

**RULES OF PROCEDURE OF THE
NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY**

**AS ESTABLISHED BY THE NATIONAL SECURITY AND INTELLIGENCE
REVIEW AGENCY IN ACCORDANCE WITH PARAGRAPH 8(1)(D) OF
THE NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY
ACT, EFFECTIVE JULY 12, 2019**

TABLE OF PROVISIONS

RULE 1: APPLICATION, PURPOSE AND INTERPRETATION

RULE 2: NON-COMPLIANCE WITH RULES

RULE 3: TIME

RULE 4: CONFLICT OF INTEREST

RULE 5: COMMENCEMENT OF COMPLAINTS

RULE 6: SERVICE OF DOCUMENTS

RULE 7: DETERMINATION OF JURISDICTION

RULE 8: CONFERENCES

RULE 9: COMPLAINTS RESOLUTION

RULE 10: ADJOURNMENTS

RULE 11: DEEMED UNDERTAKING

RULE 12: EVIDENTIARY BOOK OF DOCUMENTS

RULE 13: HEARING

RULE 14: WRITTEN HEARINGS

RULE 15: EVIDENCE

RULE 16: AMENDMENT OF COMPLAINT

RULE 17: WITHDRAWAL/ABANDONMENT OF COMPLAINTS

RULE 18: MOTIONS

RULE 1

APPLICATION, PURPOSE AND INTERPRETATION

Application

1.01 These rules apply to complaints, referrals, reports, and references made to the National Security and Intelligence Review Agency under paragraph 8(1) (d) of the *Act*.

Purpose

1.02 Except as otherwise prescribed by the *Act*, these rules are enacted to ensure that

- (a) all parties to an investigation have the fullest opportunity to participate and be heard;
- (b) arguments and evidence be disclosed and presented in a timely and efficient manner; and
- (c) all proceedings before the Review Agency be conducted as informally and expeditiously as possible.

Definitions

1.03 (1) In these rules, unless the context requires otherwise,

“*Act*” means the *National Security and Intelligence Review Agency Act*;

“assigned member(s)” means the member(s) assigned by the Chair to investigate a complaint, report or reference;

“Chair” means the Chair of the Review Agency;

“Chief” means the Chief of the Communications Security Establishment

“Deputy Head”, means,

- a) with respect to a section 16 complaint, the Director of the Canadian Security Intelligence Service;
- b) with respect to a section 17 complaint, the Chief of the Communications Security Establishment;
- c) with respect to a section 18 complaint, the Deputy Head responsible for making a decision pursuant to subsection 18(1) or 18(3) of the *Act*; and
- d) with respect to a section 19 complaint, the Commissioner of the Royal Canadian Mounted Police.

“document” includes a paper, book, record, account, sound recording, videotape, film, photograph, drawing, diagram, chart, graph, map, plan, survey, information recorded or stored by computer or by means of any other device, and a copy or portion of that material;

“Executive Director” means the Executive Director of the Review Agency;

“holiday” means

- (a) Saturday and Sunday,
- (b) the period from December 25 until January 1, inclusive,
- (c) Good Friday,
- (d) Easter Monday,
- (e) Victoria Day,
- (f) Quebec National Holiday, Saint-Jean-Baptiste Day, June 24;
- (g) Canada Day,
- (h) the Ontario civic holiday in August,
- (i) the first Monday in September, designated Labour Day,
- (j) Thanksgiving Day,
- (k) Remembrance Day, and
- (l) any special holiday proclaimed by the Governor General;

“investigation” means an investigation under paragraph 8(1)(d) of the *Act*;

“member” means a member of the Review Agency;

“party” or “parties” means the complainant and/or respondent or as the case may be;

“Registrar” means the Registrar of the Review Agency;

“Review Agency” means the National Security and Intelligence Review Agency;

“Respondent” means the Canadian Security Intelligence Service or the Communications Security Establishment or the Royal Canadian Mounted Police and/or the Deputy Head responsible, as the case may be;

“Vice-chair” means the Vice-chair of the Review Agency.

(2) A word or phrase used in these rules that is defined in the *Act* bears the definition contained in the *Act*.

Interpretation of Rules

1.04 (1) These rules shall be liberally construed to advance the purposes set out in rule 1.02.

(2) These rules are not exhaustive and the Review Agency retains the authority to decide any issue of procedure not provided for by these rules.

RULE 2

NON-COMPLIANCE WITH RULES

Effect of non-compliance

2.01 A failure to comply with these rules is an irregularity and does not render an investigation, or a step, document or direction in an investigation a nullity.

Motion to challenge irregularity

2.02 (1) A party may by motion challenge any step taken by another party for non-compliance with these rules.

(2) A motion under subrule (1) shall be brought as soon as practicable after the moving party became aware of the irregularity.

Orders on motion

2.03 Where, on a motion brought under rule 2.02, a member finds that a party has not complied with these rules, the member may, by order or direction,

- (a) dismiss the motion, where the motion was not brought within a sufficient time after the moving party became aware of the irregularity to avoid prejudice to the respondent in the motion;
- (b) grant any amendments required to address the irregularity; or
- (c) set aside the proceeding, in whole or in part.

Dispensing with compliance

2.04 On the motion of a party or on a member's own motion, a member may dispense with compliance with any of these rules where it advances the purposes set out in rule 1.02.

RULE 3

TIME

Computing Time

- 3.01 In computing time under these rules, or under a direction made under these rules,
- (a) where there is a reference to a number of days between two (2) events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
 - (b) where a period of less than seven (7) days is prescribed, holidays shall not be counted; and
 - (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

Extension or abridgment of time periods

3.02 (1) On the motion of a party or on a member's own motion, a member may extend or abridge any time prescribed by these rules, or by a direction made under these rules, where it advances the purposes set out in rule 1.02.

(2) A motion for an extension of time may be made before or after the expiration of the time prescribed.

RULE 4

CONFLICT OF INTEREST

Conflict of interest

4.01 The assigned member (s) who

- (a) has had, apart from his or her functions as a member of the Review Agency, any previous or current personal, business, or professional association with any person affected by an investigation of the Review Agency under paragraph 8(1)(d) of the *Act*; or
- (b) is an employee, associate, counsel or member of a firm that is representing the person affected before the Review Agency.

shall withdraw from any further participation in the Review Agency's investigation in relation to that person.

RULE 5

COMMENCEMENT OF COMPLAINTS

How a complaint is commenced

5.01 (1) A complaint under subsection 16(1) of the *Act* shall be made in writing pursuant to section 21 of the *Act* using Form 16.

(2) A complaint under subsection 17(1) of the *Act* shall be made in writing pursuant to section 21 of the *Act* using Form 17.

(3) A complaint under subsection 18(3) of the *Act* shall be made in writing pursuant to section 21 of the *Act* using Form 18.

(4) A complaint referred to the Review Agency made under subsection 45.53(4.1) or 45.67(2.1) of the *Royal Canadian Mounted Police Act* by the Civilian Review and Complaints Commission pursuant to section 19 of the *Act*.

Manner of filing a complaint

5.02 A complaint shall be filed by sending the appropriate form under rule 5.01 to the Registrar by mail or courier, other than subrule 5.01(4).

When a complaint deemed received

5.03 A complaint made under subsection 16(1) of the *Act* is deemed received when the Review Agency has received the following:

- (a) Form 16 as per subrule 5.01(1);
- (b) A copy of the complainant's letter of complaint to the Director;
- (c) A copy of the Director's response, if any; and
- (d) A statement from the complainant indicating that he or she is dissatisfied with the Director's response or a statement that a period of more than sixty (60) days has lapsed since the complainant provided the Director with a written complaint.

5.04 A complaint made under subsection 17(1) of the *Act* is deemed received when the Review Agency has received the following:

- (a) Form 17 as per subrule 5.01(2);
- (b) A copy of the complainant's letter of complaint to the Chief;
- (c) A copy of the Chief's response, if any; and

- (d) A statement from the complainant indicating that he or she is dissatisfied with the Chief's response or a statement that a period of more than sixty (60) days has lapsed since the complainant provided the Chief with a written complaint.

5.05 A complaint made under section 18 of the *Act* is deemed received when the Review Agency has received the following:

- (a) Form 18 as per subrule 5.01(3); and
- (b) A copy of the notice from the Deputy Dead informing of the decision to deny or revoke the security clearance.

5.06 A complaint referred to the Review Agency under section 19 of the *Act* is deemed received when the Review Agency has received notice from the Civilian Review and Complaints Commission. The Review Agency will record the information using Form 19.

RULE 6

SERVICE OF DOCUMENTS

Manner of service

6.01 Unless otherwise directed, a document shall be served by filing the document with the Registrar, and the Registrar shall thereafter serve the other parties.

RULE 7

DETERMINATION OF JURISDICTION

Complaints made pursuant to sections 16 and 17 of the Act

7.01 (1) Upon receipt of a complaint, the Registrar shall notify the complainant that the complaint is deemed received and the respondent's right to make representations on the Review Agency's jurisdiction to investigate the complaint. The Registrar shall notify the respondent of their right to make written representations on the Review Agency's jurisdiction to investigate the complaint and shall be filed no later than four (4) weeks following notice to that effect.

(2) The respondent is to also provide a Protected B version of their representations on jurisdiction.

(3) Upon receipt of the respondent's written representations, the Registrar shall notify the complainant of their right to make reply representations and shall be filed with the Review Agency no later than two (2) weeks following notice to that effect.

7.02 After receiving written representations from the parties, if any, a member shall conduct a preliminary review of the complaint in order to determine if, pursuant to subsections 16(1) or 17(1) of the *Act*, the Review Agency has jurisdiction to investigate the complaint. The member may, of his or her own motion, determine the Review Agency's jurisdiction or forward the complaint to the Review Agency for a determination on jurisdiction.

7.03 The member is not required to hold an oral hearing to determine the Review Agency's jurisdiction to investigate the complaint but may do so if the member is of the opinion that it would assist in determining jurisdiction.

7.04 If the member or the Review Agency, determines that any of the conditions precedent to the investigation of a complaint set out in subsections 16(1) or 17(1) of the *Act* have not been fulfilled, the Chair shall notify the complainant and the respondent that the Review Agency does not have the jurisdiction to investigate the complaint and set out the applicable grounds as set out in subsections 16(1) or 17(1) of the *Act*.

7.05 If the member or the Review Agency, determines that, under subsection 16(2) or 17(2) of the *Act*, the Review Agency does not have jurisdiction to investigate the complaint, the Chair shall so notify the complainant and the respondent by registered mail or personal service of the Review Agency's determination.

Member to be assigned

7.06 Should the Review Agency determine it has jurisdiction to investigate the complaint under section 16 or 17 of the *Act*, the Chair shall assign one or more members to investigate the complaint.

Notice of jurisdiction and right to oral hearing

7.07 If it is determined that the Review Agency has jurisdiction to investigate the complaint under section 16 or 17 of the *Act*, the Chair shall, by registered mail or personal service, notify the complainant and the respondent of

- (a) the determination of jurisdiction;
- (b) the requirements of subsection 25(1) of the *Act*;
- (c) the complainant's right to an oral hearing on the merits of the complaint; and
- (d) the complainant's right to make representations in writing to the assigned member(s) if the complainant does not exercise his or her right to an oral hearing.

Complaints made pursuant to section 18 of the Act

7.08 (1) Upon receipt of a complaint, the Registrar shall notify the complainant that the complaint is deemed received and the respondent's, Deputy Head responsible, right to make representations on the Review Agency's jurisdiction to investigate the complaint. The Registrar shall notify the respondent, Deputy Head of the Department, of their right to make written representations on the Review Agency's jurisdiction to investigate the complaint and shall be filed no later than four (4) weeks following notice to that effect.

(2) The respondent is to also provide a Protected B version of their representations on jurisdiction.

(3) The Registrar shall notify the Director of the Service that a complaint has been filed with the Review Agency.

(4) Upon receipt of the respondent's written representations, the Registrar shall notify the complainant of their right to make reply representations and shall be filed with the Review Agency no later than two (2) weeks following notice to that effect.

7.09 After receiving written representations from the parties, if any, a member shall conduct a preliminary review of the complaint in order to determine if, pursuant to subsections 18(1) or 18(2) of the *Act*, the Review Agency has jurisdiction to investigate the complaint. The member may, of his or her own motion, determine the Review Agency's jurisdiction or forward the complaint to the Review Agency for a determination on jurisdiction.

7.10 The member is not required to hold an oral hearing to determine the Review Agency's jurisdiction to investigate the complaint but may do so if the member is of the opinion that it would assist in determining jurisdiction.

7.11 If the member or, the Review Agency, is of the opinion that, under subsections 18(1) or 18(2) of the *Act*, that the Review Agency does not have jurisdiction to investigate, the Chair shall so notify the complainant, the Deputy Head and the Service by registered mail or by personal service.

7.12 If the member, or the Review Agency, determines that, under the time limits in subsection 18(4) of the *Act*, the Review Agency does not have jurisdiction to investigate the complaint, the member shall determine whether or not to allow a longer period for making a complaint and shall notify the parties of its determination.

Member to be assigned

7.13 Should the Review Agency determine it has jurisdiction to investigate the complaint under section 18 of the *Act*, the Chair shall assign one or more members to investigate the complaint.

Notice of jurisdiction and right to oral hearing

7.14 If a member, or the Review Agency, determines that the Review Agency has jurisdiction to investigate the complaint, the Chair shall, by registered mail or personal service, notify the complainant, the Deputy Head and the Service of,

- (a) the determination of jurisdiction;
- (b) the requirements of section 25(1) of the *Act*;
- (c) the complainant's right to an oral hearing on the merits of the complaint;
and
- (d) the complainant's right to make representations in writing to the assigned member(s), if the complainant does not exercise his or her right to an oral hearing.

Notice under section 24 of the *Act*

7.15 The Review Agency shall, before the commencement of the investigation, issue the notifications required by section 24 of the *Act* by registered mail or personal service.

Information from Director and Deputy Head

7.16 The Review Agency shall obtain from the Director and Deputy Head concerned, after issuance of the notifications required by section 24 of the *Act*, such information as will enable the complainant to be as fully informed as possible of the circumstances giving rise to the denial of the security clearance or of the contract, as the case may be.

Statement under section 22 of the Act and Representations

7.17 Upon receipt of the information referred to in rule 7.16, the assigned member(s) shall, after consulting with the Deputy Heads pursuant to subsection 52(1)(a) of the *Act*, instruct the Registrar on his or her behalf to send the statement and copies referred to in section 22 of the *Act* by registered mail or personal service.

Complaints referred to the Review Agency pursuant to section 19 of the Act

Notice to investigate and right to oral hearing

7.18 If a member, or the Review Agency, determines that the Review Agency may investigate the complaint, the Chair shall, by registered mail or personal service, notify the complainant and the respondent of

- (a) its determination to investigate the complaint;
- (b) the requirements of subsection 25(1) of the *Act*;
- (c) the complainant's right to an oral hearing on the merits of the complaint; and
- (d) the complainant's right to make representations in writing to the assigned member(s), if the complainant does not exercise his or her right to an oral hearing.

REFERENCES UNDER PARAGRAPH 45(2)(B) OF THE CANADIAN HUMAN RIGHTS ACT

Member to be assigned

7.19 Upon receipt of the reference referred to in paragraph 45(2)(b) of the *Canadian Human Rights Act*, the Chair shall assign one or more members of the Review Agency to investigate the matter.

Notice to the Director and the Minister

7.20 The Review Agency shall, pursuant to section 24 of the *Act*, before the commencement of the investigation, notify the Director and the Minister referred to in subsection 45(2) of the *Canadian Human Rights Act*.

Right to make representations

7.21 The Review Agency shall notify the complainant, the Minister referred to in subsection 45(2) of the *Canadian Human Rights Act* and the Director of their opportunity to make representations under subsection 25(2) of the *Act*, of the time limits the Review Agency has established within which those representations must be made and of the procedures for the making of representations and presenting evidence.

Information from the Minister

7.22 The Review Agency shall obtain from the Minister referred to in subsection 45(2) of the *Canadian Human Rights Act* information relating to the security considerations.

Statement under section 45(6) of the *Canadian Human Rights Act*

7.23 Upon receipt of the information referred to in rule 7.22, the assigned member(s) shall, after consulting with the Director pursuant to subsection 52(1) of the *Act*, instruct the Registrar to send the statement referred to in subsection 45(6) of the *Canadian Human Rights Act* on his or her behalf.

Service of Report

7.24 After the report is finalized and after consulting with the Director pursuant to paragraph 52(1)(a) of the *Act*, and not later than ninety (90) days after the matter is referred to it, or such further time as granted by the Canadian Human Rights Commission, the Review Agency shall provide the Commission, the Minister referred to in subsection 45(2) of the *Canadian Human Rights Act*, and the complainant with its report.

REPORTS UNDER SUBSECTION 19(2) OF THE *CITIZENSHIP ACT*

Member to be assigned

7.25 Upon receipt of a report under subsection 19(2) of the *Citizenship Act*, the Chair shall assign one or more members of the Review Agency to investigate the grounds on which the report is based.

Right to make representations

7.26 The Review Agency shall notify the complainant, the Minister referred to in subsection 19(2) of the *Citizenship Act* and the Director by registered mail or personal service of their opportunity to make representations and present evidence under subsection 25(2) of the *Act*, of the time limits the Review Agency has established within which those representations must be made and of the procedures for the making of representations and presenting evidence.

Information from the Minister

7.27 The Review Agency shall obtain from the Minister referred to in subsection 19(2) of the *Citizenship Act* information relating to the grounds for believing that the complainant will engage in the activity described in paragraphs 19(2)(a) or (b) of the *Citizenship Act*.

Statement under section 19(5) of the *Citizenship Act*

7.28 Upon receipt of the information referred to in rule 7.27, the assigned member(s) shall, after consulting with the Director pursuant to paragraph 52(1)(a) of the *Act*, instruct the Registrar to send the statement referred to in subsection 19(5) of the *Citizenship Act* on his or her behalf.

Service of Report

7.29 Upon completion of his or her investigation, the assigned member(s) shall make a report to the Governor in Council under subsection 19(6) of the *Citizenship Act* and shall consult with the Director pursuant to paragraph 52(1)(b) of the *Act* prior to providing the complainant by registered mail or personal service with a report containing conclusions of the report as required by subsection 19(6) of the *Citizenship Act*.

RULE 8

CONFERENCES

Mandatory pre-hearing conference

8.01 (1) On a date to be set by the Registrar, a pre-hearing conference shall be conducted by a member.

Matters to be dealt with

- (2) At a pre-hearing conference, a member may discuss with the parties,
 - (a) whether the parties are requesting an oral hearing or whether it may proceed in writing;
 - (b) the identification, limitation or simplification of any issues;
 - (c) the identification and limitation of evidence;
 - (d) whether the parties will make any formal admissions of particular facts or documents;
 - (e) witness management, including,
 - (i) the identification and limitation of witnesses,
 - (ii) the order of witnesses,
 - (iii) whether any summons are required;
 - (f) disclosure of unclassified documents;
 - (g) whether the services of an interpreter are needed for an oral hearing;
 - (h) the scheduling of any pre-hearing motions (procedural issues);
 - (i) the scheduling of the hearing;
 - (j) the location of the hearing; and
 - (k) any other matter relevant to the investigation.

Request for case management conference

8.02 (1) A party to an investigation may, at any time, request that a case management conference be conducted by a member.

Request to Registrar

(2) A request by a party for a case management conference shall be made in writing to the Registrar.

Member may convene case management conference

8.03 A member upon request or of his own motion may convene a case management conference.

Notice of conference

8.04 (1) The Registrar shall serve on the parties a notice setting out the manner in which the pre-hearing or case management conference will be conducted, the date, time and if required, the place of the conference.

(2) Any conference may be conducted over the telephone or in person.

Attendance at conference

(3) Unless otherwise directed by the member conducting the conference, all the parties to the investigation, or their representatives, are required to participate in or attend at the conference.

Failure to participate or attend

(4) Where a person who is required to participate in or attend at a conference does not participate in or attend the conference, the member conducting the conference may proceed in the absence of the person or without the person's participation.

RULE 9

COMPLAINTS RESOLUTION

Application

9.01 This rule applies to complaints under sections 16, 17, 18 and 19 of the *Act*.

Purpose

9.02 The purpose of a resolution meeting is to resolve some or all of the issues in a complaint.

Requesting resolution meeting

9.03 A party may, at any time, request a resolution meeting.

Request to Registrar

9.04 A request by a party to convene a resolution meeting shall be made to the Registrar.

Member may convene

9.05 Where a member determines that the circumstances require it, he or she may request a resolution meeting.

Notice of resolution meeting

9.06 Upon consent of the parties, the Registrar shall serve on the parties a notice setting out the date, time and place of the resolution meeting.

Member to conduct resolution meeting

9.07 (1) A member shall conduct the resolution meeting.

(2) The member conducting the resolution meeting shall not investigate the merits of the complaint or participate in further deliberations regarding the complaint.

Confidentiality

9.08 All communications at a resolution meeting and material prepared for the purposes of such a meeting are confidential and shall be deemed to be without prejudice and not to be disclosed.

Notice of settlement

9.09 (1) Where a settlement of all or part of a proceeding is reached at a resolution meeting, it shall be reduced to writing (using Form 909) and signed by the member conducting the resolution.

Report of a partial settlement

(2) Where a settlement of only part of a proceeding is reached at a resolution meeting, the member conducting the resolution meeting shall specify the issues that have been resolved.

Notice of failure to settle

(3) Where no settlement can be reached at a resolution meeting, the member conducting the resolution meeting shall record that fact on the Review Agency's file.

RULE 10

ADJOURNMENTS

How to obtain an adjournment

10.01 Where a party wishes to adjourn a pre-scheduled hearing or a hearing that is underway, the party shall bring a motion for an adjournment to the assigned member(s).

Considerations

10.02 In considering whether to grant an adjournment, a member may consider

- (a) prejudice to a party;
- (b) the timing of the request for the adjournment;
- (c) the number of prior requests for an adjournment;
- (d) the number of adjournments already granted;
- (e) prior directions or orders with respect to the scheduling of future hearings or motions;
- (f) the public interest;
- (g) the costs of an adjournment;
- (h) the availability of witnesses;
- (i) the efforts made to avoid the adjournment;
- (j) the requirement for a fair hearing; and
- (k) any other relevant factor.

RULE 11

DEEMED UNDERTAKING

Application

11.01 (1) This rule applies to information or evidence obtained by the parties in the course of an investigation before the Review Agency.

(2) This rule does not apply to information or evidence obtained other than under subrule (1).

Deemed undertaking

(3) All parties and their lawyers are deemed to undertake not to use information or evidence to which this rule applies for any purposes other than those of the investigation in which the evidence was obtained.

Exceptions

(4) Subrule (3) does not prohibit a use to which the person who disclosed the information or evidence consents.

(5) Subrule (3) does not prohibit a prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury).

Direction that undertaking does not apply

11.02 If satisfied that the public interest outweighs any prejudice that would result to a party who disclosed information or evidence, a member may direct that subrule 11.01(3) does not apply to information or evidence, and may impose such terms and give such directions as are just.

RULE 12

EVIDENTIARY BOOK OF DOCUMENTS

Complaints under sections 16, 17 and 19 of the Act

Obligations of the Complainant

12.01 (1) The complainant shall file with the Registrar, no later than sixty (60) days before the hearing or on a date to be fixed by the member, a book of documents containing

- (a) a list of every document that is relevant to the Review Agency's investigation;
- (b) a copy of every document that is relevant to the Review Agency's investigation; and
- (c) for every witness upon whose evidence the complainant intends to rely, a summary of the anticipated evidence of the witness, using Form 1200, and a list of documents or things, if any, to which the witness will refer.

Obligations of the respondent

(2) The respondent shall file with the Registrar, no later than sixty (60) days before the hearing or on a date to be fixed by the member, a book of documents containing

- (a) a list of every document that is relevant to the Review Agency's investigation;
- (b) a copy of every document that is relevant to the Review Agency's investigation; and
- (c) for every witness upon whose evidence the respondent intends to rely, a summary of the anticipated evidence of the witness using Form 1200, and a list of documents or things, if any, to which the witness will refer.

Complaints under section 18 of the Act

Obligations of the Service and the Deputy Head

12.02 (1) The Service and Deputy Head shall file with the Registrar, no later than sixty (60) days before the hearing or on a date to be fixed by the member, a book of documents containing

- (a) a list of every document that is relevant to the Review Agency's investigation;
- (b) a copy of every document which is relevant to the Review Agency's investigation; and

- (c) for every witness upon whose evidence the Service and the Deputy Head intend to rely, a summary of the anticipated evidence of the witness, using Form 1200, and a list of documents or things, if any, to which the witness will refer.

Obligations of the Complainant

- (2) The complainant shall file with the Registrar, not later than sixty (60) days before the hearing or on a date to be fixed by the member, a book of documents containing
 - (a) a list of every document that is relevant to the Review Agency's investigation;
 - (b) a copy of every document that is relevant to the Review Agency's investigation; and
 - (c) for every witness upon whose evidence the complainant intends to rely, a summary of the anticipated evidence of the witness using Form 1200, and a list of documents or things, if any, to which the witness will refer.

Evidence may not be introduced

12.03 Evidence that is not disclosed as required under rules 12.01 and 12.02 may not be introduced as evidence in a hearing, except with leave of the assigned member(s). Should a party intend to disclose further evidence, the party shall notify the Review Agency of the evidence to be disclosed and to provide representations with respect to the reasons for the evidence not having been disclosed under rules 12.01 and 12.02.

RULE 13

HEARING

Notice of Hearing

13.01 (1) When an investigation is ready for a hearing, the Registrar shall serve the parties with a Notice of Hearing.

(2) The Notice of Hearing shall notify the parties of the time and place of the hearing.

(3) The member, in his or her discretion, may notify the parties of the time and place of an *ex parte* hearing, but only the party presenting evidence at that hearing has a right to such notice.

Hearings are investigative

13.02 (1) Hearings before the Review Agency are investigative in nature.

(2) The assigned member(s) may, of his or her own motion, summon, examine, and cross-examine witnesses.

(3) Counsel to the Review Agency may examine and cross-examine witnesses and request that witnesses be summoned and introduce any relevant documents into evidence.

(4) The assigned member(s) may adjourn the hearing at any time to obtain such additional information under sections 10 or 27 of the *Act* as the member deems necessary to the full investigation and consideration of the complaint or other matter before them.

Hearing by one member

13.03 Hearings may be conducted by one or more members of the Review Agency.

Hearing in English or French

13.04 A hearing shall be conducted in the English or French language.

Right to a hearing

13.05 In the course of an investigation of a complaint, the complainant and the respondent shall be given an opportunity to present evidence and to make representations to the Review Agency.

Right to counsel

13.06 A party to a hearing may be heard personally or be represented by counsel.

***Ex parte* hearing**

13.07 (1) A party may request, pursuant to subsection 25(2) of the *Act*, that the hearing or a portion of the hearing proceed in the absence of the other parties, for reasons of national security or other reasons considered valid by the assigned member(s).

(2) Subject to section 27 of the *Act*, it is within the discretion of the assigned member(s) to exclude from the hearing one or more parties during the giving of evidence or the making of representations by another party.

(3) Subject to section 27 of the *Act*, it is within the discretion of the assigned member(s) in balancing the requirements of preventing injury to national security, national defence, or international relations of Canada and providing fairness to the person affected to determine, when a party has been excluded from portions of the hearing, if the facts of the case justify that the nature of the evidence given or representations made by other parties should be disclosed to that party.

(4) If the assigned member(s) decides that the nature of the evidence or the representations made by other parties shall be disclosed to a party, the member shall consult with the Deputy Head concerned before determining the extent of the disclosure to ensure compliance with section 27 of the *Act*.

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

Examination-in-chief

13.08 (1) A party to a hearing may call and examine witnesses.

Cross-examination

(2) Subject to section 27 of the *Act*, it is within the discretion of the assigned member(s) in balancing the requirements of preventing injury to national security, national defence, or international relations of Canada and providing fairness to the person affected to determine if the facts of the case justify that a party be given the right to cross-examine witnesses called by other parties.

Re-examination

(3) Subject to section 27 of the *Act*, it is within the discretion of the assigned member(s) to determine if the facts of the case justify that a party be given the right to re-examine his or her witness.

Prohibition of photography, recording, etc.

13.09 Other than the Review Agency's court reporter, no person shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or oral representations by electronic means or otherwise,

- (a) at a hearing,
- (b) of any person entering or leaving the room in which a hearing is to be or has been convened, or
- (c) of any person in the building in which a hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing.

Interpreter

13.10 A party may make a request in writing to the Review Agency under the *Official Languages Act* for the services of an interpreter at a hearing no later than (30) thirty days before the hearing

Notice of Accommodation Required

13.11 A party shall notify the Registrar as early as possible of any needs of the party or his, her or its witnesses that may require accommodation.

RULE 14

WRITTEN HEARINGS

14.01 (1) If the complainant does not exercise his or her right to an oral hearing, the Registrar on behalf of the assigned member(s) shall notify the parties of the deadlines within which the evidence and written representations of the parties will be received.

(2) Subject to section 50 of the *Act*, it is within the discretion of the assigned member(s) in balancing the requirements of preventing injury to national security, national defence, or international relations of Canada and providing fairness to the person affected to determine if the facts of the case justify that the substance of the evidence and written representations made by one party should be disclosed to one or more of the other parties.

(3) If the assigned member(s) decides that the substance of the evidence and written representations made by one party shall be disclosed to another party, the assigned member shall consult with the Deputy Head concerned before determining the extent of the disclosure to ensure compliance with section 50 of the *Act*.

(4) If the assigned member(s) decides that the substance of the evidence and written representations made by one party shall be disclosed to other parties, the other parties shall have the right to present evidence in reply and to comment on those written representations.

RULE 15

EVIDENCE

Admissible evidence

15.01 Subject to rule 15.02, the assigned member(s) may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

- (a) any oral testimony; and
- (b) any document,

relevant to the nature of the investigation and may act on such evidence, but the assigned member(s) may exclude anything unduly repetitious.

Taking official notice of facts

15.02 The assigned member(s) may

- (a) take notice of facts that may be judicially noticed; and
- (b) take notice of any generally accepted technical facts, information or opinions within the member's specialized knowledge.

Summons

15.03 (1) The assigned member(s) may, by summons, require any person

- (a) to give evidence on oath or affirmation at a hearing; and
- (b) to produce in evidence at a hearing specified documents.

Form of summons

- (2) A summons shall be in Form 1503.

Signing of summons

- (3) A summons may be signed by the Registrar.

Summons may be issued in blank

(4) On the request of a party, the Registrar shall issue to the party a blank summons and the party may complete the summons and insert the name of the witness to be summoned, where the reason for the issuance of the blank summons is justified by the requesting party.

Service of summons

(5) Subject to subrule (6), the party who obtains a summons shall serve, by personal service or registered mail, the summons on the witness to be summoned.

Witness fees

(6) The party who obtains a summons shall pay or tender to the witness to be summoned, at the same time that the party serves the summons on the witness, witness fees and travel expenses in the amount set out in Tariff A of the *Federal Court Rules*.

Witness's right to counsel

(7) A witness called by a party or summoned by the assigned member(s) to give oral or written evidence or to produce documents is entitled to be advised by counsel as to his or her rights but such counsel may take no other part in the hearing.

Idem

(8) A witness and his or her counsel are entitled to be present at the hearing only when that witness is giving evidence.

Protection under section 28 of the Act

(9) The assigned member(s) shall advise each witness, prior to the giving of evidence, of the protection afforded by section 28 of the *Act*.

Member may investigate beyond evidence adduced by parties

15.04 In conducting its investigation, the Review Agency is not limited to the evidence admitted at a hearing.

RULE 16

AMENDMENT OF COMPLAINT

Amendment of complaint

16.01 (1) At any stage of an investigation, on the motion of a party or on a member's own motion, a member may grant leave to amend a complaint where it advances the purposes set out in rule 1.02, unless prejudice would result that could not be compensated for by an adjournment.

(2) Notwithstanding subrule (1), a member may not grant leave to amend a complaint unless the requirements of paragraphs 16(1)(a) or 17(1)(a) of the *Act*, as the case may be, have been complied with.

RULE 17

WITHDRAWAL/ABANDONMENT OF COMPLAINTS

Withdrawal

17.01 A complainant may request the withdrawal of the complaint by serving notice on the Review Agency.

Deemed abandonment

17.02 A complaint shall be deemed abandoned when the Review Agency has been unable to communicate with the complainant despite reasonable attempts to do so.

RULE 18

MOTIONS

Motion Record

18.01 (1) A party may bring a motion at any time by filing a motion record with the Registrar.

Contents of Motion

(2) The moving party shall include (a) a notice of motion the grounds upon which the motion is sought, using Form 1801, (b) a summary of the material facts upon which the moving party relies in the form of an affidavit (Form 1802) which may include the documents and other evidence upon which the moving party relies, (c) written submissions, and (d) authorities, if any.

Responding Party's Obligations

(3) Within (7) seven days of receiving the motion, the responding party may file (a) a summary of the material facts upon which the responding party relies in the form of an affidavit (Form 1802) which may include the documents and other evidence upon which the responding party relies, (b) written submissions, and (c) authorities, if any.

Motions in writing

18.02 Motions are to be in writing, unless otherwise directed by a member.

Motions by members

18.03 This rule shall not apply to motions brought by a member.

Informal procedure

18.04 (1) If these rules provide that a party may seek relief by bringing a motion, a party may begin by informally requesting relief, in writing, to the Registrar.

(2) The member may issue a direction or order resolving a matter for which relief is requested under subrule (1) or direct the party to proceed by way of motion.