an intervenor in a proceeding.
respondent	A person, bargaining agent, department or employer against which a complaint is brought.

4. Abbreviations

Abbreviation	Definition
ACA	*Accessible Canada Act*
ATSSC	Administrative Tribunals Support Service of Canada
CLC	*Canada Labour Code*
CHRA	*Canadian Human Rights Act*
CHRC	Canadian Human Rights Commission
FPSLRA	*Federal Public Sector Labour Relations Act*
FPSLREB	Federal Public Sector Labour Relations and Employment Board
FPSLREBA	*Federal Public Sector Labour Relations and Employment Board Act*
FPSLR Regs	*Federal Public Sector Labour Relations Regulations*
RCMP	Royal Canadian Mounted Police

5. Feedback

This Guide may be revised from time to time, and feedback is welcome. We invite you to send your comments so that we may improve the guide, to better meet your needs. Please send them to us by the following means:

By email: director.directeur@fpslreb-crtespf.gc.ca

By post: Federal Public Sector Labour Relations and Employment Board
P.O. Box 1525, Station B
Ottawa, Ontario
K1P 5V2

Street address: Federal Public Sector Labour Relations and Employment Board
240 Sparks Street, 6th Floor West
Ottawa, Ontario
K1A 0A5

6. More information

The Board's website contains a wealth of information, including

- a searchable database of its decisions;
- links to the full texts of the applicable Acts and regulations;
- links to its forms;
- frequently asked questions (a FAQ); and
- other helpful information under "Resources".

The Board's decisions since 2000, notices of hearing, and publications, including this guide, are available in both official languages on the Board's website.

In addition, the Canadian Legal Information Institute (CanLII) posts all Board decisions rendered since 2000.

B. GENERAL INFORMATION ABOUT GRIEVANCES AND COMPLAINTS

1. The Board's Secretariat

To exercise its powers and perform its duties, the Board receives support services from the staff of its Secretariat ("the Secretariat staff"), which is composed of persons employed by the ATSSC[2].

2. Hours of business

The Board's hours of business are 9:00 a.m. to 5:00 p.m., Eastern time, Monday to Friday.

3. How the Secretariat staff can and cannot help you

The Secretariat staff may help grievors and complainants with a range of information about the administrative aspects of the Board's work. However, as they provide services to an independent and impartial tribunal, there are limits to how much assistance they can provide. It is therefore important to understand how they may and may not help you.

The Secretariat staff will be pleased to help you by providing information, such as

- which forms to use;
- blank copies of forms or directions to where they can be found online;
- a brief explanation of how the Board works and descriptions of its practices and procedures;
- basic information about mediation, applications, complaints, grievances, or hearings;
- how to access the Board's decisions on its website;
- how your case is proceeding and what is involved in each step of having your case heard;
- how to get a case set down for hearing; or
- the availability of interpretation services.

The Secretariat staff <u>cannot</u> give you advice of any nature and <u>cannot</u> help by

- giving you legal advice;
- identifying Board decisions that may help you;
- recommending a lawyer to act on your behalf;
- advising you as to the tribunal in which you should initiate your proceeding, should there be a choice;
- interpreting any portion of a collective agreement or arbitral award or any jurisprudence or policies that may apply to you;

[2] *Administrative Tribunals Support Service of Canada Act*, S.C. 2014, c. 20, s. 376

- informing you of the words to use in your documents;
- letting you know whether you have included enough information in your documents;
- informing you as to what to say at a hearing or how to make your legal arguments or written submissions;
- advising you or opining on what the decision in your case will be;
- interpreting orders made by the Board or the Chairperson;
- changing an order that the Board or the Chairperson has made; or
- allowing you to communicate directly with the Chairperson or a Board member, other than at a case conference or your hearing.

4. When is representation mandatory, and when is it optional?

a) When must a grievor be represented by a bargaining agent?

Before referring grievances concerning the interpretation or application of a collective agreement or arbitral award to the Board for adjudication, grievors must first obtain their bargaining agents' approval as well as a commitment to represent them (*FPSLRA*, s. 209(2); *FPSLR Regs*, s. 69(1)).

b) When is representation optional?

For all other matters, grievors or complainants may choose either to proceed on their own or to be represented at any stage of the proceedings by a lawyer, a bargaining agent representative, or anyone else they choose.

Grievors or complainants who choose to be represented are responsible for retaining and paying any associated costs for their representatives. They must also provide the Board with their representative's name and contact information and a declaration from that representative confirming his or her agreement to act on behalf of the grievor or complainant (*FPSLR Regs*, ss. 69(2) and (3)).

c) Communications between the Board, the representative, and the grievor or complainant

The representative may sign and file on behalf of the grievor or complainant the initiating Notice of Reference to Adjudication or Notice of Complaint and all subsequent documents.

The Board deals directly with the representative for all matters related to the proceedings before it, such as correspondence, motions, scheduling mediations and hearings, etc. In turn, the representative is responsible for informing the grievor or complainant of any communications, requests, etc., from the Board. However, the Board will continue to send copies of all case correspondence to the grievor or complainant.

It is essential that the grievor or complainant and his or her representative keep each other fully informed to ensure that the Board's requests are dealt with in a timely manner.

5. Official languages and requirements for simultaneous interpretation

a) The Board's services are available in both official languages

The Board is able to serve its clients in both official languages. All its documents are available in both English and French. Its decisions and orders are issued in the language of the proceedings and are posted on its website in both official languages.

Hearings may be held in either English or French. Under the *Official Languages Act*, a grievor or complainant may request that the proceedings, including the hearing, be held in the other official language, instead of the one used in the documents with which their case was referred to or filed with the Board. If so, the grievor or complainant must make this request when referring or filing his or her case. The Board requires sufficient notice to ensure that the Board member is able to understand the requested official language without an interpreter.

Witnesses may testify in the official language of their choice. However, if the choice of language is different than the language selected for the hearing, the Board requires sufficient notice from the party intending to call the witness to ensure that the Board member is able to understand the requested official language without an interpreter.

Sufficient notice is normally at least four weeks prior to the hearing. Even if sufficient notice is provided, the Board may need to reschedule the hearing if a change in Board member is required.

A grievor or complainant may file documents in either official language, regardless of the language chosen for the hearing. However, parties that are the Crown or federal institutions are required to file documents in the official language chosen for the hearing, provided reasonable notice of the language chosen had been given.

Please note that the Board is not responsible for translating documents that parties submit.

b) Requesting simultaneous interpretation

If necessary, simultaneous interpretation of the official languages can be provided at a hearing, free of charge. For example, if the grievor or complainant requests a hearing in one official language and a witness chooses to use the other one, simultaneous interpretation may be necessary.

A party requesting simultaneous interpretation must notify the Board in writing at least twelve (12) weeks in advance of the scheduled hearing date. The Board requires that notice so that it can ensure that a bilingual Board member is available and so that arrangements may be made for qualified interpreters and sound equipment. In some locations, it may be difficult to reserve interpretation services without twelve weeks' notice.

c) Simultaneous interpretation for non-official languages

A party or witness that does not understand or speak the official language(s) in which the proceedings are being conducted, may be assisted by an interpreter.

The costs and arrangements for the interpreter must be borne by the party seeking the assistance. On an exceptional basis, the Board may, at its discretion, agree to arrange for the interpretation and cover its cost, but only if the request is made at least twelve weeks in advance of the hearing and subject to any conditions that the Board may set.

6. Filing initiating, reply, and subsequent documents

a) How to file documents

Documents may be filed with the Board by

- hand delivery;
- regular mail;
- courier; or
- electronic mail, fax transmission, or other electronic means (*FPSLR Regs*, s. 9)

b) Initiating documents

Initiating documents must be completed and sent to the Board to launch a proceeding, including (*FPSLR Regs*, s. 1)

- an application for an extension of time to refer a grievance to adjudication, if it is filed before the notice of reference to adjudication is made;
- a notice referring a grievance to adjudication;
- a labour relations complaint made under s. 190(1) of the *FPSLRA*; or
- a reprisal complaint made under s. 133(1) of the *CLC*.

All initiating documents must be filed with the Board (*FPSLR Regs*, s. 2).

The Board must receive initiating documents before the deadlines set out in the applicable Act or regulation, unless the Board has the power to extend them and has done so.

c) Reply documents - complaints

Replies in writing are required for labour relations complaints and for reprisal complaints under s. 133 of the *CLC*. The other party must reply to the initiating document no later than **15 days** after it receives a copy of it (*FPSLR Regs*, s. 5), and it may file its reply with the Board by the methods listed in paragraph (a) of this section. If the other party fails to reply, the Board may dispose of the matter without further notice to that party (*FPSLR Regs*, s. 6).

d) Subsequent documents

A subsequent document is submitted to the Board after an initiating document is filed but does not include one that is to be presented as evidence at a hearing or any notice to or from the CHRC (*FPSLR Regs*, s. 7(1), 8).

Subsequent documents must be filed with the Board via any of the methods listed in paragraph a) of this section. The person filing a subsequent document is responsible for providing copies of it to all participants, including (*FPSLR Regs*, s. 7(2))

- the person who filed the initiating document;
- every person who received a copy of the initiating document from the Board, unless that person notified the Board in writing that he or she does not wish to receive copies of subsequent documents;
- any intervenors; and
- the CHRC, if it received notice from the grievor that the grievance involves the interpretation or application of the *CHRA*.

e) Document with insufficient information

Either on its own or at the request of a party or an intervenor, the Board may request that the information in any document filed by another party or any other intervenor be made more complete or specific. If after giving the party or the intervenor who filed the document an opportunity to reply, it fails to comply with the Board's request, the Board may strike from the document the incomplete or insufficiently specific information (*FPSLR Regs*, s. 15, 100).

7. The Board's contact information

Mailing address:	Federal Public Sector Labour Relations and Employment Board P.O. Box 1525, Station B Ottawa, Ontario K1P 5V2
Street Address:	Federal Public Sector Labour Relations and Employment Board 240 Sparks Street, 6th Floor West Ottawa, Ontario K1A 0A5
Fax:	613-990-1849
Telephone:	613-990-1800
Toll free:	1-866-931-3454

8. Meeting deadlines: when a document is deemed received by the Board

The date on which a document will be considered to have been received by the Board depends on the applicable regulations, the method used to send it, and the time of day on which it was received, as follows (*FPSLR Regs*, s. 9):

Method used to send it	Date it is considered received
Hand delivery	On the day on which it is received (*FPSLR Regs,* s. 9(b)).
Regular mail	On the day that is: i) the date of the postmark or the date of the postage meter impression authorized by the Canada Post Corporation, or ii) if both the postmark and postage meter impression appear on the envelope, on the later of the dates indicated in them (*FPSLR Regs,* s. 9(d)).
Courier	On the day on which the document was sent (*FPSLR Regs,* s. 9(a)).
Electronic mail, fax transmission, or other electronic means	On the day on which the document was sent (*FPSLR Regs,* s. 9(c)).

9. Calculating periods to determine deadlines

Whether referring a grievance to adjudication or filing a complaint, a number of deadlines must be observed. Calculating the period to determine a deadline can be tricky, and the calculation method can vary, depending on whether the applicable timeline is determined by the *FPSLR Regs* or the collective agreement.

For example, when calculating a period under the *FPSLR Regs*, Saturdays, Sundays, and holidays are included, while they might not be when calculating one under some collective agreements. So, grievors and complainants must consult the proper source for their cases, including collective agreements and the applicable legislation, as well as ss. 26 to 29 (computation of time) and s. 35(1) (definition of "holiday") of the *Interpretation Act* in other cases.

As for the time limits set out in the *FPSLR Regs*, if a deadline falls on a Saturday, Sunday, or holiday, the end of the period will be extended to the next business day immediately following the weekend or holiday (*FPSLR Regs*, s. 10; *Interpretation Act*, s. 26).

The statutory holidays observed in the federal public sector are

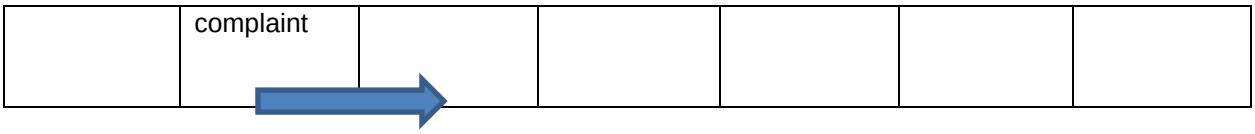
New Year's Day - January 1
Good Friday
Easter Monday
Victoria Day
St-Jean Baptiste Day - June 24 (only in Quebec)
Canada Day - July 1
First Monday in August (excluding Quebec)
Labour Day
Thanksgiving Day
Remembrance Day - November 11
Christmas Day - December 25
Boxing Day - December 26

Example: If the last day of a period within which a grievance or complaint may be submitted falls on a Sunday, it is extended to the next business day, the Monday (assuming it is not a statutory holiday).

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Last day of period within which to submit the grievance or complaint	Last day for submitting the grievance or complaint					

Example: If the last day of a period within which a grievance or complaint may be submitted falls on a holiday Monday, it is extended to the next business day, the Tuesday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Last day of period within which to submit the grievance or	Last day for submitting the grievance or complaint				



10. The Board may dismiss a matter if it is trivial, frivolous, vexatious, made in bad faith

Section 21 of the *FPSLREBA* allows the Board to summarily dismiss any matter that in its opinion is trivial, frivolous, or vexatious or that was made in bad faith.

11. Hearing Schedules

The Board's Registry sets out a schedule of cases to be heard each month. Schedules are normally released to parties approximately four (4) to six (6) months in advance, and shortly thereafter are published on the FPSLREB's web site.

Once the schedule is published, the parties can seek permission from the Board to postpone the hearing. See Section H-15 for information on this process. If a postponement is granted, the Board may schedule another case for the same date(s).

The Registry strives to create a balanced schedule each month. This involves the consideration of numerous variables including the availability of Board members, geography, the language of the hearing, and the nature and age of the case.

Certain types of files such as terminations, "income-jeopardy" cases (e.g. where a grievor has been off work for some time) and policy grievances are given priority. The age of the file is also an important consideration.

Parties should be aware that given the Board's active caseload, it may take many months before a case is placed on the schedule.

C. REFERRING INDIVIDUAL GRIEVANCES TO ADJUDICATION

Under the *FPSLRA*, individual, group and policy grievances can be referred to the Board for adjudication. This section of the guide provides information about the referral of individual grievances. Sections D and E provide information about the referral of group and policy grievances to adjudication. **Sub-sections 4 to 12 that follow also apply to group and policy grievances.**

1. When may an individual grievance be referred to adjudication?

Employees are entitled to present an individual grievance to their employers if they feel aggrieved based on one of the grounds listed in s. 208(1) of the *FPSLRA*.

An individual grievance may be referred to the Board for adjudication only after the grievor has presented it up to and including the final level of the employer's grievance process and then only if it has not been dealt with to the grievor's satisfaction (*FPSLRA*, ss. 209(1), 225).

2. What types of individual grievances may be referred?

Only certain types of individual grievances may be referred to the Board for adjudication. In addition, to refer certain types of grievances, the grievor must obtain the bargaining agent's approval and must have it represent him or her at the adjudication proceedings.

The following *FPSLRA* provisions set out the types of individual grievances that may be referred:

- s. 209(1) and (2); and
- s. 238.25 (for RCMP members and reservists).

The following chart summarizes the grievances that may be referred to adjudication.

Individual grievances that may be referred to adjudication

If the Individual Grievance Is Related to…		Employee in the Core Public Administration of the Public Service	Separate Agency Employee	RCMP Member
the interpretation or application in respect of the grievor of a provision of a collective agreement or an arbitral award [*FPSLRA* s. 209 (1) (a)] (applies only to employees represented by a bargaining agent and requires bargaining agent's approval to represent the grievor)		✓	✓	✓
a disciplinary action resulting in: [*FPSLRA* s. 209 (1) (b)]	**termination**	✓	✓	
	demotion	✓	✓	
	suspension	✓	✓	
	financial penalty	✓	✓	
a demotion or termination for unsatisfactory performance (s. 12(1)(d) of the *Financial Administration Act*) [FPSLRA s. 209 (1) (c) (i)]		✓		
a demotion or termination for any other reason that does ***not* relate to a breach of discipline or misconduct (s. 12(1)(e) of the *Financial Administration Act*)** [FPSLRA s. 209 (1) (c) (i)]		✓		
a non-consensual deployment under the *Public Service Employment Act* where the grievor's consent was required [FPSLRA s. 209 (1) (c) (ii)]		✓		
a demotion or termination for any reason that does ***not* relate to a breach of discipline or misconduct** [*FPSLRA* s. 209 (1) (d)] (*Applies only to designated separate agencies. At this writing only the Canada Revenue Agency and the Canadian Food Inspection Agency had been designated separate agencies).			✓*	

3. Providing notice to the Board

To refer an individual grievance to adjudication, a grievor, or his or her authorized representative, must sign and file with the Board a notice of reference to adjudication of an individual grievance (*FPSLRA*, s. 223(1)), which must contain the information required under s. 89(1)(a) of the *FPSLR Regs*. The Board has made available on its website standardized forms setting out the required information, which can be completed and filed with the Board. There are two forms to choose from:

1) The first form is used **if the grievance is about the interpretation or application of a provision of a collective agreement or an arbitral award**, in which case the grievor must first obtain the bargaining agent's approval to represent him or her at adjudication and must have the bargaining agent's representative sign the form, indicating that approval (*FPSLR Regs,* s. 89(1)(a)(i)).

2) The second form is used **if the grievance is about any other matter that may be referred to adjudication**, such as a termination, demotion, suspension, financial penalty, or deployment (*FPSLR Regs,* s. 89(1)(a)(ii)).

A grievor must file a copy of the grievance, along with the notice of reference to adjudication.

4. Deadline

The deadline for referring a grievance to adjudication depends on when the employer provides a decision at the final level of the grievance process.

- If the grievor receives the final-level decision during the period within which it was required to be made (as specified in the collective agreement, or if not, as specified in the *FPSLR Regs*), the grievor may submit the notice of reference to adjudication **no later than 40 days** after the day on which he or she received the final decision, or within a different period that may be set out in the relevant collective agreement (*FPSLR Regs*, s. 90(1)).

- If the grievor does not receive the final-level decision before the expiry of the period within which the decision was required to be made, the grievor may submit the notice of reference to adjudication **no later than 40 days** after the expiry of that period, or within a different period that may be set out in the relevant collective agreement (*FPSLR Regs*, s. 90(2)).

5. Raising a timeliness objection

No later than 30 days after being provided with a copy of the grievor's notice of reference to adjudication, the responding party may raise an objection on the grounds that (*FPSLR Regs*, s. 95(1)):

- the prescribed time limit for presenting the grievance at a level of the grievance process was not met; or
- the prescribed time limit for referring the grievance to adjudication was not met.

To raise this objection, the objecting party must provide a written statement to the Board detailing the objection and the reasons for it (*FPSLR Regs*, s. 95(3)). It may be addressed before the grievance is heard on its merits.

However, if the responding party has not already objected to an untimely grievance presentation at a level of the grievance process, it cannot raise one for the first time at the reference-to-adjudication stage. It may be raised only if the grievance was rejected for the same reasons at the level at which the time limit was not met and at all subsequent levels of the grievance process (*FPSLR Regs*, s. 95(2)).

If a respondent fails to raise an objection within the 30-day time limit, any subsequent attempt to raise such an objection may be denied on the basis that the respondent is deemed to have waived the right to object.

6. Requesting an extension of time

a) Making the request

Despite the deadlines established by regulations or provided for in a grievance process set out in a collective agreement, a deadline may be extended either before or after it expires. If the parties cannot agree to an extension, an application for one can be made to the Board.

Under s. 12(a) of the *FPSLR Regs*, extensions of time may be sought in the interest of fairness.

The matters for which extensions may be sought under the *FPSLR Regs* include the following:

- presenting a grievance at any level of the grievance process (s. 68);
- providing a decision at a grievance level (s. 72);
- referring a grievance to adjudication (s. 90);
- objecting to the establishment of a board of adjudication or filing the name of a nominee to that board (s. 91);
- for the CHRC, filing its notice of intention to make submissions (s. 93(1));
- notifying the Board of an intention to not participate in mediation (s. 94(1));
- raising an objection to a grievance reference on the grounds that the grievance had not been presented in time at a level of the grievance process (s. 95(1)(a));
- raising an objection to a grievance reference on the grounds that the grievance was not referred to adjudication in time (s. 95(1)(b));
- filing with the Board copies of the decisions made at each level of the grievance process (s. 96); or
- providing or filing any notice, reply, or document.

b) Deciding whether to grant an extension

The Board's jurisprudence has established that time limits should be extended only in exceptional circumstances.

Applications for extensions of time are allowed sparingly so as not to destabilize the statutory labour relations scheme and the agreement between the parties.

The Board has often referred to an earlier decision in assessing whether to grant an extension, *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1. The decision states at paragraph 75 that in determining whether it is in the interest of fairness to exercise its discretion to extend a deadline, five criteria could be considered:

> **i) whether there are clear, cogent, and compelling reasons for the delay;**
>
> **ii) the length of the delay;**
>
> **iii) the applicant's due diligence;**
>
> **iv) the balance of the injustice caused to the applicant by denying the extension against the prejudice caused to the respondent by granting it; and**
>
> **v) the chance of success of the grievance.**

Those five "*Schenkman*" criteria are to be examined in the context of the particular facts and are not necessarily of equal importance. Weighting is situational and depends on the facts in each case (see *Duncan v. National Research Council of Canada*, 2016 PSLREB 75 at para. 130).

Please consult the Board's website to view its other decisions for more information on extensions.

7. When the Board receives a notice of reference to adjudication

a) It assigns an officer to the case

First, the Board opens a file and assigns a registry officer to the case. That officer will contact the parties, help them move the process forward, and answer procedural questions.

b) It conducts an initial review

The Board initially reviews a grievance file to determine whether it has all the necessary information and whether there is a reason to dismiss it immediately.

If only some information is missing or incomplete, the Board may contact the grievor to obtain it (*FPSLR Regs*, s. 100(1)). However, on its own accord, it may dismiss a grievance for certain reasons, including

- it is substantially incomplete;
- it is not of a type that may be referred to adjudication and is not within the Board's jurisdiction (*FPSLRA*, s. 209(1));
- the Board does not have jurisdiction because the grievance was not presented at all required levels before it was referred (*FPSLRA*, s. 225); or
- the grievance is trivial, frivolous, or vexatious or was made in bad faith (*FPSLREBA*, s. 21).

If one of those reasons is present and the Board does not address it during the initial review, the respondent may raise an objection (see, for example, *FPSLR Regs*, s. 95).

If the grievance is not dismissed during the initial review, the Board takes additional processing steps.

c) It creates the Board's contact list

Based on the persons named in the grievance, the Board makes a list of the parties and any intervenors or other persons who may be affected by the proceeding.

d) It sends acknowledgement and requests grievance level decisions

As the Board is obliged to provide copies of the notice to the other party (*FPSLR Regs*, s. 4), it sends a letter addressed to both parties to

- acknowledge receipt of the notice;
- request that the parties provide their positions on mediation within 15 days;
- provide information on the next steps in the process; and
- provide a copy of the Board's contact list.

The Board also forwards a copy of the notice to the employer or the deputy head of the grievor's department or agency and asks that they provide it with a copy of the decisions made at each level of the grievance process, in accordance with s. 96 of the *FPSLR Regs*.

e) It forwards information

The registry officer then sends to everyone on the Board's contact list (*FPSLR Regs*, s. 4)

- a copy of the notice;
- a copy of the grievance; and
- a copy of the Board's contact list.

f) The grievance may be referred or heard

Historically, once a notice has been sent to the Board, in almost all instances, the Board has been seized of the grievance (*FPSLRA*, s. 223(2.1)). This means that a panel of the Board, usually consisting of one member, adjudicates the grievance (*FPSLREBA*, s. 37). Exceptionally, a three-member panel may be assigned if the matter's complexity warrants it. However, a panel (whether one or three-member) will be assigned to hear a grievance only if the party referring it has not requested any of the following options (*FPSLRA*, s. 223(2)):

- that the grievance be referred to the adjudicator named in the collective agreement if the grievance arose from a collective agreement;
- that the grievance be referred to the adjudicator selected by the parties; or
- that the grievance be referred to a board of adjudication if one has been requested and the other party has not objected, which would consist of three people (*FPSLRA*,

s. 224). The first would be a member of the Board designated by the Chairperson to be the chair of the board of adjudication. Each of the other two is nominated by one of the parties and must not have any direct interest in or connection with the grievance, its handling, or its disposition. If the employer does not nominate anyone, the Board must nominate someone who will be deemed the member nominated by the employer.

As noted, historically, parties have rarely requested any of those options, and grievance adjudications are typically conducted by one-member panels of the Board. Accordingly, **the information provided in this guide addresses grievance adjudications conducted by the Board. Where a grievance is being adjudicated by an adjudicator or a board of adjudication, the parties should consult the provisions in the *FPSLRA* and the *FPSLR Regs* applicable to those types of proceedings for additional guidance.**

8. The employer or deputy head must file decisions made at each grievance process level

An employer or deputy head must provide the Board with a copy of the decisions made at each level of the grievance process **within 30 days** after the day on which the employer or deputy head was provided with a copy of the notice (*FPSLR Regs*, s. 96).

9. Raising a discrimination issue under the *CHRA* in the context of a grievance

The prohibited grounds of discrimination, as set out in ss. 3 and 25 of the *CHRA*, are race, national or ethnic origin, colour, religion, age, sex (including pregnancy or childbirth), sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, physical or mental disability, and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

a) The party must notify the CHRC

If a party to a grievance that is referred to the Board for adjudication raises an issue involving the interpretation or application of the *CHRA*, it must give the CHRC notice of it (*FPSLRA*, ss. 210(1), 217(1), and 222(1)) by completing and sending a notice of a human rights issue to the CHRC with the required information, along with a copy of the grievance and the Notice of Reference to Adjudication (*FPSLR Regs*, ss. 92(1) and (1.1)). Parties may use the standardized form setting out the required information, which the Board has made available on its website . The party must also provide a copy of the notice of a human rights issue to the Board and to everyone on the Board's contact list (*FPSLR Regs*, s. 92(2)).

Parties should be aware that **all information in the completed notice of a human rights issue will be provided to all the parties** to the adjudication. Therefore, it is best to be cautious when providing sensitive or confidential information (e.g., PRI, medical information, etc.) in your notice. In addition, contact information, such as a postal or email address, must be disclosed to all parties.

b) The CHRC notifies the Board of its intent

As the CHRC is permitted to make submissions (*FPSLRA*, s. 210(2)), upon receipt of a notice of a human rights Issue, it must, **within 15 days**, notify the Board of whether it intends to make submissions on the issue raised in the notice (*FPSLR Regs*, s. 93(1)). The Board has made available on its website a standardized form that the CHRC can use to provide the required information, which it can file once completed. The CHRC must submit to the Board a copy of the grievance and the notice of the reference to adjudication, together with its notice. When the Board receives the notice from the CHRC, it must provide copies of it to the parties and any intervenors (*FPSLR Regs*, s. 93(3)).

10. Neutrality

At adjudication, both parties must be given the opportunity to be heard (*FPSLRA*, s. 228(1)). The Board has a completely neutral role throughout the grievance process. As the decision maker must maintain impartiality, it does not provide legal or strategic advice to either party, or any monetary support. **Therefore, before referring a grievance to adjudication, grievors may want to consider seeking the advice of their bargaining agent or of a private-practice lawyer.**

11. The Board's powers

a) Powers to administer the process

The powers of the Board in dealing with grievances include the authority to

- dismiss any matter that in their opinion is trivial, frivolous, or vexatious or was made in bad faith (*FPSLREBA*, s. 21);
- decide the matter without holding an oral hearing (*FPSLREBA*, s. 22);
- with the parties' consent and by any means that they consider appropriate, help them resolve any issues at any stage of the proceeding (*FPSLREBA*, s. 23);
- order case conferences or procedures (*FPSLREBA*, s. 20(b));
- order that a case conference or hearing be conducted using any means of telecommunication (*FPSLREBA*, s. 20(c));
- compel any person to produce documents or things that may be relevant (*FPSLREBA*, s. 20(f));
- hold oral hearings in person or "paper hearings" in writing (*FPSLREBA*, s. 22);
- summon and enforce the attendance of witnesses and compel them to give evidence (*FPSLREBA*, s. 20(a));
- administer oaths and solemn affirmations (*FPSLREBA*, s. 20(d));
- accept any evidence (*FPSLREBA*, s. 20(e));
- enter any premises of the employer; inspect and view any work, material, machinery, appliance, or article; and require any person on the premises to answer questions relating to the matter at issue (*FPSLRA*, s. 16(d));

- interpret and apply the provisions of the *CHRA*, except those relating to the right to equal pay for work of equal value (*FPSLRA*, ss. 226(2)(a) and (b));
- interpret and apply the *ACA* (*FPSLRA*, s. 226(2)(a.1));
- give relief in accordance with ss. 53(2)(e) or 53(3) of the *CHRA* (*FPSLRA*, s. 226(b));
- give relief in accordance with s. 102 of the *ACA* (*FPSLRA*, s. 226(b.1)); and
- if the grievance involves a termination, demotion, suspension, or financial penalty, award interest as they consider appropriate (*FPSLRA*, s. 226(2)(c)).

b) Remedial powers

If the Board finds that a grievance is well founded, it has the power to make the order that it considers appropriate in the circumstances (*FPSLRA*, s. 228(2)).

Examples of appropriate remedies may include orders to

- reinstate a grievor in his or her job, with back pay and benefits;
- rescind a demotion;
- rescind a disciplinary action that resulted in a suspension or financial penalty;
- pay damages;
- provide monetary compensation when a collective agreement provision has been violated; or
- pay interest.

However, the Board cannot make an order that would require amending a collective agreement or an arbitral award (*FPSLRA*, s. 229).

12. Hearing procedures

For details on grievance hearing procedures, please see Section H of this Guide.

D. REFERRING GROUP GRIEVANCES TO ADJUDICATION

Under the *FPSLRA,* a bargaining agent may present a group grievance to the employer when more than one employee in a bargaining unit feels **commonly** aggrieved by the interpretation or application of a provision of a collective agreement or an arbitral award (*FPSLRA*, s. 215 (1)). In order to present a group grievance, a bargaining agent must first obtain the consent of each of the employees concerned. The Board has created a form for bargaining agents to use to record this consent, which is available on its website.

Group grievances must relate to employees in a single portion of the federal public administration (*FPSLRA* s. 215 (3)). See *FPSLRA*, s. 215 for additional restrictions.

1. When may a group grievance be referred to adjudication?

A group grievance may be referred to the Board for adjudication only after the bargaining agent has presented it up to and including the final level of the employer's grievance process and then only if it has not been dealt with to the bargaining agent's satisfaction (*FPSLRA*, s. 216).

2. What types of group grievances may be referred?

Group grievances may only be referred to adjudication when they concern the interpretation or application of a provision of a collective agreement or an arbitral award.

3. Providing notice to the Board

To refer a group grievance to adjudication, a bargaining agent must file with the Board a notice of reference to adjudication of a group grievance (*FPSLRA*, s. 223(1)), which must contain the information required under s. 89(1)(c) of the *FPSLR Regs*. The Board has made available on its website a standardized form setting out the required information, which can be filed once completed. The bargaining agent must submit to the Board a copy of the grievance along with the notice of reference to adjudication.

4. Additional information

See Section C of the Guide, on referring individual grievances to adjudication, for additional information related to the handling of group grievances. Sub-sections 4 to 12 of Section C provide information on deadlines, timeliness objections, extensions of time, notifications to the CHRC, the Board's role following receipt of notice of reference to adjudication and other matters, which also apply to group grievances.

5. Right of employee to withdraw

An employee who signed onto a group grievance may, at any time before a final decision is made in respect of the grievance, notify the bargaining agent that he or she no longer wishes to be involved in the group grievance. After receiving the notice, the bargaining agent may not pursue the grievance in respect of that employee (*FPSLRA*, ss. 218 and 219).

E. POLICY GRIEVANCES

Under the *FPSLRA,* a policy grievance may be presented by either a bargaining agent or an employer if it relates to the interpretation or application of a provision of a collective agreement or an arbitral award (*FPSLRA* s. 220 (1)).

1. When may a policy grievance be referred to adjudication?

A party that presents a policy grievance may refer it to the Board for adjudication. Most commonly, policy grievances are filed by bargaining agents who present them directly at the final level of the employer's grievance process (*FPSLRR*, s 83). In that case, the reference to adjudication must happen within 40 days of the employer's final level reply (see Sub-section C-4 of the Guide for additional details on the timeline).

2. What types of policy grievances may be referred?

Policy grievances may only be referred to adjudication when they concern the interpretation or application of a provision of a collective agreement or an arbitral award as it relates to either a party or the bargaining unit generally (*FPSLRA* s. 220 (1)). See the *FPSLRA,* s. 220, for additional restrictions.

3. Providing notice to the Board

To refer a policy grievance to adjudication, an employer or bargaining agent must file with the Board a notice of reference to adjudication of a policy grievance (*FPSLRA*, s. 223(1)), which must contain the information required under s. 89(1)(c) of the *FPSLR Regs.* The Board has made available on its website a standardized form setting out the required information, which can be filed once completed. A copy of the policy grievance must be provided along with the notice of the reference to adjudication.

4. Additional information

See Section C of the Guide, on referring individual grievances to adjudication, for additional information related to the handling of policy grievances. Sub-sections 4 to 12 of Section C provides information on deadlines, timeliness objections, extensions of time, notifications to the CHRC, the Board's role following receipt of notice of reference to adjudication and other matters, which also apply to policy grievances.

5. Remedial powers of the Board

Note that s. 232 of the FPSLRA limits the decision the Board can make on a policy grievance to declarations of the correct interpretation, application or administration of a collective agreement, declaring whether the agreement or award has been contravened, and requiring the employer or bargaining agent to interpret, apply or administer the agreement or award in a specified way.

F. FILING LABOUR RELATIONS COMPLAINTS

1. What types may be filed?

Under the *FPSLRA*, complaints may be made against an employer, a bargaining agent, or a person who has committed an unfair labour practice either by failing to fulfil a labour relations duty or by failing to comply with an applicable labour relations provision. The specific types of complaints that may be made are summarized in the following charts:

Chart 1 lists complaints that may be filed related to matters concerning collective bargaining and terms and conditions of employment.

Chart 1 – Complaints related to collective bargaining and terms and conditions	**Relevant provisions of the *FPSLRA***
The employer altered the terms and conditions of employment after being notified of an application for certification After being notified of an application for certification, the employer failed to comply with the duty under s. 56 of the *FPSLRA* to maintain the existing terms and conditions of employment	ss. 56, 190(1)(a)
Failure to bargain in good faith The employer or bargaining agent failed to comply with the duty under s. 106 of the *FPSLRA* to bargain in good faith	ss. 106, 190(1)(b)
Failure to observe terms and conditions of employment during bargaining After notice to bargain collectively was given, the employer or bargaining agent or an employee in the bargaining unit failed to comply with the duty under s. 107 of the *FPSLRA* to observe the existing terms and conditions of employment	ss. 107, 190(1)(c)
Failure to bargain in good faith in two-tier bargaining In a two-tier bargaining situation under s. 110 of the *FPSLRA*, the employer, the bargaining agent, or the deputy head failed to comply with the duty under s. 110(3) to bargain in good faith	ss. 110(3), 190(1)(d)
Failure to implement provisions of a collective agreement or an arbitral award The employer or an employee organization failed to comply with either the duty under s. 117 of the *FPSLRA* to implement the provisions of a collective agreement or the duty under s. 157 to implement the provisions of an arbitral award	ss. 117, 157, 190(1)(e)
Failure to observe terms and conditions of employment with respect to essential services positions After notice to bargain collectively was given, the employer, the bargaining agent, or an employee in the bargaining unit occupying an essential services position failed to comply with the duty under s. 125(1) of the *FPSLRA* to observe the terms and conditions of employment already in force	ss. 125(1), 190(1)(f)

Chart 2 lists complaints that fall under the category of “unfair labour practices” or ULP. These fall into four main areas depending on who is alleged to have committed the unfair practice. The most common of these complaints are those related to the duty of fair representation.

Chart 2- Complaints about **unfair labour practices**	**Relevant provisions of the *FPSLRA***
Commission of an unfair labour practice The employer, an employee organization, or any person committed an unfair labour practice within the meaning of s. 185 of the *FPSLRA* (i.e., as set out in the table below).	ss. 185-189, 190(1)(g)
Unfair Labour Practices – Employer • An employer, a person acting on the employer’s behalf, a person occupying a managerial or confidential position, or an officer of the RCMP	
- participating in or interfering with the formation of, administration of, or representation of employees by an employee organization;	s. 186(1)(a)
- discriminating against an employee organization;	s. 186(1)(b)
- refusing to employ or to continue to employ, suspending, laying off, discharging from the RCMP, or otherwise discriminating against any person with respect to employment, pay, or any other term or condition of employment, intimidating, threatening, or otherwise disciplining any person for seeking to participate or participating in activities related to an employee organization or labour relations proceedings or exercising a right to complain or grieve;	s. 186(2)(a)
- imposing or proposing to impose any condition on an appointment or in an employee’s terms and conditions of employment that seeks to restrain an employee or person from becoming a member of an employee organization or exercising a right to complain or grieve; or	s. 186(2)(b)
- seeking by intimidation, threat of dismissal, or any other kind of threat, by imposing a financial or other penalty, or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer, or representative of an employee organization or to refrain from testifying or otherwise participating in a proceeding, making a required disclosure, or making an application, filing a complaint, or presenting a grievance.	s. 186(2)(c)
Unfair Labour Practices – Duty of Fair Representation • A bargaining agent or any of its officers or representatives acts in a manner that is arbitrary or discriminatory or that is in bad faith in representing any employee in the bargaining unit.	s. 187
Unfair Labour Practices – Employee Organizations • An employee organization or any of its officers or representatives or any person acting on its behalf that	
- without the employer’s consent, attempts, at an employee’s place of employment during the employee’s working hours, to persuade the employee with respect to membership in the employee organization;	s. 188(a)
- expels or suspends an employee from membership or denies an employee membership by applying its membership rules in a discriminatory manner;	s. 188(b)
- disciplines or penalizes an employee in a discriminatory manner;	s. 188(c)

- expels or suspends the membership of an employee or disciplines or penalizes an employee because the employee exercised a labour relations right or refused to perform an act contrary to labour relations provisions; or - discriminates against a person with respect to membership or intimidates, coerces, or penalizes a person because that person has participated or will participate in a labour relations proceeding, filed a complaint, presented a grievance, or exercised any labour relations right.	s. 188(d) s. 188(e)
Unfair labour practices – persons • A person seeks by intimidation or coercion to compel an employee to become, refrain from becoming, cease to be, or to continue to be a member of an employee organization or to refrain from exercising any labour relations right.	s. 189

2. 90-day deadline

A labour relations complaint can be filed no later than **90 calendar days after the date** on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint (*FPSLRA*, s. 190(2); see also ss. 190(3) and (4)). **This time limit cannot be extended. Failing to meet it will result in the Board having no authority to hear the complaint.**

3. How to file a complaint and what to include

A complaint must be filed with the Board (*FPSLR Regs*, s. 2) and must contain the information required under s. 57 of the *FPSLR Regs*. The Board has made available on its website a standardized form setting out the required information, which can be filed once completed. The party preparing the complaint should ensure that it contains sufficient information to enable the Board to determine, among other things,

- the activity complained of and the specific paragraph of s. 190(1) of the *FPSLRA* that is alleged to have been contravened;
- a concise statement of the particular actions or inactions that resulted in the complaint, specifying the dates and the names of the persons in question;
- the steps taken by or on behalf of the complainant to resolve the matter that gave rise to the complaint;
- the corrective action or order being sought; and
- any other matters relevant to the complaint.

4. What the Board does upon receipt of a labour relations complaint

a) Assigns a registry or case management officer

First, the Board opens a file and assigns an officer to the case. That officer will provide a copy of

the complaint to the other party and to any person who may be affected by the proceeding. The officer will also contact the parties or their representatives, help them move the process forward, and answer procedural questions.

b) Creates the Board's contact list

The Board creates a list of the parties or other persons who may be affected by the proceeding.

c) Sends acknowledgement to the parties

The Board sends a letter addressed to all parties to

- acknowledge receipt of the complaint;
- provide the other parties with a copy of the complaint (*FPSLR Regs*, s. 4) and advise the respondents of their opportunity to reply to it;
- ask the parties to provide their positions on mediation within 15 days;
- provide information on the next steps in the process; and
- provide a copy of the Board's contact list.

5. The Respondent's reply

If a respondent wishes to reply to the complaint, it must do so by filing it with the Board **no later than 15 calendar days** after it receives a copy of the complaint (*FPSLR Regs*, s. 5).

However, if it does not reply, the Board or the Chairperson may dispose of the matter without further notice to the respondent and may schedule a hearing (*FPSLR Regs*, s. 6).

6. Duty of fair representation complaints

An unfair labour practice complaint made under s. 187 of the FPSLRA is called a "duty of fair representation complaint" or DFR complaint. These types of complaints are made when an employee alleges that their bargaining agent, or its officers and representatives, has acted in a manner that is arbitrary, discriminatory or in bad faith, in the representation of that employee. In order to be considered by the Board, these complaints must be filed within the 90-day time limit described earlier in sub-section 2.

Upon receipt of a DFR complaint, the Board Registry may write to the complainant to provide additional information about the complaint process, and to request additional particulars, pursuant to subsection 100(1) of the *FPSLR Regs*. At this stage of the process, the respondent is notified of the complaint for information only. No action is required from the respondent at this time. Once the complainant has filed his or her particulars, this information is provided to the respondent. It is at this stage that the respondent is given **15 calendar days** to respond to the complaint.

7. The Board's role and remedial powers

According to s. 190 of the *FPSLRA*, the Board examines and inquires into complaints. Therefore, in accordance with s. 37 of the *FPSLREBA*, these matters are heard by a panel of

the Board, usually composed of one member.

The Board plays a completely neutral role throughout the complaint process. Because it must maintain its impartiality, it does not provide legal or strategic advice to either party or any monetary support. **Therefore, before filing a complaint, complainants may want to consider seeking the advice of their bargaining agent (unless the complaint is against their bargaining agent) or of a private-practice lawyer.**

The Board must exercise the powers and perform the duties and functions that are conferred or imposed on it by, or that are incidental to attaining the objects of, the *FPSLRA* (s. 12).

The Board's role and remedial powers for labour-relations complaints are as follows:

- The Board may refuse to determine a complaint involving a collective agreement if its opinion is that the complainant could refer the matter to adjudication as a grievance (*FPSLRA*, s. 191(2)).
- The Board may help the parties settle the complaint. However, if it does not attempt to help them or if the matter is not settled within what it considers a reasonable time, the Board must determine the complaint (*FPSLRA*, s. 191(1)).
- If the Board determines that a labour relations complaint is well founded, it may make any order against the party complained of that it considers necessary in the circumstances, including any of the orders listed in s. 192(1) (see the following chart).

Complaint determined well founded	**Possible orders - s. 192(1)**
The employer failed to comply with the duties under ss. 107 or 125(1) of the *FPSLRA* to observe terms and conditions of employment after notice to bargain collectively was given.	The employer must pay to any employee compensation that is not more than the amount that in the Board's opinion is equivalent to the remuneration that but for that failure it would have paid the employee (s. 192(1)(a)).
The employer failed to comply with the duty under s. 186(2)(a) to refrain from unfair labour practices by refusing to employ or to continue to employ, suspending, laying off, discharging from the RCMP, or otherwise discriminating against any person with respect to employment, pay, or any other term or condition of employment, intimidating, threatening, or otherwise disciplining any person for seeking to participate or having participated in activities related to an employee organization, labour relations proceedings, or exercising a right to complain or grieve.	The employer must (s. 192(1)(b)) - employ, continue to employ, or permit any person to return to the duties of his or her employment; - pay to any person affected by that failure compensation in an amount that in the Board's opinion, is not more than the remuneration that but for that failure the employer would have paid to that person; and - rescind any disciplinary action taken with respect

	to any person affected by that failure and pay compensation in an amount that in the Board's opinion, is not more than any financial or other penalty the employer imposed on the person.
The employer failed to comply with the duty under s. 186(2)(c) to refrain from seeking by intimidation, threat of dismissal, or any other kind of threat, by imposing a financial or other penalty, or by any other means to compel a person to refrain from becoming or to cease to be a member, officer, or representative of an employee organization or to refrain from testifying or otherwise participating in a proceeding, making a required disclosure, or making an application, filing a complaint, or presenting a grievance.	The employer must rescind any action taken with respect to any employee affected by the failure and pay compensation in an amount that in the Board's opinion, is not more than any financial or other penalty that the employer imposed on the employee (s. 192(1)(c)).
The employee organization failed to comply with the duty under s. 187 to provide fair representation.	The employee organization must, on behalf of any employee, take and carry on or assist any employee to take and carry on any proceeding that the Board considers that the employee organization ought to have taken and carried on (s. 192(1)(d)).
The employee organization failed to comply with the obligation under s. 188(b) to not expel or suspend an employee from membership or deny an employee membership by applying its membership rules in a discriminatory manner; or the employee organization failed to comply with the obligation under s. 188(d) to not expel, suspend, take disciplinary action against, or impose any form of penalty on an employee for exercising any labour relations or grievance right or for having refused to perform an act that was contrary to labour relations provisions.	The employee organization must reinstate or admit the employee as one of its members (s. 192(1)(e)).
The employee organization failed to comply with the obligations under ss. 188(c) or (d) or s. 188(e) to not discriminate against a person with respect to membership or intimidate or coerce a person or impose a financial or other penalty on a person because that person participated or will participate in a labour relations proceeding, has filed a complaint, has presented a grievance, or has	The employee organization must rescind any disciplinary action taken and pay compensation in an amount that in the Board's opinion, is not more than any financial or other penalty that the employee organization imposed on the employee (s. 192(1)(f)).

exercised any labour relations right.	

8. Hearing procedures

For details on labour-relations complaint hearings, please see Section H of this Guide.

G. FILING REPRISAL COMPLAINTS WITH THE BOARD UNDER S. 133 OF THE *CLC*

1. Statutory protections for federal public service employees' occupational health and safety rights

Part II of the *CLC* sets out occupational health and safety protections for public service employees (*FPSLRA*, s. 240).

To protect employees' rights with respect to occupational health and safety, s. 147 of the *CLC* prohibits employers from retaliating against or disciplining, or threatening to retaliate against or discipline, employees who make efforts to exercise or enforce their rights to a healthy and safe workplace. In particular, simply because an employee has testified or will testify in a proceeding or an inquiry, has provided information to a person performing duties related to working conditions affecting the health or safety of any employee, has acted in accordance with the *CLC*'s occupational health and safety provisions, or has sought enforcement of any Part II provisions, an employer cannot

- dismiss, suspend, lay off, or demote the employee;
- impose a financial or other penalty on the employee;
- refuse to pay remuneration to the employee for any period in which he or she would have worked had the employee not exercised his or her rights under Part II;
- take any disciplinary action against the employee; or
- threaten to take any of the actions just detailed against the employee.

If an employee believes that an employer has taken any of those retaliatory or disciplinary actions against him or her, the employee may file a complaint with the Board (*CLC*, s. 133).

2. Conditions for filing retaliation complaints

For this type of complaint, the *CLC* establishes conditions that a complainant must meet before being permitted to file one.

First, s. 133(3) of the *CLC* stipulates that as required by s. 128(6), an employee must have reported to the employer — without delay — the circumstances of the dangerous work situation before the employee can file a complaint with the Board alleging that the employer either

- retaliated against the employee for refusing to operate a dangerous machine, work in a dangerous place, or perform a dangerous activity (*CLC*, s. 128(1)); or
- would not permit the employee to refuse the dangerous work (*CLC*, s. 128(4)).

Second, s. 133(3) also requires that unless the Minister has already received the employer's and the workplace committee's investigation reports about the alleged dangerous work situation, an employee cannot file a complaint with the Board alleging that the employer retaliated for exercising his or her s. 129(1.3) right to continue to refuse dangerous work during the Minister's investigation of the matter.

3. Filing deadline

A reprisal complaint must be made with the Board **within 90 calendar days** after the date on which the complainant knew or, in the Board's opinion, ought to have known, of the action or circumstances giving rise to the complaint (*CLC*, s. 133(2)). **Failing to meet the 90-day deadline may result in the Board refusing to hear the complaint**, as extensions of time cannot be granted (see *Larocque v. Treasury Board (Department of Health)*, 2010 PSLRB 94 at paras. 26 to 37).

4. How to file a complaint and what to include

A complaint must be filed with the Board (*FPSLR Regs*, s. 2) and must contain the information required under s. 57.1 of the *FPSLR Regs*. The Board has made available on its website a standardized form setting out the required information, which can be filed once completed. The party preparing the complaint should ensure that it contains sufficient information to enable the Board to determine, among other things,

- a concise statement of the retaliatory or disciplinary action as described in section 147 of the *CLC* that the employer took against the complainant, including the dates and names of everyone involved;
- the steps taken by or on behalf of the complainant to resolve the matter that gave rise to the complaint;
- the corrective action sought under s. 134 of the *CLC*; and
- any other matters relevant to the complaint.

5. What the Board does when it receives the complaint

a) Assigns a registry or case management officer to the case

First, the Board opens a file and assigns an officer to the case. That officer provides copies of the complaint to the other party and to any person who may be affected by the proceeding. The officer also contacts the parties or their representatives to help them move the process forward and to answer procedural questions.

b) Creates the Board's contact list

The Board creates a list of parties and any other persons who may be affected by the complaint.

c) Sends acknowledgement

The Board sends a letter addressed to both parties to

- acknowledge receipt of the complaint;
- provide the respondent with a copy of the complaint and advise it of its opportunity to reply;
- ask the parties to provide their positions on mediation within 15 days;
- provide information on the next steps in the process; and
- provide a copy of the Board's contact list.

d) Forwards information

The registry officer then sends any other parties on the Board's contact list (*FPSLR Regs*, s. 4)

- a copy of the complaint; and
- a copy of the Board's contact list.

6. The Board's role and the corrective actions it may order

According to s. 133 of the *CLC*, an employee makes this type of complaint to the Board. Therefore, in accordance with s. 37 of the *FPSLREBA,* it is heard by a panel of the Board, usually composed of one member.

The Board plays a completely neutral role throughout the complaint process. As it must maintain its impartiality, it does not provide legal or strategic advice to either party, or any monetary support. **Therefore, before filing a complaint, complainants may consider seeking the advice of their bargaining agent or of a private-practice lawyer.**

Upon receipt of a complaint, the Board may help the parties settle the matter. If the Board does not help with the settlement or if a settlement is not achieved within what the Board considers a reasonable time in the circumstances, it will hear and determine the complaint (*CLC*, s. 133(5)).

If the Board determines that the employer contravened s. 147 of the *CLC*, it may require the employer to cease contravening that section and may require it to (*CLC*, s. 134)

- permit any employee who suffered retaliation to return to his or her employment duties;
- reinstate any former employee who suffered retaliation;
- compensate any employee or former employee who suffered retaliation in an amount not exceeding what in the Board's opinion the employee would have been paid had the retaliation not occurred; and
- rescind any retaliatory disciplinary action taken against any employee and pay compensation in an amount not exceeding what in the Board's opinion, the

employee would have been paid had the retaliatory disciplinary action not occurred.

7. Hearing Procedures

For details on reprisal complaint hearings, please see Section H of this Guide.

H. HEARING PROCEDURES

The Board's procedures are intended to ensure that

- every party is given full and ample opportunity to participate in the proceeding;
- all preparatory steps are taken by the parties in a timely matter so that the hearing proceeds as efficiently as possible;
- the parties have the opportunity to present their evidence and submissions to the the Board; and
- all stages of a proceeding are conducted as informally and quickly as the requirements of fairness and the principles of natural justice will allow.

This section provides more detailed information about the procedural steps that lead to and that occur during a hearing.

1. Accommodations

The Board is committed to ensuring that its processes are accessible. It addresses requests for reasonable accommodation on a case-by-case basis in accordance with the *Canadian Human Rights Act*.

A party should indicate in advance of any proceeding whether any accommodation measures will be needed for any person attending, such as, for instance, persons with physical disabilities. When sufficient notice is received, the Board makes every reasonable effort to ensure that the hearing location is accessible and barrier-free. For further information, parties are asked to consult the Board's Policy on Accommodation Requests.

2. Mediation

When an individual grievance is referred to adjudication or a complaint is made, the Board automatically offers the parties the opportunity to voluntarily participate in mediation, as it can help them quickly and efficiently resolve the matter without holding a hearing. Mediation is confidential. The goal is to conclude the matter through a mutually satisfactory resolution.

If a party does not intend to participate in mediation, it must notify the Board and everyone on the Board's contact list within **15 calendar days** from the day on which it received the Board's letter acknowledging the matter and providing copies of the grievance or complaint (*FPSLR Regs*, s. 94(1)).

Even if a party refuses mediation at the outset, the Board encourages the parties to continue working towards a settlement, and they may agree to participate in mediation at any time during the proceedings (*FPSLR Regs*, s. 94(2)).

If the parties agree to mediate at any point, they may jointly request to have the matter referred to the Board's Mediation and Dispute Resolution Services (MDRS). In most cases, the grievance or complaint will be immediately put in abeyance, and a mediation date will be scheduled. A trained mediator is assigned to the file and will contact the parties to prepare for the mediation session. The MDRS team is dedicated to providing impartial third-party

assistance to help resolve matters to the parties' mutual satisfaction. The Secretariat staff takes care of the logistics, such as coordinating the date, time, and location of the mediation session.

3. The Board may help parties resolve a matter by any appropriate means

In addition to the Board's mediation and adjudication functions, it has an additional broad, general power to help parties resolve a grievance or complaint. If they agree, a Board member or an ATSSC employee who is authorized by the Board may help parties resolve any issues in dispute at any stage of a proceeding and by any means that the Board considers appropriate. Any such assistance does not affect the Board's power to determine any issues that are not settled (*FPSLREBA*, s. 23).

4. Withdrawing a grievance or a complaint

A grievor or complainant may withdraw a grievance or complaint either (*FPSLR Regs*, s. 11(1))

- before a hearing, by providing the Board with written notice of the withdrawal;
- at a hearing, by advising the Board in person of the withdrawal; or
- at any time before a decision is made, by providing the Board with written notice of the withdrawal.

When the Board is notified of a withdrawal, it closes the file and informs the other parties, any intervenors, and, if notice of the proceeding was provided to it, the CHRC (*FPSLR Regs*, s. 11(2)).

4.1 Deemed withdrawal of a grievance

The Board occasionally observes that some matters before it are inactive for extended periods. For instance, parties that were granted a request that a hearing date not be set pending the outcome of some other event sometimes fail to inform the Board if the event occurred and whether the case is ready to move forward again. If the Board identifies this sort of inactivity in a case, it may, on its own initiative, send a notice of status review to all the parties, which requires them to provide representations stating why the matter should not be deemed withdrawn. If there is no response from the parties within the period determined by the Board, it may deem the matter withdrawn (*FPSLR Regs*, s. 11.1).

5. Adding a party or an intervenor

In proceedings under the *FPSLRA*, any person, employee organization, council of employee organizations, or employer that is not already a party to but has a substantial interest in a grievance or complaint proceeding may apply to the Board to be added as a party or an intervenor. Upon receipt of an application, the Board provides the parties with an opportunity to make representations about the application. After considering the representations, the Board decides whether to add the applicant as a party or as an intervenor (*FPSLR Regs*, ss. 1, 14, 99).

a) How to apply to be added

The application must be in writing and must include the following information:

- the applicant's name, telephone number, fax number, and mailing and electronic addresses that are to be used for sending documents to the applicant;
- the name, telephone number, fax number, and mailing and electronic addresses of the applicant's authorized representative, if there is one;
- the Board's file number for the grievance or complaint that is the subject of the application;
- the grounds for the application and the applicant's interest in the matter;
- the contribution the applicant expects to make if allowed to participate or intervene;
- the signature of the applicant or their authorized representative; and
- the application date.

The application must be forwarded to the Board at the Board's addresses as listed above in Sub-section B-7.

The person filing an application is responsible for providing copies of it to all participants, including (*FPSLR Regs*, s. 7(2))

- the person who filed the initiating document;
- every person who received a copy of the initiating document from the Board, unless that person has notified the Board in writing that he or she does not wish to receive copies of subsequent documents;
- any intervenors; and
- the CHRC, if it received notice from the grievor that the grievance involves the interpretation or application of the *CHRA*.

b) Parties may make written submissions

After receiving a copy of an application, the Board will request that the existing parties make written representations on the application. A party's written submissions must also be sent to all participants, as mentioned (*FPSLR Regs*, s. 7(2)).

c) The criteria that the decision maker will consider

To determine whether it will grant an application, the Board may consider the following factors:

- whether the applicant is directly affected by the proceeding;
- whether the applicant's position is already represented in the proceeding;
- whether the public interest and the interests of justice would be served by allowing the applicant to intervene; and
- whether the applicant's input would help the Board decide the matter.

d) Decision - participatory rights

If the Board decides to add an applicant as an intervenor, the applicant will ordinarily be provided with any subsequent documents filed with the Board, pursuant to *FPSLR Regs*, s. 7(2)).

The Board has the discretion to allow intervenors to participate fully throughout the entirety of the proceedings or, alternatively, to issue directions limiting an intervenor's participatory rights or role in the proceedings. For example, an intervenor's role may be limited to providing only oral arguments at the hearing or written submissions. Intervenors are given notice of all case conferences and of the hearing, and they are informed if a file is closed.

6. "Paper Hearing"

The Board is not required to hold an oral hearing to reach a decision on a grievance or complaint (*FPSLREBA*, s. 22). Indeed, if a matter can be decided fairly based solely on written information, there may be no need to proceed by oral hearing. The Board may ask the parties for their position on this issue.

If the Board decides to conduct a paper hearing, it will inform everyone on the Board's contact list and the CHRC, if applicable.

The Board may request additional written submissions and supporting documentation, such as affidavits, and will determine the time limit for providing them.

Once all the information has been received and is on the record, the Board will review all the documents on the record, make a determination, and render a written decision.

7. Expedited hearings

If the employer and the bargaining agent have previously signed a collective agreement provision or memorandum of understanding with the Board setting out the terms for conducting an expedited hearing, either the bargaining agent or the employer may apply for one; normally, they are held in Ottawa. All parties must agree to hold an expedited hearing.

An expedited adjudication can deal with certain grievances without resorting to a full hearing process, thus saving the parties time and resources. This method has been in use since 1994, and most employers and bargaining agents have agreed to use it in specific cases. However, expedited hearings **are <u>not</u> available to grievors representing themselves**.

In an expedited process, the employer and the bargaining agent agree that the decision rendered will <u>not</u> be precedent-setting and will <u>not</u> be judicially reviewed.

The parties normally provide evidence by filing an agreed statement of facts; thus, they do not call witnesses to testify. An oral decision is given at the end of the hearing, and a short written decision follows within five days.

8. Case conferences

In keeping with the goals of eliminating inefficiencies and emphasizing labour-management cooperation, the parties may request a case conference or the Board may order them to attend one (*FPSLREBA*, s. 20(b)).

a) Purpose

The purpose of a case conference is to resolve any administrative or procedural issues with a hearing and to help the Board, the parties, any intervenors, and the CHRC prepare for it, including assessing the readiness of the participants for a scheduled hearing.

The conference may or may not be presided over by the same Board member assigned to preside over the hearing.

b) Scheduling

The Board has the power to set the date, time, and place for a case conference (*FPSLREBA*, s. 20(b)) and must provide the parties, intervenors, and CHRC with notice at least three days in advance, unless the matter is urgent (*FPSLR Regs*, ss. 16, 101). A case conference may be held in person or by any means of telecommunication, such as teleconferencing (*FPSLREBA*, s. 20(c)).

c) The issues to be discussed

A number of issues may be discussed, including but not limited to

- settlement opportunities;
- with respect to the facts not in dispute, if the parties agree on some or all of the facts to be presented at the hearing, whether it is necessary to call witnesses to prove them. The Board may then ask the parties to prepare an agreed statement of facts, which is placed in the file and binds the parties and the decision maker to those facts;
- resolving some issues and narrowing those in dispute, to reduce the amount of time required for the hearing;
- how the hearing will be conducted, especially if a large number of parties will participate;
- any procedural issues, technical questions, or other preliminary matters that need to be addressed before the hearing;
- motions that have been filed or that are anticipated and that must be dealt with before the hearing;
- the need for further particulars or document disclosure;
- what documents, evidence or jurisprudence must be disclosed or exchanged before the hearing and how many copies will be required at the hearing;
- the order in which the grievor or complainant, the respondent, other parties, any intervenors, and the CHRC will present their evidence and submissions;
- the anticipated amount of time required by each party to present their case;
- the number of witnesses that each party intends to call and what, in general terms, they will testify about. The parties should be prepared to provide this information, which may require them to consult their proposed witnesses before the case

conference to discuss these questions (this also helps avoid repetitive evidence);
- estimates of the amount of time for examination-in-chief and cross examination of each witness;
- the use of expert witnesses during the hearing, including the time limits for providing, in advance, their credentials, a summary of any expert testimony, or an expert report;
- the need for simultaneous interpretation services;
- whether any party or person appearing at the hearing requires some form of accommodation;
- whether simultaneous interpretation services will be required;
- whether some grievances or complaints should be heard at the same time, if appropriate;
- the remedies sought; and
- any other matter that may expedite the proceeding and avoid delays.

If the parties raise no issues that could require either a delay scheduling the hearing or another case conference, the Board will schedule a hearing.

9. Document exchange

At this pre-hearing stage, each party shares with the others any documents that may be relevant to the matter. The Board has adopted a policy on *Pre-Hearing Exchange of Document Lists* that sets out a requirement that an initial list of relevant documents be exchanged at least sixty (60) days in advance of the hearing, and that the actual exchange of documents on that list take place within seven (7) days of a request. The purpose is to facilitate efficient proceedings by ensuring that

- the parties will not be taken by surprise;
- each party may adequately prepare for and participate in the hearing; and
- the proceedings will not require an adjournment so that a party may review and prepare a response to newly presented evidence.

At the pre-hearing stage, the test for relevance is much broader and looser than at the hearing. As such, the parties are required to produce all documents that <u>may</u> be relevant (in other words, arguably or potentially relevant) to the issues in dispute.

If a party fails to produce the necessary documents, it could become subject to an order for disclosure or an order to comply with a disclosure order.

The exchange of document lists and actual documents at the pre-hearing stage takes place between the parties. At this stage, document lists and documents are **not** to be sent to the Board registry. Parties normally will only provide documents to the Board as part of the production of evidence at the hearing.

10. Why oral hearings are held

There are a number of reasons to hold an oral hearing. They are necessary when the matter involves questions of credibility, if there are contradictory versions of the facts, or if complex factual or legal issues have been raised.

In addition, oral hearings give the parties an opportunity to examine and cross-examine witnesses, to help prove or disprove the allegations in the grievance or complaint. They also give the parties, while presenting their arguments, the chance to answer any clarifying questions from the Board.

In keeping with the open court principle, the Board's policy is that oral hearings are presumptively open to the public, including the media. Only in very exceptional circumstances may the Board decide that all or part of a hearing should be closed to the public to ensure the proper administration of justice (*A.B. v. Treasury Board (Royal Canadian Mounted Police)*, 2016 PSLREB 23 at paras. 2 and 80 to 87).

11. Notice of hearing

If the Board decides that an oral hearing is necessary, it sets the date, time, and place for it that it deems appropriate.

a) The Board advises the parties then sends a notice of hearing

The Board is required to provide a Notice of Hearing at least seven days before the scheduled hearing date (*FPSLR Regs*, ss. 17, 102(1)). If a matter is urgent, the Board may provide shorter notice. However, in practice, normally around 30 days in advance of the scheduled hearing, the Board sends an official Notice of Hearing to those on its contact list for the case and to the CHRC, if applicable (*FPSLR Regs*, s. 102(1)). The Notice confirms the hearing date, time, and place.

The hearing schedule is also posted on the Board's website.

b) If a party cannot attend on the scheduled date

If a party cannot be present on the date in the notice, it must file a request for a postponement of the hearing. For additional information on requesting a postponement, please see section **H-15** of this Guide.

Refer to the Board's Policy for the Postponement of Hearings**.**

c) Where hearings may be held

The Board does its best to accommodate the parties with respect to the hearing location. Oral hearings are usually held in the community in which the grievor or complainant works or is based or in the closest major urban centre. The Board does not reimburse the travel costs of any party or witness that attends a hearing.

Hearings in the National Capital Region are usually held on the seventh floor of the C.D. Howe Building at 240 Sparks Street in Ottawa.

Elsewhere in the country, as the Board may use any services and facilities of federal government departments, boards, and agencies (*FPSLREBA*, s. 14), the Board uses hearing rooms at Federal Court locations and at other federal administrative tribunals. It also uses hotel or conference centre meeting rooms.

The Board may also order that a hearing or any part of it be conducted using any telecommunication means that allows all the participants to communicate adequately, such as teleconferencing or videoconferencing (*FPSLREBA*, s. 20(c)).

12. The consequences of failing to attend

If a person provided with a Notice of Hearing fails to attend the hearing or any continuance of it, the Board may proceed with the hearing and dispose of the matter without contacting or notifying the person again (*FPSLR Regs*, ss. 17(3), 102(2)).

13. Summoning witnesses, serving the summons, and paying witness fees and expenses

To ensure that a witness attends a hearing, the party seeking to call the witness may apply for a summons, also commonly referred to as a subpoena. The Board has the authority to summon witnesses to a hearing, enforce their attendance, and compel them to give oral or written evidence under oath or solemn affirmation (*FPSLREBA*, s. 20(a), and *FPSLRA,* s. 226(1)).

The party requesting the summons must file a request with the Board.

If a case conference is to be held, a party wishing to summon a witness should normally wait until the conference is over before applying for the summons.

a) Required information for a summons

The party applying for a summons may be required to provide certain information before the summons can be issued, some of which is required under the *FPSLR Regs*, ss. 18, 103:

- the Board's case file number;
- the name and address of the witness to be summoned;
- the date, time, and place where the witness is required to appear, if known;
- a statement of the evidence that the witness is expected to give at the hearing; and
- a detailed description of the documents and other things that the witness must produce at the hearing, if any.

b) Consideration of the summons application

The Board will consider the summons request. If it has concerns about the relevance of the evidence to be provided by the proposed witness or the appropriateness of the summons, it may seek clarification.

If the issuance of the summons is considered appropriate, the Board will prepare and deliver it to the party who requested it. This may be done by electronic mail, courier or fax.

c) The requesting party must deliver the summons and pay witness fees and allowances

The party who requested the summons is responsible for ensuring that the witness is served with the summons as soon as possible and at least seven days before the appearance of the witness in order to provide him or her sufficient notice.

The summons may be served by any of registered mail, hand, or process server, as well as by fax or electronic mail, provided the witness agrees to be served by that method. Whatever means is used, the party serving the summons must have written proof that the witness received it.

As stated in s. 41 of the *FPSLREBA*, a person who is summoned to attend as a witness at any Board proceeding is entitled to receive fees and allowances for attending, equal to those to which the person would be entitled if summoned to attend before the Federal Court. The fees are set out in Tariff A of the *Federal Courts Rules*. **They are paid by the party requesting the summons** and should ordinarily be paid in advance**.** The Board will not direct how the fees and allowances are to be paid. The witness and the person requesting his or her attendance must deal with the matter.

If the hearing is postponed, the party that summoned the witness is responsible for notifying the witness as soon as possible, to avoid any unnecessary travel and expense. The requesting party must also notify the witness of the new date at least seven days before the witness is due to appear if time allows. As the issued summons is still valid, it is not necessary to apply for a new one.

d) If a summoned witness fails to attend

If a summoned witness fails to attend a hearing, the summoning party may wish to request an adjournment based on that failure to appear. If so, the summoning party will be required to prove that the witness was served with the summons and that the appropriate witness fees and allowances were paid. **If the summoning party wishes to enforce a witness summons, they may consider seeking legal advice.**

e) Copies

An application for a summons does not need to be copied to the other parties, intervenors, or interested persons, as it falls under the exceptions listed in s. 7(3) of the *FPSLRR.*

14. Expert witnesses and expert reports

Generally, witnesses can give evidence only about facts they know personally; they are not permitted to give their opinions. However, expert witnesses are an exception.

Expert witnesses are called to give their opinion as evidence. They have special experience, education, training, or skills that qualify them to provide an informed opinion about something relevant to the case. They offer their particular knowledge or expertise, to help the decision maker understand an issue in the case. An expert witness's role is to provide fair, objective, and non-partisan assistance to the decision maker by explaining and clarifying what is known about their particular area of expertise.

If a party intends to call a witness to be recognized as an "expert witness" at a hearing, then that party must take a number of steps well in advance of the hearing.

First, the party will need to retain an appropriate expert, and if the party requires an expert report, the expert will need to be retained early enough to have a report prepared well in advance of the hearing.

An expert's report should contain

- the expert's name, address, and qualifications;
- a summary of the expert's proposed testimony; and
- the expert's signature and the date of the report.

Next, the party should send the expert's credentials (e.g., curriculum vitæ and list of publications) to the other party, along with any report written by the expert that the party intends to produce and rely on at the hearing.

Sharing this information serves three purposes. One, it notifies the other party of the intention to produce an expert's evidence. Two, it allows the other party to review the expert's credentials and report well in advance of the hearing. Three, if the other party intends to challenge the expert's evidence, it has time to retain its own expert, obtain that expert's report, and provide that expert's credentials and report to the first party.

Although the Board does not require copies of this type of correspondence between the parties, an expert witness's credentials must be produced at the hearing.

Before requesting a summons for an expert witness, the requesting party should arrange for a specific date and time for the expert to testify. If necessary, the requesting party should discuss these scheduling arrangements with the opposing party. The arranged date and time should be provided to the Board when requesting the summons.

15. Requesting a postponement

The Board has established a *Policy on Postponements of Hearings*. It outlines the procedure for requesting the postponement of a scheduled hearing. Scheduling a time and place for a hearing takes into account several factors, including the geographically widespread area where hearings

take place, the provision of services in both official languages and the availability of its members. The Board's goal is to effectively and efficiently administer justice without the unnecessary loss of time and resources.

A request for a postponement should be made as soon as possible once hearing dates have been provided. As proximity to the scheduled date(s) increases, so will the Board's scrutiny of any request for postponement.

The procedure for postponement requests is as follows:

- The party must submit the request in writing to the Board and a copy of it must be sent to the all the parties identified by the Board for the hearing. Consideration of a postponement request does not mean that it will be automatically granted, even where all parties consent to it.
- The postponement request must indicate the currently scheduled hearing dates and include the reason(s) for the request. The reasons must be clear, cogent and compelling.
- Upon receipt of the request, the Board may contact the other party or parties and determine whether they agree with, or oppose, the postponement request. A party opposing the request must provide written reasons for its position.
- If the request is granted, the Board will advise all parties of the postponement, including any specific direction for the rescheduling of the matter.
- If the postponement is not granted, parties are expected to be present on the date of the hearing. If a party is not present at the hearing, the Board may proceed in its absence.

The Board will only grant a postponement where clear, cogent and compelling reasons exist. The following **will generally not be considered sufficient cause** to grant a postponement:

- The parties' mutual desire for a postponement;
- The fact that the matter has not previously been postponed;
- The parties indicate that the case will probably settle if a postponement is granted;
- A witness, party, or counsel is unavailable (without exceptional circumstances) after being provided due notice.

16. Requesting an adjournment of proceedings already underway

The Board has the power to adjourn a hearing and to specify the date, time, place, and terms of its continuance (*FPSLR Regs*, ss. 21, 105). Requests for adjournment are not automatically granted; they must be supported by a valid justification (for example, see the reasons just noted for justifying such a request).

17. Motions

a) What is a motion?

A motion is a request to the Board for a decision or order relating to an issue that has arisen. It may be brought before, at the start of, or during a hearing or at any time before a final decision is rendered. A motion may be brought by a party or a person wishing to obtain party or intervenor status. The order requested is often procedural, such as a request to extend or shorten time limits, or a request for an order excluding witnesses from the hearing room.

In some cases, the decision or order following the hearing of a motion may end the proceedings. For example, a successful motion to dismiss a grievance or complaint on the grounds that it exceeds the Board's jurisdiction will end the matter. When such motions are granted, the grievance or complaint will be dismissed, and the Board will no longer deal with the matter.

b) Who can bring a motion?

The grievor or complainant, respondent, or any other party to the proceeding may bring a motion or request.

c) When may a motion be brought?

A motion or request may be presented at any time before the Board renders a final decision. However, it must be made as soon as possible, to avoid any unnecessary delays.

d) How to bring a motion

Before the hearing, a motion must be made to the Board in writing. It must specify the nature of the order requested and the grounds on which it is based. The party or person bringing the motion must, as soon as possible, provide a copy to all parties and the CHRC, if applicable, which, in turn, all have a right to reply.

At the start of or during the hearing, a motion may be made orally. For example, a motion requesting the adjournment of the hearing due to unforeseen circumstances may be made orally.

e) What happens after a motion has been received?

If the motion is brought before the hearing, the Board will provide the parties who have a right to reply with an express deadline for providing their written replies. Replies should also be sent to all parties, any intervenors, and the CHRC, if applicable. The Board may shorten or extend the reply period in certain cases.

If a party has not asked for an extension of time to file a reply and attempts to file its reply after the deadline has expired, the Board may decide not to consider the late reply and may rule on the motion based on the information that was received on time.

f) Consideration of the motion and ruling

After the period for filing replies has elapsed, the Board will consider the submissions received, rule on the motion, and inform all participants of the decision.

18. Each participant must bring sufficient copies of documents, exhibits, and jurisprudence

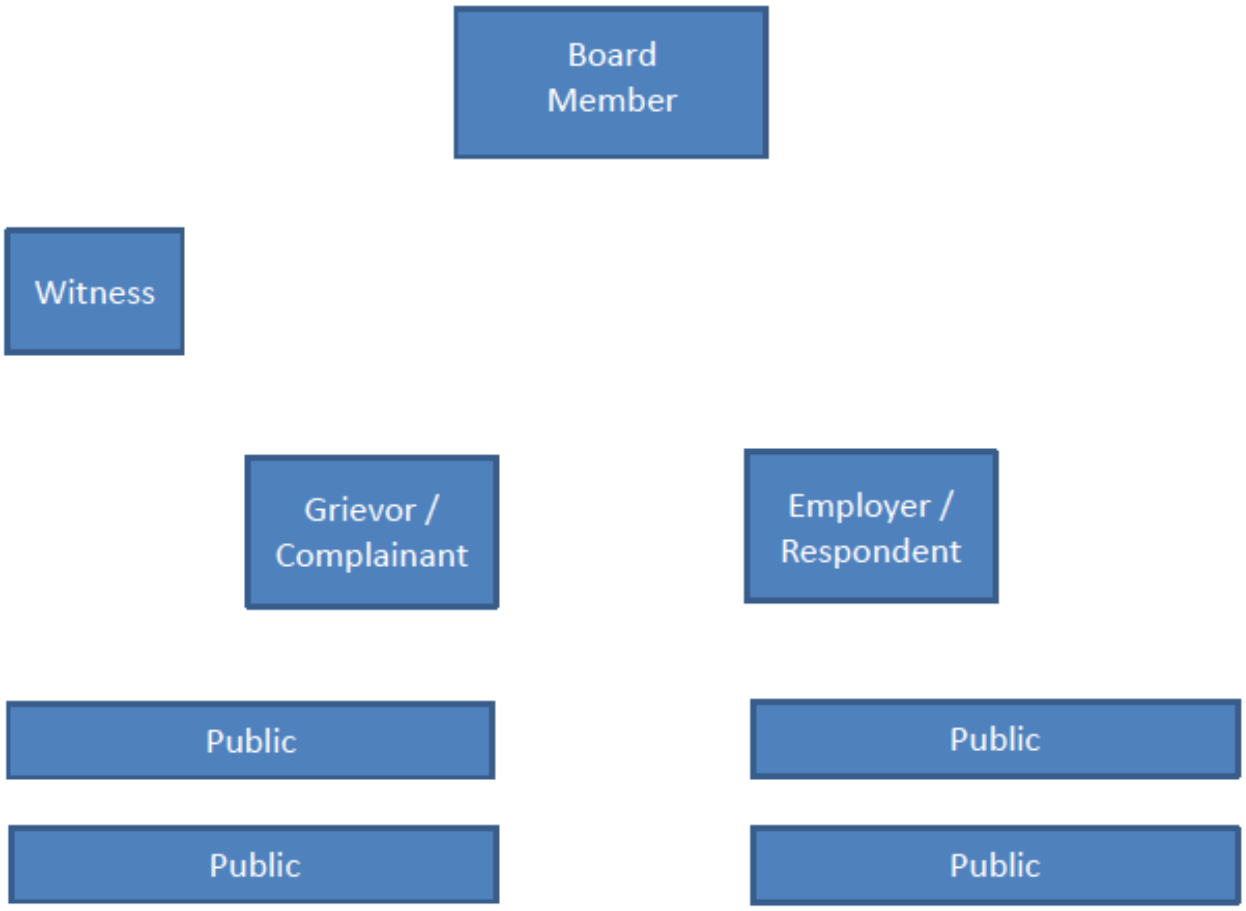
It is extremely important that those participating in a hearing bring with them a sufficient number of copies of the documents they intend to file as exhibits.

The grievor or complainant, respondent, and all other participants providing documentation are responsible for contacting the Board to verify the number of copies of each document required for the hearing. Not only must they prepare copies for each other, but they must also prepare copies for the panel of the Board hearing the case, any intervenors, the CHRC, and the interpreters, if simultaneous interpretation is being provided. If witnesses are testifying, a copy of exhibits will also be required for them. The documentation must be filed in both official languages, if it exists in both (ss. 19(2) and 104(2) *PSLRR Regs*).

Parties wishing to submit jurisprudence should also highlight the relevant parts of the decisions that they wish to bring to the attention of the panel of the Board.

19. Layout of the hearing room

The hearing room is usually arranged as shown below:



20. Provisions unique to the RCMP: its Commissioner may request an adjournment or object to the disclosure of information

The *FPSLRA* contains special provisions applicable to grievances or labour relations complaints coming before the Board that concern a person who is or was an RCMP member or a reservist. These provisions permit the Commissioner of the RCMP to request adjournments or object to disclosures of information.

a) The RCMP Commissioner may request an adjournment to protect ongoing investigations or proceedings

On the request of the RCMP Commissioner, the Board must adjourn proceedings if he or she is

satisfied that continuing them would prejudice an ongoing criminal investigation or an ongoing criminal or civil proceeding. Although each adjournment cannot exceed 90 days, more than one adjournment may be requested (*FPSLRA*, sections 238.06, 238.26).

b) The RCMP Commissioner may object to the disclosure of information if it would be injurious to law enforcement, public safety, or national security

The Commissioner may object to information being disclosed to the Board or to a party if, in the Commissioner's opinion, disclosing it would be injurious to law enforcement, public safety, or national security (*FPSLRA*, sections 238.07-238.12 and 238.27-238.32). If the Commissioner objects, he or she must, as soon as feasible, give written notice of the objection and the reasons for it to the Board and the parties.

The Board or a party may challenge the Commissioner's objection by making a written request to the Minister to appoint a former judge of a provincial superior court or of the Federal Court to review the information and make a final and binding order on the disclosure.

Once the Minister appoints a judge, the Minister advises the Board, the parties, and the Commissioner of the appointment. They are then given an opportunity to make submissions to the judge. Submissions must be made within 30 days of the notice being sent or, if the judge permits, within not more than 60 days.

Once the period for making submissions expires, the judge must render a decision within 30 days or, if the Minister permits, within not more than 60 days.

If the judge does not conclude that the disclosure of the information would be injurious to law enforcement, public safety, or national security, he or she must dismiss the Commissioner's objection.

If the judge concludes that disclosing all or part of the information would be injurious but considers that the public interest in its disclosure outweighs the public interest in not disclosing it, then he or she must order the Commissioner to disclose to the Board or to the party

- all or part of the information;
- a summary of the information; or
- a written admission of facts relating to that information.

If the judge concludes that the disclosure of the information would be injurious to law enforcement, public safety, or national security and that the public interest in disclosure does not prevail, then he or she must uphold the Commissioner's objection.

Any information that the Commissioner discloses may be used only in connection with the matter or proceeding that gave rise to the objection. In addition, the Board or party cannot be required to give or produce evidence relating to that information in any other criminal, civil, or

administrative action or proceeding.

21. Who presides at an oral hearing?

While the vast majority of hearings are presided over by one person, it is possible for matters to be heard by a panel of three. The one person presiding, or the chairperson of a three-person panel, is the master of the proceedings and is responsible for the conduct of the hearing.

a) Labour relations and occupational health and safety reprisal complaint hearings

For labour relations complaints and occupational health and safety reprisal complaints (s. 133 of the *CLC*), oral hearings are heard by a panel of the Board consisting of either one member or, if the Chairperson considers that the complexity of a matter requires it, a panel of the Board consisting of three members (*FPSLREBA*, s. 37).

If the matter is heard by a panel of three members, the chairperson of the panel is either the Chairperson of the FPSLREB or another Board member designated by the Chairperson (*FPSLREBA*, s. 37(3)).

b) Grievance adjudications

Legislation provides that grievances may be adjudicated by (*FPSLREBA*, s. 37(1); *FPSLRA*, ss. 223(2) and (2.1))

- the adjudicator named in the applicable collective agreement, if the grievance arose from it;
- if no adjudicator is so named, the one selected by the parties;
- if no adjudicator is so named or selected, and if one party requests a board of adjudication and the other party ***does not object***, a board of adjudication established by the Chairperson; or
- ***most commonly***, when none of the above occurs, then the Board is seized of the grievance, which **is then adjudicated in most instances by a single Board member appointed by the Chairperson to sit as a *panel of the Board*.**

22. Record of the hearing

The Board does not make video or audio recordings of hearings or prepare minutes. While the presiding panel members will take their own notes of the evidence and the submissions, these notes are only for their use and are not made available to the parties or the public without the consent of the panel member who made them (*FPSLREBA*, s. 32; *FPSLRA*, s. 244). **Therefore, parties wishing to have a record of the proceedings should take notes.**

23. Introductions and preliminary matters

At the start, the parties and intervenors, as well as their representatives (if any), are invited to introduce themselves for the record and to raise any preliminary matters that need to be addressed.

24. Exclusion of witnesses

At the request of a party, the Board may exclude from the hearing room any witness who is scheduled to testify but has not yet done so. This is done to prevent the witness from being influenced by the testimonies of prior witnesses and - intentionally or inadvertently - tailoring his or her testimony, based on their evidence. A party or a witness whose presence is essential to give instructions to a representative cannot be excluded but may be asked to testify before other witnesses.

The Board will instruct witnesses excluded from the hearing room not to discuss their upcoming evidence with anyone else present at the hearing. In addition, no one may communicate with an excluded witness until he or she has finished testifying.

When a witness has finished testifying and has been excused, he or she may remain in the hearing room until the hearing concludes. If he or she chooses to leave, the witness must not discuss his or her testimony with any excluded witnesses who have not yet testified.

25. Burden of proof

In both grievance adjudications and complaint proceedings, the party who bears the burden of proof must establish its case on a balance of probabilities. That is, the facts must prove that it is more probable than not that the situation grieved or complained of occurred. However, the party that bears the burden of proving its case on a balance of probabilities depends on the type of grievance or complaint.

a) Grievance adjudications

Which party bears the burden of proving certain issues depends on the type of grievance referred for adjudication. The following chart indicates certain types of grievances and whether the grievor or the employer bears the burden of proof:

Type of grievance	What the grievor has the onus of proving	What the employer has the onus of proving
Discipline, such as termination	-	That the action taken was justified

		(The Employer presents its evidence first)
Rejection on probation	That the employer's action was not in fact a rejection on probation but was disguised discipline, rooted in a sham, camouflage, or bad faith **(The grievor presents his or her evidence second)**	That in good faith (*bona fide*), the employer was dissatisfied with the employee's ability to discharge the duties of the position **(The employer presents its evidence first)**
Interpretation or application of a provision of a collective agreement or arbitral award	That the interpretation or application was incorrect	-

b) Labour relations complaints

Generally, the complainant bears the burden of proving that the other party failed to fulfil a labour relations duty, failed to comply with an applicable labour relations provision, or committed an unfair labour practice. However, there is one exception, which is when the written complaint states that the employer or any person acting on its behalf committed an unfair labour practice by failing to comply with s. 186(2) of the *FPSLRA*. This provision relates generally to practices by an employer to retaliate against, prevent or compel an employee to refrain from joining or participating in an employee organization.

For such complaints, the written complaint itself is the evidence that the employer failed to comply with s. 186. The complainant need not provide any additional proof. If a party to the proceedings alleges that the failure did not occur, then that party bears the burden of proving it (*FPSLRA*, s. 191(3)).

c) CLC Section 133 reprisal complaints

Generally, the complainant bears the burden of proving that the employer committed the alleged contravention. However, there is one exception, which is when the complaint states that the employer retaliated against the complainant because he or she exercised a right to refuse to operate a dangerous machine, work in a dangerous place, or perform a dangerous activity or exercised a right to continue to refuse during a Minister's investigation into the matter.

For such complaints, the written complaint itself is evidence that the contravention of s. 147 of the *CLC* occurred. The complainant need not provide any additional proof. If a party to the proceedings alleges that the retaliation contravention did not occur, then that party bears the burden of proving it (*CLC*, s. 133(6)).

26. Opening statements

The complainant or grievor will usually be called upon to provide an opening statement at the start of the hearing. The responding party may do so immediately afterwards or may choose to make its opening statement after the other party has presented all its evidence.

The object of an opening statement is to give the Board a general notion of what will be given in evidence. The parties state what they submit are the issues and the questions between them that must be determined. They are not supposed to provide detailed arguments on legal questions or an extensive examination of the legal authorities.

27. Presenting evidence: types of evidence and admissibility

Each party to a grievance or complaint is given an opportunity to present its evidence by having witnesses testify or submit relevant documents. The party with the burden of proof is normally the first party to present its case by giving its testimony and then calling witnesses. Then, the responding party has an opportunity to testify and present its case, followed by any other parties.

a) What is evidence?

Evidence consists of all the documents, testimony, and other material and information that a party presents at a hearing to support its case.

b) Documentary evidence

Any document upon which a party wishes to rely to help the Board understand its case can be presented as evidence.

If there are no objections to the genuineness of the document, the Board will accept it as an exhibit and assign it an exhibit number.

If disputes arise about a document, it may have to be introduced or identified by the witness who created, sent, or received it. Witnesses may be questioned about the document once it has been accepted as an exhibit.

The party presenting the document must provide the original (if possible), plus sufficient copies for (*FPSLR Regs*, ss. 19(1), 104(1))

- the presiding members of the panel of the Board;
- each party to the proceeding;
- each intervenor; and
- the CHRC, if it was provided with notice of the referral to adjudication.

It is also required to have an extra copy on hand to show to any witness who may need to see or refer to it during the hearing.

c) Collective agreements or arbitral awards

For grievances about the interpretation or application of a provision of a collective agreement or an arbitral award, the party referring it to adjudication must, either before or at the hearing, file a copy of the collective agreement or arbitral award — in both official languages, if it exists in both — and provide copies to (*FPSLR Regs*, s. 97) to

- the Board;
- the other party or its representative;
- each intervenor; and
- the CHRC, if it was provided with notice of the reference to adjudication.

d) Documents available in both official languages

If an official version of a document exists in both official languages, the party presenting the document must file both language versions at the hearing (*FPSLR Regs*, ss. 19(2), 104(2)).

e) Affidavits

What is an Affidavit?

An affidavit is a voluntarily written declaration or statement of facts by a witness. The witness making the affidavit ("the affiant") confirms its contents by taking an oath or solemn affirmation in the presence of someone with the authority to administer oaths and affirmations (e.g., a lawyer or a commissioner for taking oaths and affirmations). The affiant attests that the information contained in his or her affidavit is true. This attestation has the same legal effect as providing oral testimony under oath or solemn affirmation at a hearing.

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An affidavit should contain the following information:

- the file number and name of the proceeding to which it relates;
- the affiant's name and address (preferably his or her work address);
- the affiant's title or position;
- the affiant's declaration that the contents of the affidavit are true to the best of his or her knowledge or belief;
- a concise statement of the facts relevant to the case, with each fact described very clearly in a separate, numbered paragraph; and
- the affiant's signature, the date and location indicating when and where the affidavit was signed, and the signature of the person commissioning the affiant's oath or solemn affirmation.

Why are affidavits used?

The Board has the power to accept affidavit evidence (*FPSLREBA*, s. 20(a)) and may direct at its discretion that certain witnesses provide their evidence through an affidavit where circumstances warrant. The purpose of using affidavit evidence is to better manage the hearing

time.

In cases being heard orally, the witness who provided affidavit evidence will still ordinarily be required to attend the hearing either in person or via telephone or videoconferencing so that he or she may be cross-examined on the information in the affidavit, unless the Board orders otherwise. After cross-examination, the party calling that particular witness will then have the opportunity to re-examine him or her.

f) Oral testimony

The grievor or complainant, respondent, and other parties may call individuals to testify about facts they know personally or may call expert witnesses to give expert opinion evidence. Each witness provides oral testimony by answering questions posed to him or her by the party who called the witness and by the other parties (see *Examination-in-Chief, Cross-examination, and Re-examination*).

g) Determining the admissibility of evidence

The Board determines whether evidence is admissible. It may accept evidence at a hearing even if the evidence would be inadmissible in a court of law, such as hearsay (*FPSLREBA*, s. 20(e)). However, even if evidence is accepted and heard at a hearing, the Board, when making its decision, must still determine what weight to give to that evidence.

28. Examination-in-chief, cross-examination, and re-examination

a) Oath or solemn affirmation

When a party calls a witness to testify, the person presiding at the hearing will ask the witness, before giving his or her testimony, to make a solemn affirmation that the testimony will be the truth. A witness who wishes to swear an oath instead must bring any religious text or sacred object he or she may require. (*FPSLREBA*, s. 20(d)).

The witness may then be questioned.

b) Examination-in-chief

First, the witness will be questioned by the party who called him or her. This is known as examination-in-chief. The party who called the witness must ask **open-ended questions**, which generally start with “who”, “what”, “where”, “when”, “why”, or “how”. This enables the witness to tell his or her story. The Board may also ask questions at any time.

c) Cross-examination

Once examination-in-chief is finished for a witness, each other party will have an opportunity to question the witness, to challenge or clarify his or her testimony, subject to any restrictions that the Board may impose. During cross-examination, the other party may ask leading questions; that is, questions that contain the answer sought such that the witness is likely to reply with a simple “yes” or a “no” (e.g., “Is it not true that you failed to report the issue?”).

d) Re-examination

Once cross-examination is complete, the party who called the witness may then re-examine him or her to clarify any new information that arose out of cross-examination. This is not an opportunity for a second chance at examination-in-chief. Re-examination may only concern issues raised for the first time in cross-examination that could not have been anticipated and addressed during examination-in-chief.

e) The respondent's evidence

When the party with the initial onus of proof has finished presenting its evidence (i.e., has had all its witnesses testify), the opposing party presents its evidence by calling witnesses in the same manner.

f) Evidence of other parties and intervenors

If there are intervenors or other parties at the hearing, their role concerning the presentation of evidence will likely have to be determined by the Board at a case conference or when the hearing starts. If they are permitted to present evidence, they will likely be instructed to after the grievor or complainant and the respondent or other party have presented their evidence.

29. Submissions or closing arguments

After all the evidence is presented, each party or its representative, every intervenor who has been granted permission, and the CHRC (if it is participating) has an opportunity to make remarks to the Board about the merits of a case, which are known as submissions or closing arguments.

At this stage, no further evidence may be introduced. Submissions are not evidence, and the opportunity to make them is not an opportunity to tender additional evidence. Rather, based on the evidence already presented during the hearing, and relying on points of law and decisions of the Board or the courts (jurisprudence), submissions consist of a course of reasoning designed to persuade the decision maker to arrive at a particular decision and to award an appropriate remedy.

Normally, submissions are made orally, but parties and intervenors may be asked to provide written submissions.

The order in which parties or intervenors will make their submissions will likely have been decided at a case conference or at the beginning of the hearing. The order should be similar to the order in which the evidence was presented. Therefore, generally, the party with the burden of proof will provide its closing arguments first.

If the CHRC so chooses, it may present its submissions, in accordance with any directions issued by the Board. Similarly, any intervenors will present their submissions in accordance with any directions issued.

Finally, the grievor or complainant and the responding party have an opportunity to respond to the submissions of any other parties or intervenors by making reply closing arguments.

After all the parties, intervenors, and the CHRC make their submissions, the hearing comes to a close.

30. How and when a decision is rendered

Once submissions have been presented and the hearing is complete, the presiding Board member reviews his or her notes of the testimonial evidence, examines any documentary and other evidence, decides how much weight to accord to the evidence, and considers the submissions provided before rendering a decision.

An oral decision may be rendered at the hearing, but historically it rarely occurs. If an oral decision is given, it is followed up with written reasons at a later date.

In all cases, a written decision will be rendered and sent to the parties and their representatives as well as to everyone on the Board's contact list. This normally takes a number of months.

If the matter is heard by a panel of three members, a decision by a majority of the members is the decision of the panel. If no decision is supported by a majority (e.g., if one of the side members becomes incapacitated or passes away), the decision of the chairperson of the panel is the decision of the panel (*FPSLREBA,* s. 38(1), s. 40(1)). A decision of a panel of the Board is a decision of the Board (*FPSLREBA*, s. 40(2)).

Copies of the written reasons for the decision are sent to everyone on the Board's contact list. A copy of the order and any written reasons are also deposited with the Chairperson of the FPSLREB (*FPSLRA*, s. 228(2)).

Typographical or clerical errors

A decision may occasionally contain a typographical or clerical error. Either party to the matter may bring such errors to the Board's attention by contacting its Registry Office.

If the party knows the identity of the Registry Officer who was responsible for administering the case, it may phone or email that Officer directly to inform him or her of the error. Otherwise, the party may email the Registry at mail.courrier@fpslreb-crtespf.gc.ca. When notifying either the Registry or a registry officer of an error, please provide the following information:

- the case number or the decision's citation number;
- the details of the error; and
- the location of the error in the decision (page and paragraph number).

Normally, if the error is corrected, the parties will be notified in writing of the changes made to the decision. However, notification may not necessarily be provided if the error was minor and did not affect the essential substance of the decision or its page numbering.

I. THE ENFORCEMENT OF A DECISION OR ORDER

The Board does not have the power to follow up on or investigate into compliance with its decisions or orders. Therefore, to ensure enforcement, a party to a grievance adjudication, or any person or organization affected by an order of the Board in a complaint proceeding, may request in writing that the Board file a certified copy of the order, without the reasons for it, in Federal Court. Upon such a request, the Board must file the order unless, in its view, there is no indication or likelihood that the order will not be complied with or there is some other good reason that filing it with the Federal Court would serve no purpose.

Once filed, the order becomes an order of the Federal Court and may be enforced as such by the party, affected person, or affected organization (*FPSLREBA*, s. 35, *FPSLRA*, s. 234).

J. JUDICIAL REVIEW

According to s. 34 of the *FPSLREBA*, every decision or order of the Board is final and is not to be questioned or reviewed in any court except via judicial review proceedings and only on the grounds set out in ss. 18.1(4)(a), (b), or (e) of the *Federal Courts Act*, which read as follows:

> **Grounds of review**
>
> **18.1(4)** The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal
>
> **(a)** acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
>
> **(b)** failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
>
> …
>
> **(e)** acted, or failed to act, by reason of fraud or perjured evidence ….

Section 28(1)(i) of the *Federal Courts Act* states that the Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made with respect to the Board.

As mentioned, most grievances and complaints are heard by a panel of the Board. As a result, most applications for judicial review are presented to the Federal Court of Appeal.

Applications for judicial review must be filed in accordance with the *Federal Courts Act* and the *Federal Courts Rules*. The party making the application is responsible for complying with all Federal Court or Federal Court of Appeal procedures and time limits. For example, an application for judicial review must be made within 30 days after the decision was first

communicated to the applicant, unless a judge of the appropriate court permits otherwise (see the *Federal Courts Act*, s. 18.1(2)).

For more information on judicial review proceedings, consult the following:

The Federal Court

The Federal Court of Appeal

Federal courts staff locations

The Board's Fact Sheet on Judicial Review.