



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

Statement on Joint Book of Documents

Public Servants Disclosure Protection Tribunal

July 2012

Statement on Joint Book of Documents

In order to ensure that a hearing proceeds expeditiously, the Tribunal will ordinarily require that the parties prepare a Joint Book of Documents for the purposes of disclosure. This request will generally be made once all the parties have had an opportunity to file their statement of particulars and replies to the other parties' statement of particulars. Parties are encouraged to refer to the suggested template for a Joint Book of Documents, found in Appendix A.

A Joint Book of Documents should contain all the documents that the parties intend to produce as evidence, as well as a list of these documents. In this list, the parties are asked to provide the following:

- title of the document;
- date of the document;
- whether or not the document will be admitted as to authenticity (i.e. the document is what it is represented to be);
- whether or not the document will be admitted as to the truth of its content (i.e. there is no dispute as to the truth of the statements or thoughts expressed in the document itself);
- whether or not the document is subject to a previously-issued confidentiality order;
- whether or not there is an anticipated motion for a confidentiality order.

A distinction needs to be made between disclosure and the Joint Book of Documents for Applications brought under subparagraph 20.4(1)(a) and Applications brought under subparagraph 20.4(1)(b) of the *Public Servants Disclosure Protection Act*, 2006, c. 9, s 201 (the "Act").

Disclosure - Application for an Order of Remedy

Where the Application is brought under subparagraph 20.4(1)(a) of the Act, the parties are the complainant, the (current or former) employer and the Public Sector Integrity Commissioner (the “Commissioner”). In this type of Application, the Commissioner is seeking an order for a remedy in favour of the complainant if the Tribunal determines that a reprisal was taken. The disclosure process and the Joint Book of Documents will normally be completed in one step.

The disclosure process, including the Joint Book of Documents, will address both the merits of the Application and the issue of remedy.

Disclosure - Application for an Order of Remedy and an Order of Disciplinary Action

When the Application is brought under subparagraph 20.4(1)(b) of the Act, the parties are the complainant, the (current or former) employer, the Commissioner and one or more named respondents. In this type of Application, the Commissioner is seeking an order of remedy in favour of the complainant as well as an order of disciplinary action against a named respondent who took a reprisal. Therefore, the disclosure process and the Joint Book of Documents will normally be completed in a two-step process.

The first step of the disclosure process, including the Joint Book of Documents, will address the merits of the Application and the issue of remedy.

The second step of the disclosure process, including an additional Joint Book of Documents, will address disciplinary measures and will only be sought if the Tribunal finds that reprisal was taken against the complainant by a named respondent.

This two-step process is consistent with section 21.5 of the Act.¹ Subsection 21.5(4) of the Act states that the Tribunal may make an order respecting the disciplinary action to be taken against any person who was determined to have taken the reprisal after issuing its reasons.

In addition, Rule 22(2) of *the Public Servants Disclosure Protection Rules of Procedure*, SOR/2011-170 provides time limits for the filing of the statement of particulars relating to disciplinary action. The time limits under Rule 22(2) do not begin until after the Tribunal has determined that reprisal was taken against the complainant, and after the parties are served with reasons.²

¹ Determination — paragraph 20.4(1) (b)

21.5 (1) On application made by the Commissioner for the orders referred to in paragraph 20.4(1) (b) the Tribunal must determine whether the complainant has been subject to a reprisal and whether the person or persons identified by the Commissioner in the application as having taken the alleged reprisal actually took it. If it determines that a reprisal was taken, the Tribunal may, regardless of whether or not it has determined that the reprisal was taken by the person or persons named in the application, make an order granting a remedy to the complainant.

Parties

(2) The parties in respect of proceedings held for the purpose of subsection (1) are the Commissioner and

(a) the complainant;

(b) if the complainant is a public servant, the complainant's employer;

(c) if the complainant is a former public servant, the person or entity who was the complainant's employer at the time the alleged reprisal was taken; and

(d) the person or persons identified in the application as being the person or persons who may have taken the alleged reprisal.

Reasons

(3) The Tribunal must issue written reasons for its decisions under subsection (1) as soon as possible.

Order respecting disciplinary action

(4) After issuing the reasons under subsection (3), the Tribunal may make an order respecting the disciplinary action to be taken against any person who was determined by it to have taken the reprisal.

Parties

(5) The parties in respect of proceedings held for the purpose of subsection (4) are the Commissioner, the person against whom the disciplinary action would be taken and, for the purpose of making submissions regarding disciplinary action on behalf of the person or entity who would be required to implement the order if it were made, any person designated by the Tribunal.

² Rule 22

Disciplinary applications — registrar

22. (1) If the Commissioner makes an application for an order respecting disciplinary action under paragraph 20.4(1)(b) of the Act and the Tribunal determines that a reprisal was taken against the complainant, the registrar must

(a) serve each party referred to in subsection 21.5(5) of the Act with a copy of the reasons issued by the Tribunal under subsection 21.5(3) of the Act; and

(b) after that is completed, provide each party with notice that all parties have been served with the reasons.

Disciplinary applications — time limit

(2) In relation to an application for an order respecting disciplinary action, a party must file its statement of particulars within the following number of days after the date of the registrar's notice under paragraph (1)(b):

(a) in the case of the Commissioner, within 20 days after the date of the notice;

(b) in the case of a person designated by the Tribunal under subsection 21.5(5) of the Act, within 35 days after the date of the notice; and

(c) in the case of the person against whom the disciplinary action would be taken, within 50 days after the date of the notice.

