



*Protection from reprisal.
Your Right. Our Mission.*

Representing yourself before the Tribunal

Public Servants Disclosure Protection Tribunal

March 2013

The use of the masculine in this document is aimed solely at making it more readable and applies without discrimination to persons of both sexes.

This Guide will help you represent yourself before the Public Servants Disclosure Protection Tribunal (Tribunal) if that is what you have decided to do. It is based on the *Public Servants Disclosure Protection Act*, the *Rules of Procedure* which the Tribunal has adopted, the *Procedural Guide* and the document entitled *How a Reprisal Complaint Comes Before the Tribunal*. You will find all these materials at the Tribunal's Web site, along with the Tribunal's decisions and its Hearing Schedule.

This Guide contains general information only. It has no legal value and does not provide legal advice about how a party appearing before the Tribunal should proceed. If you need legal advice, contact a lawyer or some other representative. If you have questions about the procedure, contact the Registry of the Public Servants Disclosure Protection Tribunal (the Registry) by telephone at 613-943-8310, by fax at 613-943-8325, or by email at the address shown below.

Email: tribunal@psdpt-tpfd.qc.ca

Postal address:

Public Servants Disclosure Protection Tribunal
333 Laurier Avenue West
17th Floor
Ottawa, Ontario K1A 0G7

The Guide is updated regularly. Send us your comments so that we may improve the Guide and thus better meet your needs.

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Introduction

The purpose of this Guide is to provide information on reprisal complaints for those who choose to represent themselves. Appearing without legal counsel may prove to be an arduous task and it may also have an impact on an individual's rights. The Guide will be of assistance to self-represented parties by giving them a better understanding of the stages in the process and enabling them to act appropriately in their dealings with the Public Servants Disclosure Protection Tribunal (the Tribunal).

The Guide does not provide full and complete information on the proceedings before the Tribunal. It aims to explain basic concepts for individuals who are not accustomed to quasi-judicial proceedings.

To obtain more detailed information, you may want to look at the [Public Servants Disclosure Protection Act](#) (the PSDPA), the [Public Servants Disclosure Protection Tribunal Rules of Procedure](#) (the Rules of Procedure), the [Procedural Guide](#) and the document [How a Reprisal Complaint Comes Before the Tribunal](#), which can all be found on the Tribunal's Web site at www.psdpt-tpfd.gc.ca.

General information

What is the Public Servants Disclosure Protection Tribunal?

The Tribunal is an independent quasi-judicial body, which means that it operates almost like a court of justice. Its purpose is to protect public servants from reprisals when they disclose wrongdoing. The Tribunal has been established under the PSDPA and it can order remedies for

a complainant and disciplinary measures against the person who took reprisals. Note that the Tribunal does not itself play any role in the disclosure of wrongdoing.

The Tribunal handles reprisal complaints that have been placed before it by the Public Sector Integrity Commissioner (Commissioner). Only the Commissioner can refer a reprisal complaint to the Tribunal.

Representing yourself

A party may be represented by a lawyer or any other person, or may be self-represented. A party is a person who takes part in a matter that is before the Tribunal and has the right to present evidence and arguments to the Tribunal. The parties before the Tribunal are the Commissioner, the complainant, the employer or former employer of the complainant, the person identified as the one who took the reprisal, the person designated by the Tribunal to make submissions on behalf of the person or entity who would be required to implement any order by the Tribunal, and possibly other “interested persons”. Which parties are involved in a case will depend on the nature of the application made to the Tribunal by the Commissioner: the Tribunal may be asked to determine whether or not a reprisal was taken against the complainant and to order a remedy, or it may be asked to order disciplinary action against the person who took the reprisal.

If you are being represented, or you intend to be represented, you must so inform the Registry of the Public Servants Disclosure Protection Tribunal (the Registry) in writing and provide contact information so that the Registry may convey information about the proceedings to your representative.

Representing yourself is not easy. It is therefore important to assess the possible impact of such a decision. If you do decide to act without a lawyer or other representative, you will need to find the rules that apply, understand them and follow them.

It is suggested that you retain the services of a lawyer or other representative if:

- you have no idea about the applicable rules of law or do not know where to find them;
- you cannot understand the documents you receive from the Tribunal or from the other parties;
- the case seems complex and you need witnesses to testify to the facts that you are bringing forward;
- you need an expert witness, for example a specialist, to demonstrate important facts;
- the dispute has become a personal and emotional matter for you;
- you find it hard to comply with strict rules and deadlines;
- other parties in the case are using the services of a lawyer.

If you decide to represent yourself, you will have to:

- understand the applicable rules of law;
- gather and store the documents you wish to place before the Tribunal member presiding at the hearing;
- attend pre-hearing conferences;
- prepare carefully for the hearing;
- examine and cross-examine witnesses during the hearing;

- argue your point of view based on the evidence and the applicable rules of law;
- understand documents that use legal terminology;
- be at ease discussing and negotiating matters with the other parties or their representatives;
- respond to requests from the other parties or from the Tribunal within the required time limits.

Procedural fairness and natural justice

Any quasi-judicial body such as the Tribunal must act fairly when it makes a decision that affects a person's rights. One aspect of procedural fairness and natural justice is the right to be heard. The right to be heard includes the right to know the position of the other party, the right to present one's evidence and arguments to the decision-maker at an oral hearing or in writing, the right to be represented, the right to an interpreter, the right to cross-examine and the right to be given reasons for a decision.¹

Another aspect of procedural fairness is the right to an impartial hearing. This means the right to be heard by someone who has no direct interest in the matter at hand, such as a monetary or personal interest, or someone who has prejudged the matter; and it means the right to be heard by the Tribunal in an unbiased manner. The Tribunal's institutional independence is crucial. This means that the Tribunal can make decisions without outside influences being brought to bear.

¹ See *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 on the right to be given the reasons for a decision.

Procedural fairness is applied in a flexible manner and varies, depending on the particular case. The more important the decision is for the people involved, the stricter the application of procedural fairness. It is up to the Tribunal to make sure that the principles of natural justice are applied throughout the proceedings and throughout the hearing.

If you are representing yourself, you will need to pay special attention to procedural fairness so as to make full use of your rights. You will need to be able to argue and make sure you obtain the reasons for the Tribunal’s decision.

KEY POINTS TO REMEMBER

The right to be heard	The right to an impartial hearing
<ul style="list-style-type: none"> • right to present evidence and arguments; • right to be represented by a lawyer; • right to obtain the reasons for decision. 	<ul style="list-style-type: none"> • Right to a neutral decision-maker who has no interest in the matter at hand; • Right to an unbiased tribunal; • No outside influence.

Roles of each stakeholder

Role of the lawyer or representative

A lawyer is a legal professional who uses his knowledge to advise and represent his client. A representative advises his client, takes his client’s interests at heart and defends these interests. When appearing before the Tribunal, the lawyer or representative does what is required to properly represent his client. For example, the represented individual does not have to introduce evidence, examine witnesses and cross-examine the opposing party. Also, a lawyer

or representative will assess the merits of the client's case, identifying the issues involved, the chances of success, and the risks.

Role of the lawyer or representative of other parties

If you represent yourself but the other parties have lawyers, you will be facing legal professionals who have been trained to appear in court. They will be acting in the interests of their clients and thus you will not get any help from them. Representatives of the other parties may express their opinions or positions to you. If you decide to resolve the dispute outside the hearing, you may want to try negotiating with them.

Lawyers must at all times act in a polite manner when dealing with you and with the other parties. You too have a duty to be polite.

Role of the Public Sector Integrity Commissioner

Once the Commissioner receives a reprisal complaint from a public servant, he must act independently and observe confidentiality when dealing with the disclosure of wrongdoing and the alleged reprisal. The Commissioner may refuse to rule on a complaint or to initiate an investigation for a number of reasons; for example, if there is bad faith, or if the complaint could better be dealt with through some other mechanism. If the Commissioner determines there may have been reprisals, he can appoint an investigator to investigate. Once the investigation is complete, a report is given to the Commissioner, who then decides whether to pursue the matter.

If the Commissioner decides that the complaint should be sent to the Tribunal, he must advise, in writing, the complainant, the employer, the persons identified as the ones who took the reprisals and anyone else affected by the decision. The parties must also be notified if the Commissioner dismisses a complaint. It is also up to the Commissioner to ensure that the parties' rights to procedural fairness and natural justice are respected during his investigation.

Role of Tribunal members

When the Commissioner files an application to the Tribunal, the matter is placed before one member of the Tribunal, or alternatively before a panel consisting of all three members; a panel of three is used when the matter is complex or very important. A member of the Tribunal presides over the hearing, hears the parties and sees to the proper conduct of the hearing. He hands down decisions, but may also be called upon to take part in an alternative dispute resolution process selected by the parties before the hearing begins. The Tribunal member acts impartially and independently at all times, not favouring any party. Consequently, the parties may not communicate with the member outside the hearing, except during pre-hearing conferences that are set up by the Registry.

The Tribunal members do not act as advisors to any of the parties. If you act alone, they cannot help you present your case during the hearing.

Role of the Registry of the Tribunal

The Registry provides administrative services and support to the Tribunal to enable the Tribunal to fulfill its mandate. He makes arrangements for hearings, and receives applications, motions, documents and orders concerning all matters being brought before the Tribunal.

The Registry staff can help you by:

- explaining how the Tribunal works, its practices and procedures;
- answering basic questions about alternative dispute resolution, such as mediation or a settlement conference;
- providing general information on the progress of your case and explaining each step in the process;
- providing information on interpretation services.

However the Registry staff may not:

- provide you with advice of any kind;
- give you legal advice or recommend a lawyer to represent you;
- tell you which tribunal or court you should take your case to, if there is a choice;
- interpret any part an of act, rule, case law or policy that may apply to your case;
- tell you what words to use in documents;
- give you their view on what the decision will be;
- interpret the Tribunal's orders;
- modify a Tribunal order;
- authorize you to communicate directly with the Chairperson of the Tribunal.

KEY POINTS TO REMEMBER

Representing yourself means:

- complying with the same rules as the lawyers and the other parties;
- preparing and being ready with answers to questions prior to your appearance before the Tribunal;
- respecting the limitations on the role of each participant in the process;
- understanding that the members of the Tribunal and the Registry of the Tribunal are not advisors.

Conduct of Proceedings

The Commissioner's application

The process begins with the Commissioner making an application to the Tribunal, and ends with the Tribunal's final decision or with some other event that brings the process to an end (the parties resolve the dispute among themselves; a party withdraws).

Only the Commissioner may make bring a reprisal complaint before the Tribunal. He can ask the Tribunal to determine whether reprisals were taken against the complainant and order remedies for the complaint or disciplinary action against the person determined to have made the reprisal.

Disclosure of evidence

Before the hearing, the parties must share their evidence with each other and reveal the positions they intend to take before the Tribunal. This process enables the parties to prepare properly and it ensures that there will be no surprises which could lead to a motion for adjournment.

Once the Registrar has served notice of the commencement of time limits, the parties must serve and file a statement of particulars covering the key facts which they will attempt to establish in support of their case, their positions on the legal issues raised by the case, the remedies requested, the disciplinary action sought, the documents they intend to produce, a list of documents which they have or had in their possession that are relevant to the case and the list of witnesses they intend to call (except for expert witnesses).

The Commissioner and the complainant may file a reply to dispute the facts or issues raised by the other party in its statement of particulars.

Any party intending to produce an expert witness at the hearing must file a report prepared by the expert.

Motions

Any party may submit a motion to the Tribunal, that is, a request about an issue which arises before or during the hearing. For example, a party may submit a motion asking for a confidentiality order.

Pre-hearing conference

The goal of a pre-hearing conference is to resolve administrative or procedural matters. It also helps the parties and the Tribunal to prepare for the hearing. Several matters may be considered: admissions of undisputed facts; determination of the number of witnesses in order to avoid repetition of evidence; the order in which the parties will present their evidence and arguments and the time they will have to do so; the use of expert witnesses; the date, length and venue of the hearing; the need for simultaneous interpretation, and the disposition of motions that have been filed or are expected to be filed and need to be considered before the hearing.

Joint Book of Documents

Once the parties have had an opportunity to file their statements of particulars and respond to the statements of the other parties, the Tribunal may request that the parties submit a Joint Book of Documents.

The Joint Book of Documents contains all the documents which the parties intend to produce as evidence along with a list of these documents.

For more information on the procedure to follow regarding service of documents, motions, affidavits, time limits, the conduct of proceedings and the disclosure of evidence, see the [Procedural Guide](#) and the [Rules of Procedure](#).

For more on how a reprisal complaint is brought before the Tribunal, the factors considered in deciding to refer a matter to the Tribunal, the disclosure of evidence, motions, pre-hearing

conferences and the Joint Book of Documents, see [How a Reprisal Complaint Comes Before the Tribunal.](#)

Alternative dispute resolution

A dispute can be resolved by some means other than a Tribunal hearing. It may be useful to consider attempting alternative dispute resolution to come to a settlement. If the parties opt for negotiation, mediation or a settlement conference, the dispute could be resolved without a hearing.

Negotiation

Through negotiation, an agreement can be reached that recognizes the interests of all parties. Negotiation can be undertaken either before or during the hearing. If negotiation leads to the signing of an agreement, the parties need to be sure that all the details and conditions are included in the agreement and that its wording is clear and unambiguous.

Mediation

The Tribunal provides mediation services on a voluntary basis. The discussions will be facilitated by a mediator who guides the parties in exploring their interests and options. Mediators must always be impartial and respectful. During the mediation, they take a creative approach in order to help parties' be open minded. Mediators help parties to communicate in order to increase the quality of the conversation among the parties and avoid personal attacks. While the mediator structures the process, it is up to the parties themselves to find a satisfactory solution. They should be open to suggestions, and should make their interests known.

Mediation may involve one or several meetings, depending on the dispute. You may represent yourself at the meetings or have someone represent you. You can terminate mediation efforts at any time. The content of the discussions remains confidential.

If mediation succeeds, the parties write up an agreement and sign it. You should make certain that the agreement contains all the points you agreed on with the other parties, and that you have properly understood the contents of the agreement.

Settlement conferences

Settlement conferences allow the parties to discuss the strengths and weaknesses of the case with a member of the Tribunal. This is different from mediation. A settlement conference is an evaluative process chaired by a member of the Tribunal. During the conference, the member reviews the positions of the parties and gives his assessment of the strengths and weaknesses of the parties' positions, based on legislation, regulations, policies, case law or other documents that have been brought forward by the parties. If a settlement is reached, the parties make sure that it is feasible and then make it official by writing up and signing an agreement. You should make sure that you have properly understood the contents of the agreement.

Always keep alternative dispute resolution options in mind. A settlement could be best. A decision handed down after a hearing will not necessarily please all the parties, whereas a settlement is more likely to meet everyone's interests. Tribunals are not the only forum where you can make your point of view known.

KEY POINTS TO REMEMBER

Interest-based mediation	Settlement conference
<ul style="list-style-type: none">• Focuses on the process and on solving problems; based on interest-based negotiation;• Takes parties' interests into consideration;• Mediator does not offer his own opinions;• Mediator helps parties find common ground;• Solution suits all parties.	<ul style="list-style-type: none">• Tribunal member assesses parties' chances of success;• Conference focuses on the law;• Parties take the Tribunal member's opinion into consideration;• Earlier decisions are looked at in order to identify possible outcomes.

Preparing for the hearing

Preparation

It takes time and energy to prepare for the hearing. Before the hearing, you need to review your case. It should contain all relevant components for the Tribunal to understand the case you will be making.

1. Re-read your file, checking the facts and making sure they are true.
2. Be sure the documents you will be using have been passed on to the other parties and to the Registry.
3. Organize your documentation so that you are not hunting for a document while you are speaking.

At any time you can decide to draw on the services of a lawyer to identify the points of law to bring forward, how to introduce your evidence, and the rules of evidence with which you must comply.

You will find more information on notices of hearing, summoning of witnesses and applicable rules of law in the [Procedural Guide](#) and the document [How a Reprisal Complaint Comes Before the Tribunal](#).

Notice of hearing

The Registrar notifies each party at least 65 days before the date when the hearing will commence. The notice of hearing includes the date, time and place of the hearing. The date is decided in consultation with the parties. The Tribunal may go ahead with the hearing even in your absence if it believes that you were duly notified.

Postponement

In exceptional cases, a hearing can be postponed if you think you will not be able to appear. You must submit a request in writing, with reasons, and send a copy to all parties.

The Registrar seeks the opinion of the other party about whether the hearing should be postponed. All parties are informed of the decision on postponement.

Language of hearing

The hearing can be held in English or in French. If need be, the Tribunal will provide interpretation services, as long as the Registrar has been informed at least 10 days before the hearing commences.

Special needs

You must inform the Registry in writing, sufficiently far in advance, of your needs or services you will need before or during the hearing (for example: the building in which the hearing will take place should be accessible to people with reduced mobility).

Recording

The hearings are normally recorded. You should nevertheless take notes. While the presiding Tribunal member may take notes on the evidence or arguments, the parties and the public do not have access to these notes.

Oath-taking

Individuals called to testify must swear or solemnly affirm that they will tell the truth for their testimony to be admitted as evidence. One can swear on the Bible, another book or a sacred object, or one can simply promise to tell the truth.

You must tell the Registry in writing, at least 2 weeks in advance, which sacred books witnesses will need at the hearing. Witnesses may also bring their own sacred book or object.

Summoning witnesses

Here are some useful questions in order to identify the witnesses you will need:

- What are the essential facts I need to prove before the Tribunal?
- Who has personal knowledge of these facts and who can explain them, or explain them in part?

- Who wrote or signed the documents I intend to submit in support of my claims?
- Do I need several witnesses to establish the entire sequence of events?
- Who can I expect to see as witnesses for the opposing party, and what will they tell the Tribunal?
- Who could contradict all or part of these witnesses' testimony?

To prepare for the hearing, it's important to meet with your witnesses ahead of time. Their testimony will play a crucial role in the Tribunal's decision. If you prepare properly, you will avoid surprises during the hearing and it will allow you to prepare your evidence accordingly. It's a good idea to write up in advance the questions you will be asking witnesses, so that you don't forget anything during the hearing. You may well decide to forego the testimony of one of your witnesses once you have met them. All the evidence your witnesses give should be in your favour.

You will need to have a subpoena served on anyone you wish to compel to appear as a witness. To do this, send a written request to the Tribunal, with reasons why this person is necessary for the presentation of your case. The Tribunal will then issue a subpoena. It must be delivered at least 10 days before the hearing commences; otherwise the person is not compelled to appear. The costs of serving the subpoena and of having a witness appear are borne by the party who summons the witness. Also, witnesses who receive a subpoena are entitled to a travel allowance that includes a daily amount plus any meal and accommodation costs. This allowance must again be paid by the party who issues the subpoena. The amounts involved are the same as those allowed by the Federal Court.

The subpoena can be served in person, by fax or by a bailiff. You have to be able to prove that the subpoena was in fact served.

Applicable rules of law

The Tribunal member will make his decision according to the rules of law. You may well be certain that the facts and evidence are well founded, but legal principles must also be on your side. You will therefore need to read the laws that apply to your situation; to this end, you should look at the [PSDPA](#) and the [Rules of Procedure](#). You will also benefit from looking at the case law and legal literature.

If you intend to invoke legislation, case law or legal literature, you will have to reproduce the documents in question in a Book of Authorities, with relevant passages highlighted, and submit it 15 days before the hearing.

KEY POINTS TO REMEMBER

Case law	Legal literature
Case law is the body of decisions that have been handed down by tribunals and courts. These decisions constitute precedents. It is useful to submit previous decisions of tribunals and courts that deal with situations similar to yours. Ideally, select decisions which are favourable to you.	This is the body of articles or books by jurists containing legal opinions. These articles or books may help you understand the rules of law and legal principles relevant to your case.

Decisions of tribunals and courts can be obtained free-of-charge at various Web sites, including www.canlii.org.

Legislation and legal literature can also be found at many sites, including www.laws-lois.justice.gc.ca and www.psdpt-tpfd.gc.ca.

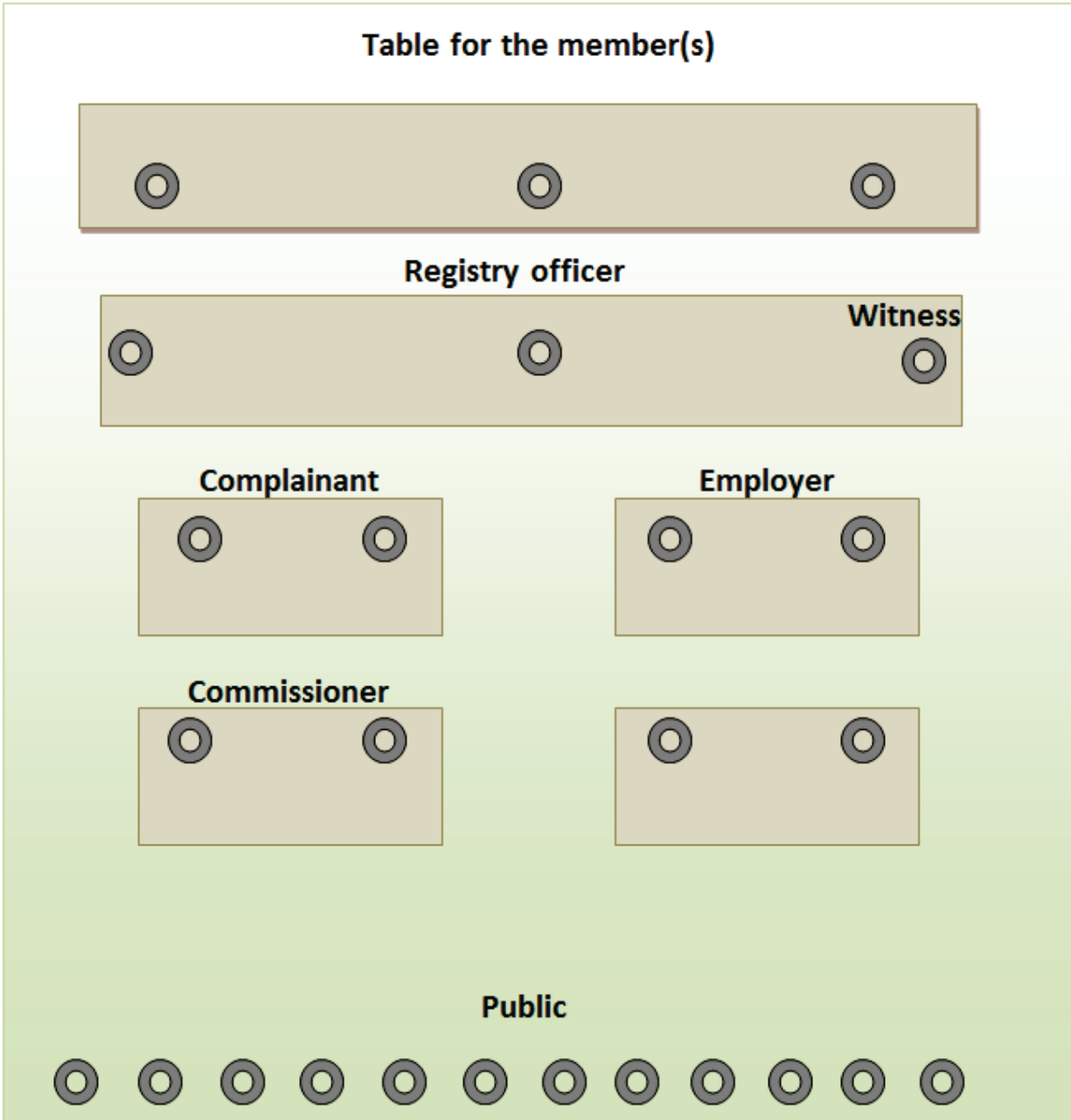
The hearing

A hearing before the Tribunal is similar to a hearing in a court. It is less formal, but the complaint is treated with the same care.

You will find more information on hearings in the [Procedural Guide](#) and the document [How a Reprisal Complaint Comes Before the Tribunal](#).

Arrangement of the hearing room

Participants are positioned in the hearing room on the basis of their role (member, registry officer, Commissioner, employer, witness, public), as shown below:



Member Panel

The Tribunal currently has three members, who are all Federal Court judges.

Conduct during the hearing and behaviour

At the outset of the hearing, the Registry Officer introduces the case. He then calls on the parties to introduce themselves. Each party's representative introduces himself. This is when you will introduce yourself to the Tribunal.

The Tribunal expects participants to behave appropriately. As a sign of respect, when the presiding Tribunal member enters or leaves the hearing room, it is customary (but not compulsory) for everyone to stand.

During the hearing, be respectful, courteous and restrained in your interaction with other participants, specifically the Tribunal member, other parties, witnesses and Registry staff.

Here is a partial list of rules of behaviour you should observe:

- Wear clean, suitable clothes;
- Do not wear a hat, cap or any other head covering unless your religion requires it;
- Put your cell phones, smartphones or pagers on silent or vibrate mode before you enter the hearing room;
- If speaking in French, address all participants (Tribunal members, parties, witnesses, etc.) formally (use "vous", not "tu");
- Listen carefully and do not cut others off unless you are objecting to a question;
- Ask the Tribunal member's permission to speak;
- Do not get into arguments with other parties;
- Do not use cameras or recording devices;

- Do not chew gum and do not bring food or beverages into the hearing room;
- Do not arrive late;
- Bring all the necessary documents with you;
- Do not post information about the case on social media (Facebook, Twitter, etc.) without the Tribunal member's permission.

It's important to remain attentive even when it's not your turn to participate. In order to conduct the hearing effectively, the Tribunal member may ask you questions about facts you have explained and you will need to reply as best you can. Certain details may seem trivial to you but they may be determining factors for the Tribunal member, who is hearing the case for the first time.

It is very likely that the Tribunal member will intervene during the hearing. This is not a sign of bias, or of agreement or disagreement. The member may need to intervene to prevent parties from abusing their right to speak or the time allocated to them. The member may also ask you questions in order to come to a proper understanding of your case.

The hearings are public, which means that the media may be present. The Tribunal can only hold hearings behind closed doors if a party has requested this and shown it to be necessary.

Failure to appear

If someone fails to appear at any hearing session, the Tribunal member may continue the hearing and hand down his decision without further notice to that person.

Opening statements and preliminary questions

Each party has an opportunity to make an opening statement giving an overview of what it intends to show (its theory of the case), how it will proceed to this end, and any remedy it will seek.

You establish your theory of the case using proven facts along with rules and principles of law. The theory of the case is a work method to develop a legal analysis. You develop a theory of the case by determining your position, identifying relevant facts and evidence, anticipating the other side's strategy, assessing the body of evidence as a whole and deciding what you will say in your arguments. Your theory is your compass as you prepare for the various steps described further on in this guide.

The Commissioner normally makes the first opening statement, then the complainant, then the employer and finally other interested persons if any. A party may also decide to make its opening statement when it introduces the evidence for its case.

Presentation of evidence

The parties present their cases in the same order as the opening statements. They can introduce documents or other exhibits and they can examine and cross-examine witnesses.

Introducing of evidence consists in examining witnesses and submitting relevant documents or other exhibits. Documents and other exhibits are usually introduced through a witness, or else with the consent of the other party. A copy of such documents and other exhibits must be

provided to each party, to the witness and to the Tribunal member. To the extent possible, unamended originals should be used.

Each party in turn presents its case by demonstrating a fact or act using methods permitted by law. When the parties call their witnesses, ordinary witnesses speak of facts of which they have personal knowledge, while expert witnesses give opinions within their field of expertise.

The evidence consists of documents and testimony introduced clearly and in chronological order. The evidence must support the claims you are making and the conclusions you draw. Be sure to introduce your evidence in accordance with the applicable rules, so that it will not be rejected.

Testimonies are crucial in determining the Tribunal's final decision. They must therefore be coherent, credible and relevant. Note that like other witnesses, you will have to swear or solemnly affirm that you will tell the truth.

Examination-in-chief

If you do not have a lawyer or other representative, you will have to personally explain those facts of which you have personal knowledge. Then you will call your witnesses. When examining your own witnesses, you may not ask leading questions, that is, questions whose wording suggests the answer "yes" or "no". Your questions must be brief and open-ended, i.e. they do not suggest an answer. If you do suggest an answer, the lawyers representing other parties will object. To avoid objections, begin a question with the word why, who, when, where or how. For example, ask a witness how he became aware that you had been suspended.

If you use an expert witness, such as a doctor or an accountant, to provide his opinion as evidence, you must first submit a report which the expert has signed that includes contact information, qualifications and a summary of the evidence he intends to give. The expert witness is the only witness allowed to give opinions.

Cross-examination

Cross-examination is an opportunity to contradict the evidence submitted during the examination-in-chief of a witness, or to show that the other party's version of events is unfounded. This calls for strategy and careful listening.

The lawyers for the other parties may cross-examine you to obtain clarification once you have completed your own testimony. Later they may cross-examine your witnesses. During cross-examination, leading questions are allowed. For example, cross-examination of the employer could include a question that had been asked of the complainant, i.e. whether he witnessed what he perceived was wrongdoing. You will have an opportunity to cross-examine the other parties' witnesses. When they are testifying, it's important not to make comments or express your feelings about their evidence or your disagreement with it.

You do not have to cross-examine the other parties' witnesses. It's best to ask questions to which you already know the answers. If you don't know the answer to a question, the result may surprise you and may strengthen the other party's evidence.

Redirect examination

After the cross-examination, the Commissioner (the first party to examine witnesses) may examine witnesses again on any matter that came up during cross-examination. You too have the right to re-examine witnesses if you are the complainant.

Exclusion of witnesses

The Tribunal may exclude from the hearing room any witness who has not yet testified. This is to prevent the witness from being influenced by the testimony of other preceding witnesses. A party to the case, or a witness whose presence in the hearing room is essential because they are instructing a representative, cannot be excluded from the hearing but may be called to testify before other witnesses. No one may communicate with excluded witnesses until they have finished giving their evidence.

Production of documents

Every document you wish to introduce before the Tribunal must be produced:

- By the person who made it;
- By someone with personal knowledge of it;
- With the consent of the other parties;
- With the authorization of the Tribunal member (in some cases).

Your witnesses may testify about the content of each of your documents when you introduce it before the Tribunal. You may explain how the documents support your claims.

For a document to be brought before the Tribunal, it must first be served on all parties in accordance with the Tribunal's [Rules of Procedure](#).

Objections

When you raise an objection during the hearing, the Tribunal member will ask the other parties for their positions on your objection and will then give you an opportunity to respond before ruling on the matter. In some cases, the Tribunal member may reserve decision and then rule on your objection in the final decision.

Motions

During the hearing, you may make a motion on a procedural matter, i.e. one that does not bear on the substance of the case. Motions may be presented in writing or orally at the hearing.

When making a motion, you must give the reasons for it. The other parties then state their positions on your reasons, after which you will have an opportunity to respond. For example, you might move that the hearing begin later than planned on the following day.

If you are challenging the jurisdiction of the Tribunal based on the relevant evidence and arguments, the Tribunal member has to be satisfied that he has jurisdiction before deciding the matter. The member may also reserve judgment on the issue of jurisdiction and proceed with the matter.

Arguments

When the time comes for arguments, the parties speak in the same order in which they introduced their evidence. At this stage, the Tribunal member has already been made aware of all the relevant facts that were introduced and hears the parties' arguments.

During arguments, you summarize the facts that have been presented and you explain, with reference to legal principles and rules, why you think the Tribunal member should find in your favour. This is the time to submit case law, legislation and passages from the legal literature that support your claims.

After the Commissioner has given his arguments, you will be able to present yours. If you are the complainant, you will have an opportunity to reply after you and each of the other parties have presented their arguments. This is your chance to highlight any contradictions you have noted in the arguments of the other parties.

It is useful to bring an outline with you, prepared in advance, to which you can refer during the hearing. This will help you remain calm. It will also help you explain your position clearly and concisely and ensure that you do not forget important aspects of the evidence. Bear in mind that during your arguments, you cannot introduce any facts that were not established during the presentation of evidence. As you speak, pay attention to the expressions on the face of the Tribunal member, and if he is taking notes, speak more slowly.

End of hearing

Once the parties have presented their arguments, the hearing ends. If for some reason the hearing cannot continue, the Tribunal may adjourn it and set other days and conditions for it to continue. Because of the problems involved in preparing the schedule of hearings, the Tribunal will only grant adjournments for serious reasons that are beyond the control of parties, not simply because a party wishes it.

KEY POINTS TO REMEMBER

Presentation of evidence	Presentation of arguments
<ul style="list-style-type: none">• Bring forward relevant documents;• Explain your version of the facts;• Examination-in-chief, cross-examination, and reply.	<ul style="list-style-type: none">• Prepare a summary of facts presented;• Bring forward case law and passages from the legal literature;• Explain why the Tribunal should find in your favour;• Relate your allegations to principles of law;• Complainant has right of reply;• Presentation of new facts prohibited except with permission of the Tribunal member.

Decision

After the hearing, the Tribunal member reviews all the documents and testimonies and decides on the significance of the various aspects of the evidence and arguments. A written decision is then handed down as soon as possible. Sometimes the Tribunal member will announce the

decision from the bench immediately after the arguments, but usually he will take the matter under consideration and hand down the decision in writing after the hearing. The decision will contain reasons for the Tribunal's conclusion. It is final and cannot be appealed. The decision will be sent to the parties and posted on the Tribunal's Web site as soon as it is available in both official languages.

After the decision

Enforcement

If it appears that an order of the Tribunal will not be carried out, a party may ask the Commissioner to file a certified copy of the order with the Federal Court. The decision then becomes an order of the Federal Court that can be enforced.

Judicial review

Tribunal decisions cannot be appealed but they can be reviewed by the Federal Court of Appeal. Applying for a judicial review will not necessarily change the decision. You will have to persuade the judge of the Federal Court of Appeal that the Tribunal's decision contains specific errors of law. For example, the Tribunal acted without jurisdiction, or failed to observe a principle of natural justice, or based its decision on an erroneous finding of fact.

Your application for judicial review will be dismissed if you cannot convincingly show that the reasoning behind the decision is erroneous or unreasonable. Note that there are deadlines to be complied with when applying for a judicial review. Do not hesitate to contact the Registry of the Tribunal for information on the formalities to be observed.

Resources

Public Servants Disclosure Protection Tribunal: www.psdpt-tpfd.gc.ca

The Tribunal's Web site contains a wide range of information on the disclosure process as well as a variety of tools, including the *Public Servants Disclosure Protection Act* and the Rules of Procedure.

CANLII: www.canlii.org

This site provides access to the decisions of Canadian courts and tribunals as well as all Canadian laws and regulations.

Department of Justice Canada: www.justice.gc.ca

This site provides access to many federal laws and regulations as well as resources in various areas of law.