

Appendix “F”



NIAGARA REGIONAL POLICE SERVICE

RULES GOVERNING
THE PRACTICE AND PROCEDURES
OF DISCIPLINARY TRIBUNALS
HELD PURSUANT TO
PART V OF THE POLICE SERVICES ACT OF ONTARIO

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Rules - General

1. These rules are made pursuant to Section 25.1 of the Statutory Powers and Procedures Act, R.S.O. 1990 which states:

Rules

25.1 (1) *A tribunal may make rules governing the practice and procedure before it.*

Application

(2) *The rules may be of general or particular application.*

Consistency with Acts

(3) *The rules shall be consistent with this Act and with the other Acts to which they relate.*

2. These Rules apply to Disciplinary Hearings held under subsection 66(3) of The Police Services Act of Ontario where the police officer who is the subject of the complaint is a member of the Niagara Regional Police Service.

Definitions

3. In these rules,

a) "Act" means the Police Services Act, R.S.O. 1990, as amended;

"Hearing Officer" means a police officer or former police officer of the rank of Inspector or higher or a judge or former judge who has retired from office designated to act as Hearing Officer in accordance with section 94(1) of the Act.

b) "Party" means:

i. the Police Officer named in a Notice of Hearing,

ii. the Prosecuting Officer,

iii. the Complainant, if the complaint was made by a member of the public.

c) "Prosecuting Officer" means a police officer, legal counsel or agent designated to act as prosecutor in accordance with section 82(1) or 82(2) of the Act.

- d) "Service" means The Niagara Regional Police Service

Procedures Before Hearings

- 4. At the conclusion of an investigation into a complaint made pursuant to Part V of the Act and after a determination has been made that allegations of misconduct have been substantiated and that the alleged misconduct is of a serious nature, or if the matter was not of a serious nature and an informal resolution pursuant to subsection 66(4) was attempted but not achieved, or if the matter was not of a serious nature and the police officer refuses to accept the penalty imposed or action taken by way of Disposition without a Hearing in accordance with subsection 66(10), the Service shall:
 - a) prepare a Notice of Hearing including a Statement of Particulars,
 - b) prepare a complete disclosure package including an itemized list of all documents or materials to be disclosed;
 - c) prepare a document outlining the appropriate suggested range of penalty to be sought in the event of a guilty plea or a finding that misconduct has occurred following a Hearing. The Prosecutor shall not be bound by the suggested range of penalty;
 - d) prepare a Hearing Officer Designation signed by the Chief of Police;
 - e) prepare a Prosecuting Officer Designation signed by the Chief of Police;
 - f) subject to the discretion of the Hearing Officer, fix a date for a Pre-Hearing Conference to be held within three (3) weeks of the service of the Notice of Hearing;
 - g) fix a First Appearance Date for the Police Officer to Appear before a Hearing Officer to answer to the allegations of misconduct. This date shall be at least two (2) weeks after the aforementioned Pre-Hearing Conference;
 - h) notify the Parties of the date, time and location of the Pre-Hearing Conference;

- i) notify the Parties of the date, time and location of the First Appearance.

Disclosure

5. Disclosure shall be provided in accordance with subsection 83(5) of the Police Services Act and with section 5.4 of the Statutory Powers and Procedures Act which states:

5.4(1) *If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,*

- (a) *the exchange of documents;*
- (b) *the oral or written examination of a party;*
- (c) *the exchange of witness statements and reports of expert witnesses;*
- (d) *the provision of particulars;*
- (e) any other form of disclosure. 1994, c. 27, s. 56 (12); 1997, c. 23, s. 13 (11).

Other Acts and regulations

(1.1) *The tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (12).*

Exception, privileged information

(2) *Subsection (1) does not authorize the making of an order requiring disclosure of privileged information. 1994, c. 27, s. 56 (12).*

6. The Service shall provide the police officer with disclosure of all material relevant to the allegations of misconduct including; statements, documents, audio and/or video recordings and physical or documentary evidence. Such disclosure shall:

- a) be provided directly to the police officer unless the police officer directs in writing, that such disclosure may be made to legal counsel or agent.
- b) be provided at the time of Service of the Notice of Hearing or as soon thereafter as is practicable.
- c) be provided on an ongoing basis before or during a Hearing.
- d) include an itemized list which must be signed by the Police officer or his/her Counsel or Agent acknowledging receipt of listed materials

Disclosure to Counsel or Agent

- 7. Where disclosure has been made to a legal counsel or agent, and the Police Officer subsequently retains a different legal counsel or agent, it shall be the responsibility of the Police Officer to ensure that the material disclosed is provided to the newly retained legal counsel or agent.

Pre-Hearing Conferences

- 8. One or more Pre Hearing Conferences may be held in accordance with section 5.3(1) of the Statutory Powers and Procedures Act which states:

5.3 *(1) If the tribunal's rules made under section 25.1 deal with pre-hearing conferences, the tribunal may direct the parties to participate in a pre-hearing conference to consider,*

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

9. The Hearing Officer may direct the parties to attend one Pre-Hearing Conference prior to the First Appearance date and may direct the parties to attend one or more Pre-Hearing Conferences thereafter.
 - a) the Police Officer need not attend the Pre-hearing Conference if represented by Counsel or Agent.
10. Any party may request that the Hearing Officer hold a Pre-Hearing Conference.
11. A Hearing Officer who presides at a Pre-hearing Conference at which the parties attempt to settle the issues shall not be the Hearing Officer who considers the allegations of misconduct at a hearing unless all parties consent.
12. On the consent of all parties, Pre-Hearing Conferences may be held by conference telephone or other electronic technology allowing persons to hear one another.

Notice Of Pre-Hearing Conference

13. The Hearing Officer shall provide written notice of a Pre-hearing Conference to the parties.
14. A notice of Pre-Hearing Conference may be combined with a Notice of Hearing, and shall include,
 - (a) the time, place and purpose of the Pre-Hearing Conference;
 - (b) a statement that the Hearing Officer who presides at the Pre-Hearing Conference may make orders with respect to the conduct of the proceeding which will be binding on all parties.
 - (c) a statement that if the party notified does not attend at the Pre-Hearing Conference, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

Recording at Pre-Hearing Conferences

15. Pre-Hearing Conferences shall not be recorded and shall be held in the absence of the public. Any notes, records or other communications made during a Pre-Hearing Conference shall be without prejudice and kept in confidence except with the consent of both parties or in accordance with law.
16. The Hearing Officer who presides at a Pre-Hearing Conference shall cause to be recorded, in a written form, any disposition and any other binding orders, agreements or undertakings which are made at the Pre-Hearing Conference. A copy of such record shall be provided to each of the parties.

Hearings – General

17. Hearings are held in accordance with the provisions of The Statutory Powers and Procedures Act. Hearings may be Oral Hearings, Electronic Hearings or Written Hearings.
18. “*Oral Hearing*” means a hearing or part of a hearing held by the parties or their representatives attending in person before the Hearing Officer;
19. “*Electronic Hearing*” means a hearing or part of a hearing held by conference telephone or other electronic technology allowing persons to hear one another.
20. “*Written Hearing*” means a hearing or part of a hearing held by the exchange of documents, whether in written form or by electronic means.
21. A party may bring a motion at a hearing, or before a hearing by arrangement with the Hearing Officer.
22. The Hearing Officer may direct that the motion be dealt with in writing or by any other means, and may direct the procedure to be followed.

Motions

23. Unless the Hearing Officer otherwise permits, a party shall deliver a notice of motion at least 14 days before the Hearing Officer deals with any motion regarding,

- (a) the jurisdiction of the Hearing Officer;
- (b) a stay of proceeding;
- (c) constitutional issues, including the Charter of Rights and Freedoms;
- (d) disclosure of particulars, documents or things;
- (e) standing or party status; or
- (f) any matter with significant legal issues; or
- (g) any other preliminary matter.

Notice of Motion

- 24. A notice of motion shall set out the grounds for the motion and the relief requested, and shall be accompanied by any evidence to be relied upon, which may include an affidavit setting out the facts.
- 25. The party filing a notice of motion shall serve all other parties with the notice of motion.
- 26. The Serving party must file an affidavit of service with the Hearing Officer or provide a supporting letter indicating who has been served, what documents have been served and by what method.

Public Access

- 27. In accordance with section 25.1(4) of the Statutory Powers and Procedures Act these rules shall be available to the public.
- 28. In accordance with section 9 of the Statutory Powers and Procedures Act Disciplinary Hearings held under subsection 66(3) of the Police Services Act of Ontario are public hearings:

9. (1) *An oral hearing shall be open to the public except where the tribunal is of the opinion that,*

- (a) *matters involving public security may be disclosed; or*

- (b) *intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the tribunal may hold the hearing in the absence of the public.*

In-Camera Hearings

- 29. A motion to have a Hearing, or portions of a Hearing, held in-camera should be brought at the first Pre-Hearing Conference or at the earliest opportunity.

Posting of Docket

- 30. A docket of all matters to be heard by a Hearing Officer shall be prepared and posted in public view on any day that Disciplinary Hearings are to be held. Such docket shall include:
 - (a) the name of the Police Officer;
 - (b) the Misconduct alleged;
 - (c) the name of the Hearing Officer;
 - (d) the name of the Prosecuting Officer.
- 31. Where a Hearing Officer has made a ruling that the Hearing be held in-camera the docket referred to above shall not contain any information for that matter.

Reading of Misconduct Allegations

- 32. The Notice of Hearing including the Statement of Particulars shall be read to the Police Officer at the First Appearance before a Hearing Officer.

33. The Notice of Hearing including the Statement of Particulars are public documents at the moment they are placed before a Hearing Officer at First Appearance and the allegations are read to the police officer. The Service will provide copies of Notices of Hearing and Statements of Particulars to members of the public or media, upon request, unless a Hearing Officer orders that they not be provided.

Public Notice

34. In order to facilitate public access to disciplinary hearings, First Appearances for officers facing allegations of misconduct shall be held:
- a) on the second Tuesday of each month, or
 - b) on another date, after notice of the date, place and time has been delivered to the public by means of a Media Advisory.

Release of Information to Media

35. The decision to formally release details pertaining to police misconduct or alleged misconduct, prior to a request from a media representative, rests with the Chief of Police in accordance with the Duties of the Chief of Police and Niagara Regional Police Service General Orders.

Time Periods

36. All time periods discussed in these rules are subject to time frames as set out in the Act or as abridged or extended by the Hearing Officer or on the consent of the parties.
37. All time periods discussed in this section are guidelines only and such time periods will only be adhered to when adherence will not interfere with:
- a) the right of the police officer to a fair and impartial consideration of the facts;
 - b) the integrity of the investigation.

38. The Service shall make every effort to commence Misconduct Hearings as soon as possible within three months of the First Appearance Date subject to:
- a) an order to stay proceedings pursuant to 69(16) of *The Act*;
 - b) availability of a Hearing Officer;
 - c) availability of counsel;
 - d) availability of witnesses;
 - e) the personal circumstances of the police officer.

Waiver of Rules

39. Any procedural requirement of these rules may be waived with the consent of the parties or the Hearing Officer.