



NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY (NSIRA)

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) and section 7.1 of the *National Security and Intelligence Review Agency Act*, effective July 12, 2019

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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 (hereinafter referred to as the “Review Agency”) under paragraph 8(1)(d) of the *Act*.
- 1.02 (1) These rules apply to the proceedings commenced under the preceding rules, except in respect of steps already taken under the preceding rules.
- (2) The assigned member(s) may decide to apply the preceding rules should it be deemed necessary to meet procedural fairness.
- 1.03 These rules take effect on July 19, 2021.

Purpose

- 1.04 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 to make representations;
 - (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

- 1.05 (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, referral, 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(3) of the *Act*; and

d) with respect to a section 19 complaint, the Commissioner of the Royal Canadian Mounted Police;

“Director” means the Director of the Canadian Security Intelligence Service;

“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;

“*ex parte*” refers to a type of proceeding held in the absence of the other parties to a complaint;

“holiday” means a Saturday, Sunday or any other day defined as a holiday in subsection 35(1) of the *Interpretation Act*;

“*in camera*” refers to a type of proceeding held in the absence of the public;

“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;

“preceding rules” means the Review Agency’s *Rules of Procedure* as they read on the day before these rules come into force;

“Protected B” refers to the level of security required by the Government of Canada to safeguard sensitive information and applies to information that, if compromised, could cause serious injury to an individual, organization or government;

“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;

(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

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

(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 becomes 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 responding party;
- (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 1.04.

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 1.04.
- (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 a complaint, referral, report or reference made to the Review Agency under paragraph 8(1)(d) of the *Act*, where such personal, business or professional association would create an actual conflict or a reasonable apprehension of bias; 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 taking any further substantive step in addressing the complaint, referral, report or reference before the Review Agency.

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

Manner of filing a complaint

5.02 Unless otherwise authorized by the Review Agency, a complaint under section 16, 17 or 18 of the *Act* shall be filed by sending the appropriate form under rule 5.01 to the Registrar by mail, courier or any other authorized electronic means.

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 from the complainant or their authorized representative:

- (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 from the complainant or their authorized representative:

- (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 from the complainant or their authorized representative:

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

5.06 A complaint referred to the Review Agency pursuant to subsection 45.53(4.1) or 45.67(2.1) of the *Royal Canadian Mounted Police Act* is deemed received when the Review Agency has received notice from the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.

RULE 6

Service of Documents

Manner of service

Complainant

6.01 Unless otherwise directed, any document to be served on a party, by the complainant or their authorized representative, is to be filed with the Registrar, and the Registrar shall thereafter serve the other parties.

Respondent

6.02 Unless the recipient provides written consent to another manner of service, any document required to be served on another party, by the respondent or their representative, may be effected by personal service or registered mail.

6.03 Any document required to be served on another party pursuant to rule 6.02 must also be filed with the Registrar and must include proof of service.

Proof of service

6.04 Service of a document may be proved by an affidavit of service or a written statement signed by the person who effected the service which identifies the document, the identity of the person served and the manner and time of service.

Filing

6.05 Where a document is to be filed with the Registrar, it may be effected by personal service, registered mail or any other electronic means authorized by the Review Agency.

6.06 The date of filing of a document with the Registrar is the date of receipt of the document.

RULE 7

Filing of Complaints

A. 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.

(2) The Registrar shall notify the Director or the Chief, as the case may be, that a complaint has been filed with the Review Agency.

(3) A member shall conduct a preliminary review of the complaint in order to determine if the Review Agency has jurisdiction to investigate the complaint.

(4) The Review Agency may request submissions from the parties on the Review Agency's jurisdiction if necessary to meet the purpose of procedural fairness.

(5) Should the Review Agency request submissions, the respondent, the Director or the Chief, as the case may be, is to provide a Protected B version of any representations on jurisdiction requested by the Review Agency for the complainant.

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

7.03 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 Review Agency shall so notify the complainant and the respondent of its determination.

Member to be assigned

7.04 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

7.05 If it is determined that the Review Agency has jurisdiction to investigate the complaint under section 16 or 17 of the *Act*, the Review Agency shall notify the complainant and the respondent of

- (a) its determination of jurisdiction; and
- (b) the requirements of section 25 of the *Act*.

7.06 The Review Agency may attempt to resolve the complaint informally pursuant to section 23 of the *Act* and in accordance with rule 10.

B. Complaints made pursuant to section 18 of the Act

7.07 (1) Upon receipt of a complaint, the Registrar shall notify the complainant that the complaint is deemed received.

(2) The Registrar shall notify the Deputy Head of the Department and the Director, that a complaint has been filed with the Review Agency.

(3) A member shall conduct a preliminary review of the complaint in order to determine if the Review Agency has jurisdiction to investigate the complaint.

(4) The Review Agency may request submissions from the parties on the Review Agency's jurisdiction if necessary to meet the purpose of procedural fairness.

(5) Should the Review Agency request submissions, the respondents, the Deputy Head of the Department and the Director, are to provide a Protected B version of any representations on jurisdiction requested by the Review Agency for the complainant.

7.08 If the member or, the Review Agency, is of the opinion that, under subsection 18(1) or 18(2) of the *Act*, that the Review Agency does not have jurisdiction to investigate, the Review Agency shall so notify the complainant, the Deputy Head and the Service.

7.09 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

7.10 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

7.11 If a member, or the Review Agency, determines that the Review Agency has jurisdiction to investigate the complaint under section 18 of the *Act*, the Review Agency shall notify the complainant, the Deputy Head and the Service of,

- (a) its determination of jurisdiction; and
- (b) the requirements of section 25 of the *Act*.

Notice under section 24 of the *Act*

7.12 The Review Agency shall, before the commencement of the investigation of a complaint under section 18 of the *Act*, issue the notifications required by section 24 of the *Act*.

Information from Director and Deputy Head

7.13 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.

7.14 The Review Agency may attempt to resolve the complaint informally pursuant to section 23 of the *Act* and in accordance with rule 10.

Statement under section 22 of the *Act* and Representations

7.15 Upon receipt of the information referred to in rule 7.13, the Review Agency shall, after consulting with the Deputy Head and the Director pursuant to paragraphs 52(1)(a) and 52(2)(a) of the *Act*, send the statement of circumstances to the complainant as required under section 22 of the *Act*, and copies will be sent to the Director and the Deputy Head concerned.

C. Complaints referred to the Review Agency pursuant to subsection 45.53(4.1) or 45.67(2.1) of the *Royal Canadian Mounted Police Act*

Notice to investigate

7.16 If a member, or the Review Agency, determines that the Review Agency may investigate the complaint, the Review Agency shall notify the complainant and the respondent of

- (a) its determination to investigate the complaint; and
- (b) the requirements of section 25 of the *Act*.

7.17 The Review Agency may attempt to resolve the complaint informally pursuant to section 23 of the *Act* and in accordance with rule 10.

D. References under paragraph 45(2)(b) of the *Canadian Human Rights Act*

Member to be assigned

7.18 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

7.19 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

7.20 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

7.21 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 subsection 45(6) of the *Canadian Human Rights Act*

7.22 Upon receipt of the information referred to in rule 7.21, the assigned member(s) shall, after consulting with the Deputy Head and the Director pursuant to paragraphs 52(1)(a) and 52(2)(a) 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

7.23 After the report is finalized and after consulting with the Deputy Head and the Director pursuant to paragraphs 52(1)(b) and 52(2)(b) 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*, the Director and the complainant with its report.

E. Reports under subsection 19(2) of *Citizenship Act*

Member to be assigned

7.24 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

7.25 The Review Agency shall notify the complainant, the Minister referred to in subsection 19(2) of the *Citizenship 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

7.26 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 has engaged, is engaging or may engage in an activity described in paragraphs 19(2)(a) or (b) of the *Citizenship Act*.

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

7.27 Upon receipt of the information referred to in rule 7.26, the assigned member(s) shall, after consulting with the Deputy Head and the Director pursuant to paragraphs 52(1)(a) and 52(2)(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

7.28 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 Deputy Head and the Director pursuant to paragraphs 52(1)(b) and 52(2)(b) of the *Act* prior to providing the complainant with a report containing conclusions of the report as required by subsection 19(6) of the *Citizenship Act*.

RULE 8

Investigations

General

8.01 Pursuant to section 7.1 of the *Act*, the Review Agency may determine the procedure to be followed in the exercise of its investigative functions.

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 may convene a case management conference on his or her own motion.

Notice of conference

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

(2) The case management conference may be conducted over the telephone, by way of videoconference or in person.

Attendance at conference

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

Failure to participate or attend

(4) Where a person who is required to participate in or attend the case management 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.

Conduct of the Review Agency's Investigation

8.05 (1) The Review Agency will proceed with its investigation by:

- (a) conducting an investigative interview of the complainant and witnesses identified by the complainant in order determine the nature and the scope of the allegations to be addressed;

- (b) conducting an investigative interview of witnesses of the respondent(s) in order to obtain the most complete and accurate information relating to the allegations; and
- (c) reviewing documentary evidence.

(2) Pursuant to Rule 12, the Review Agency may, in order to fully investigate and consider the complaint, conduct an oral or written hearing on all or some of the issues.

(3) In the course of the investigation, the Review Agency may permit a party to be present, to have access to or to comment on some of the evidence or representations made to the Review Agency by any other person, taking into consideration procedural fairness and efficiency.

(4) Counsel may advise a witness of their rights but otherwise not take part in the investigation.

Prohibition of photography, recording, etc.

8.06 (1) Other than the Review Agency, 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) with respect to any part of the investigative interview or case management conference
- (b) of any person entering or leaving the room in which an investigative interview or conference is to be or has been convened, or
- (c) of any person in the building in which an investigative interview or conference 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 investigative interview or conference.

(2) All participants in the investigative interview or case management conference must affirm before the assigned Member(s) that a photograph, motion picture, audio recording or other record capable of producing visual or oral representations by electronic means or otherwise will not be taken.

Informal Resolution

8.07 An informal resolution of the complaint may be reached, in whole or in part, at any time in the course of the investigation pursuant to the Review Agency's authority under section 23 of the *Act* and rule 10.

Informal Case Management Conference

8.08 The Review Agency may conduct an informal case management conference, in person or by way of videoconference or conference call, for the purpose of advancing the investigation as efficiently as possible.

Admissible evidence and other documents and information

8.09 The assigned member(s) may accept evidence and other information, whether on oath or by affidavit or otherwise in relation to the investigation, whether or not it is given or proven under oath or affirmation or admissible as evidence in a court of law.

Taking official notice of facts

8.10 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

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

- (a) to appear before the Review Agency;
- (b) to give oral or written evidence on oath or affirmation; and
- (c) to produce documents and things that the Review Agency deems requisite to the full investigation and consideration of the complaint.

Form of summons

- (2) A summons shall be in Form 800.

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 Courts Rules*.

Witness's right to counsel

(7) A person 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 investigation.

Idem

(8) A witness and his or her counsel are entitled to be present for the investigation 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

8.12 (1) In conducting its investigation, the allegations as worded by the complainant in the complaint Form is to be liberally and fairly construed.

(2) The Review Agency is not limited to the evidence or other documents and information submitted by the parties, and may request further oral or written information that is deemed necessary for the full investigation and consideration of the complaint.

RULE 9

Documentary evidence

Complaints under sections 16, 17 and 19 of the Act

Obligations of the Complainant

9.01 (1) The complainant shall file with the Registrar, no later than thirty (30) days following receipt of the Review Agency's notification that it has determined its jurisdiction to investigate the complaint, or on a date to be fixed by the member, documents relevant to the complaint, including:

- (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;
- (c) a list of all relevant witnesses involved in the events; and
- (d) a statement of alleged events.

(2) The Review Agency may conduct an investigative interview of the complainant if necessary for the purpose of clarifying the nature of the complainant's allegations and/or to ensure procedural fairness.

Obligations of the respondent

(3) The respondent shall file with the Registrar, no later than sixty (60) days following receipt of the Review Agency's notification that it has determined its jurisdiction to investigate the complaint, or on a date to be fixed by the member, documents relevant to the investigation, including:

- (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) a list of all relevant witnesses, including subject employees involved in the events;
- (d) a statement of events containing a chronology of facts and supporting documents demonstrating those facts.

(4) The Review Agency may narrow the scope of the documents required for its investigation based on considerations of efficiency and procedural fairness.

(5) The Review Agency may notify the respondent of a change in scope of documents required in writing or during an informal case management conference.

Complaints under section 18 of the Act

Obligations of the Service and the Deputy Head

9.02 (1) The Service and Deputy Head shall file with the Registrar, no later than sixty (60) days following receipt of the Review Agency's notification that it has determined its jurisdiction to investigate the complaint, or on a date to be fixed by the member, documents relevant to the investigation, including:

- (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;
- (c) a list of all relevant witnesses, including subject employees involved in the events;
- (d) a statement of events containing a chronology of facts and supporting documents demonstrating those facts.

Obligations of the Complainant

(2) The complainant shall file with the Registrar, no later than thirty (30) days following receipt of the material filed by the Service and the Deputy Head, documents relevant to the complaint, including:

- (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;
- (c) a list of all relevant witnesses involved in the events; and
- (d) written representations in support of the complaint.

Evidence may not be introduced

9.03 Should a party intend to disclose further information or evidence, the party shall notify the Review Agency of the information or evidence to be disclosed and, if the assigned member deems it necessary, shall provide representations with respect to the reasons for the evidence not having been disclosed under rules 9.01 and 9.02.

RULE 10

Informal Resolutions

Application

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

Purpose

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

Requesting resolution meeting

10.03 (1) A party may, at any time, request a resolution meeting.

(2) It is within the discretion of the assigned member(s) to determine if the circumstances of the case justify investigating the complaint despite a party's request to participate in a resolution meeting.

Request to Registrar

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

Member may convene

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

Notice of resolution meeting

10.06 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

10.07 (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

10.08 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 informal resolution

10.09 (1) Where an informal resolution on all or part of a complaint is reached at a resolution meeting, it shall be reduced to writing (using Form 1009) and signed by the parties.

Report of a partial informal resolution

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

Notice of failure to reach information resolution

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

Other forms of agreements and informal resolutions

10.10 (1) Should the parties enter into any other form of agreement that resolves the complaint informally, in whole or in part, the parties shall advise the Review Agency.

(2) The Review Agency shall close the file upon receipt of the complainant's written notice that the complaint is withdrawn.

(3) The complainant may amend the original complaint filed with the Review Agency pursuant to rule 14 in the event of a partial resolution.

RULE 11

Pre-Hearing Conferences

Pre-hearing conference

11.01 This rule applies to investigations of complaints where the assigned member(s) has determined that a hearing is necessary.

11.02 (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 a witness is to be summoned;
 - (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.

(3) The undertakings arising from the pre-hearing conference may not be amended, except with leave of the assigned Member(s).

Notice of conference

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

(2) Any pre-hearing conference may be conducted over the telephone, by way of videoconference or in person.

Attendance at conference

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

Prohibition of photography, recording, etc.

(4) Other than the Review Agency, 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 pre-hearing conference,
- (b) of any person entering or leaving the room in which a pre-hearing conference is to be or has been convened, or
- (c) of any person in the building in which a pre-hearing conference 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 pre-hearing conference.

(5) All participants at a pre-hearing conference must affirm before the assigned Member(s) that a photograph, motion picture, audio recording or other record capable of producing visual or oral representations by electronic means or otherwise will not be taken.

Failure to participate or attend

(6) Where a person who is required to participate in or attend the pre-hearing 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 12

Hearing

General

12.01 (1) Pursuant to rule 8.05, the member may determine that a complaint is to be addressed on the basis of the Review Agency's investigation without a written or oral hearing.

(2) Should the member determine that a hearing will assist in addressing the complaint, in whole or in part, the hearing may be in writing or oral.

(3) A hearing in writing may be held by way of the parties filing affidavits in accordance with the procedural direction established by the assigned Member(s).

(4) An oral hearing may be held by way of videoconference or in person in accordance with the procedural direction established by the assigned Member(s).

A. Oral Hearings

Notice of Oral Hearing

12.02 (1) The assigned member may determine that, in the interests of procedural fairness, an oral hearing is necessary to address the complaint, in whole or in part.

(2) If a hearing is set, the Registrar shall serve the parties with a Notice of Hearing.

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

(4) 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

12.03 (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 matters before them.

Hearing by one member

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

Hearing in English or French

12.05 A hearing shall be conducted in the English or French language as determined by the assigned member guided by procedural fairness, including the official language preferred by the Complainant.

***In camera* hearings**

12.06 In the course of an *in camera* hearing, the complainant and the respondent shall be given an opportunity to present evidence and to make representations to the Review Agency.

12.07 On a date to be fixed by the assigned member and in advance of the hearing, the complainant shall, for every witness upon whose evidence the complainant intends to rely, submit a summary of the anticipated evidence of the witness, using Form 1200, and a list of documents or evidence, if any, to which the witness will refer.

12.08 On a date to be fixed by the assigned member and in advance of the hearing, the respondent shall, for every witness upon whose evidence they intend to rely, submit a summary of the anticipated evidence of the witness, using Form 1200, and a list of documents or evidence, if any, to which the witness will refer.

Right to counsel

12.09 A party to an *in camera* hearing may be heard personally or be represented by counsel.

***In camera/Ex parte* hearings and the Application of Section 25**

12.10 (1) Subject to subrule (2), the assigned member may determine that an *in camera* hearing is necessary and, pursuant to subsection 25(2) of the *Act*, that the hearing or a portion of the hearing proceed *ex parte* for reasons of national security or other reasons considered valid by the assigned member(s).

(2) In exercising their discretion, the assigned member(s) may determine that the facts of the case justify that the nature of the evidence given or representations made by a party should be disclosed to one or more of the other parties, in whole or in part, based on a balancing of the requirements of preventing injury to national security, national defence, or international relations of Canada with procedural fairness.

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

Examination-in-chief

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

Cross-examination

(2) 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) 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.

12.12 (1) Other than the Review Agency, 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.

(2) All participants at a hearing must affirm before the assigned Member(s) that a photograph, motion picture, audio recording or other record capable of producing visual or oral representations by electronic means or otherwise will not be taken.

Interpreter

12.13 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

12.14 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.

Adjournments

12.15 Where a party wishes to adjourn a scheduled hearing or a hearing that is underway, the party shall bring a motion, orally or in writing, for an adjournment to the assigned member(s).

Considerations

12.16 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.

B. Written Hearings

12.17 (1) If an oral hearing is not required by the principles of procedural fairness, the assigned member may conclude a written hearing will assist in addressing the complaint, in whole or in part.

(2) The Registrar, on behalf of the assigned member(s), shall notify the parties of the deadlines within which the evidence, affidavits and written representations of the parties will be filed with the Review Agency.

(3) In exercising their discretion, the assigned member(s) may determine that the facts of the case justify that the nature of the evidence given or representations made by a party should be disclosed to one or more of the other parties, in whole or in part, based on a balancing of the requirements of preventing injury to national security, national defence, or international relations of Canada with procedural fairness.

(4) If the assigned member(s) determines that the substance of the evidence and written representations made by one party shall be disclosed, in whole or in part, to other parties, the other parties may, upon the direction of the assigned member(s), present evidence in reply and to comment on those written representations.

RULE 13

Motions

Motion Record

- 13.01 (1) A party may bring a motion at any time.
- (2) Motions are to be in writing, unless otherwise directed by the assigned member.
- (3) The assigned member may require the moving party to file a motion record with the Registrar.

Contents of Motion

- (4) The moving party shall include in the motion record: (a) a notice of motion the grounds upon which the motion is sought, using Form 1301, (b) a summary of the material facts upon which the moving party relies in the form of an affidavit (Form 1302) 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

- (5) Within the timelines set by the assigned member, 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 1302) which may include the documents and other evidence upon which the responding party relies, (b) written submissions, and (c) authorities, if any.

Motions by members

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

Informal procedure

- 13.03 (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.

RULE 14

Amendment of complaint

Amendment of complaint

14.01 (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 1.04, 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 paragraph 16(1)(a) or 17(1)(a) of the *Act*, as the case may be, have been complied with.

RULE 15

Withdrawal and Abandonment of Complaints

Withdrawal

15.01 A complainant may request the withdrawal of the complaint by making a request to the Review Agency in writing.

Deemed abandonment

15.02 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 16

Deemed Undertaking

Deemed Undertaking

16.01 (1) This rule applies to information or evidence obtained by the parties in the course of an investigation, including any hearings, interviews, case management conferences or pre-hearing conferences that may be held, before the Review Agency.

(2) All parties and their representatives are deemed to undertake not to record by any means or to use any information or evidence obtained in the course of an investigation for any purposes other than for the investigation.

Exceptions

(3) Subrule (2) does not prohibit a use to which the person who disclosed the information or evidence consents.

(4) Subrule (2) does not prohibit prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury).

Direction that undertaking does not apply

16.02 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 16.01(2) does not apply to information or evidence, and may impose such terms and give such directions as are just.

RULE 17

Concerns brought to NSIRA pursuant to Section 15 of the *Security of Information Act*

Application

17.01 (1) This rule applies in instances where a person must comply with subsection 15(5) of the *Security of Information Act* in order to bring to the Review Agency a concern that relates to an alleged offence that has been, is being or is about to be committed by another person in the purported performance of that person's duties and functions of service for, or on behalf of, the Government of Canada.

(2) This rule does not apply if the communication or confirmation of the information related to an alleged offence was necessary to avoid grievous bodily harm or death.

How the concern is brought to the Review Agency

17.02 (1) A concern that is brought to the Review Agency shall be made in writing.

(2) The submission to the Review Agency must include:

- (i) confirmation that the person has brought his or her concern, along with all relevant information, to the attention of the deputy head or the Deputy Attorney General of Canada pursuant to paragraph 15(5)(a) of the *Security of Information Act*;
- (ii) the date that the concern was brought to the deputy head or the Deputy Attorney General of Canada; and
- (iii) all relevant information related to the concern.

Relevant Information to be provided to the Review Agency

17.03 (1) Upon receipt of the concern, the assigned member of the Review Agency must, as soon as feasible,

- (i) review all of the relevant information included in the submission; and
- (ii) request any additional information that is required for the Review Agency to respond.

(2) All requested additional information must be provided to the Review Agency forthwith on a date directed by the assigned member of the Review Agency.

Response by the Review Agency

17.04 (1) The Review Agency must provide a response pursuant to paragraph 15(5)(b) of the *Security of Information Act* as soon as feasible and not later than 30 days following receipt of the concern in writing and the relevant information.

(2) The Review Agency's response shall be in writing and will include:

- (i) the facts and background related to the concern brought to the Review Agency;
- (ii) the Review Agency's analysis of the public interest considerations related to the potential disclosure of the information related to the alleged offence that has been, is being or is about to be committed by another person in the purported performance of that person's duties and functions of service for, or on behalf of, the Government of Canada;
- (iii) where appropriate, provide an opinion with respect to the potential disclosure of the information related to the alleged offence that has been, is being or is about to be committed.

Information Management

17.05 A concern brought to the Review Agency in writing and all relevant information that is submitted shall be accessed only by the assigned member of the Review Agency and other Review Agency employees as expressly delegated by the Chair of the Review Agency.

Disclosures Not Within the Scope of Section 15 of the *Security of Information Act*

17.06 Where a concern brought to the Review Agency is not within the scope of the *Security of Information Act*, the Review Agency may examine the matter pursuant to its review mandate, as established under subsection 8(1) of the *National Security and Intelligence Review Agency Act*, where it concludes the concern meets the following criteria:

- (i) the concern involves wrongdoing as defined in the *Public Servants Disclosure Protection Act*; and
- (ii) the person bringing the concern is an employee of the Canadian Security Intelligence Service or the Communications Security Establishment, or is a member of the Canadian Armed Forces and the concern constitutes an activity relating to national security or intelligence.