



JUDICIAL COUNCIL FOR TERRITORIAL JUDGES
CONSEIL DE LA MAGISTRATURE DES JUGES TERRITORIAUX

Rules of Procedure of the Judicial Council for Territorial Judges

Definitions

1. In these rules,

“Act” means the *Territorial Court Act*, RSNWT 1988 c. T-2

“Clerk” means the Clerk of the Judicial Council engaged under s 31.4(5) of the Act.

“Complaint” means a complaint submitted to the Judicial Council

“Complainant” means the person who has made a complaint against a Territorial Judge which has been referred to the Judicial Council under s 31.4(6)(d) of the Act.

“Judge” means the Territorial Court Judge who is the subject of the complaint.

“Hearing” means the hearing of the complaint directed by the Judicial Council under s 31.4(10)(a) of the Act and includes hearings to determine preliminary matters;

“Council” means the Judicial Council for Territorial Judges continued by s 31(1) of the Act and includes a panel comprised of Council members established to hear a complaint

“Party” includes the Judge and any other person the Council determines to be a party to the hearing.

Jurisdiction

2. These rules are made pursuant to ss 31.1(1) and (2) of the Act .

3. The Council may, in its discretion, dispense with, vary, or supplement these rules, and issue directives and orders respecting the procedures and conduct of a hearing where it deems it necessary, having regard to the circumstances.

4. Where there is a conflict between these rules and a direction on procedure, the direction on procedure prevails.

General Procedure

5. In conducting a hearing the Council shall be bound by principles of fairness and the Rules of Natural Justice, including:
 - (a) The Judge is entitled to reasonable notice of the time and place of the hearing, as well as the issues for determination together with enough information to enable them to participate meaningfully in the hearing;
 - (b) The Judge has the right to be present at the hearing, to be heard, and to be represented by legal counsel of their choice; and
 - (c) The Council members shall act impartially when considering the complaint.
6. The Council shall determine the time, date, and location of hearings.
7. The Council shall notify the Judge and the Complainant of the time, date, and location of the hearing.
8. Two or more complaints may be heard together where the Council determines they concern substantially similar facts or conduct.
9. The Council may set deadlines and provide other direction to any party for filing and serving written legal submissions or other materials and for exchanging witness lists.
10. In addition to providing notice to the Judge and the Complainant, the Council may publish notice of hearing as and where it deems appropriate.
11. The Council may grant an order permitting a witness to give evidence by video conference or by telephone conference.
12. The Council may, in its discretion, hold pre-hearing conferences with the parties to address preliminary procedural or jurisdictional matters.

Public Hearings

13. Hearings shall be conducted in public, except where

- (a) the Council determines there are exceptional circumstances which justify holding all or part of the hearing in private, and
- (b) the Council determines the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private.

14. The Judge, the Complainant or a party may apply by motion in accordance with these Rules for an order directing all or part of hearing be held in private.

Motions

15. Any matter that arises in the course of the Council's consideration of a complaint after it has been referred to a hearing and that requires a decision or order of the Council, must be brought before it by motion.

16. The Council shall determine the time, date and location for the motion to proceed and issue any directions for service.

17. A motion must

- (a) be in legible writing;
- (b) be signed by the person making the motion or their legal counsel;
- (c) contain a clear and concise statement of the facts and the legal authority upon which the applicant relies in support of the motion;
- (d) be delivered to the Clerk of the Council or any other person the Council directs; and
- (e) subject to an order from the Council abridging the time for service, be served on the Judge, the complainant, or other parties, as the case may be, at least five clear days before the date it is scheduled to be heard.

18. A motion may be heard by oral or written submissions.

Notice of Constitutional or Jurisdictional Issues to be Raised

19. Where a party intends to raise a constitutional or jurisdictional issue at the hearing they must do so by motion submitted to the Council and served on all other parties at least 21 days before the date of the hearing.

Application to be a Party

20. Any person may apply for standing to be a party by motion submitted to the Council and served on the Judge, the Complainant and all other parties at least 30 days before the date of the hearing.

21. The Council may grant full or limited standing to any person where it determines it is in the public interest to do so.

Service

22. In this rule, "electronic transmission" means a transmission by an electronic device to an email address.

23. Service of any notice, directive, decision, complaint or other materials may be effected on the Judge by:

- (a) delivering the materials to the Judge's chambers in Yellowknife;
- (b) where the Judge has provided an address for service, mailing the materials to that address by ordinary mail or by registered mail which does not require a signature, in which case it shall be deemed received seven days after it is mailed or on the date it is noted as delivered by Canada Post, as the case may be;
- (c) delivering the materials to the Judge's address for service by courier;
- (d) electronic transmission;
- (e) process server; or
- (f) any combination of the above.

24. Service of any notice, directive, decision, complaint or other materials may be effected on a Complainant or any party by:

- (a) mailing the materials to the address for service provided by the Complainant or party by ordinary mail or by registered mail which does not require a signature, in which case it shall be deemed received seven days after it is mailed or on the date it is noted as delivered by Canada Post, as the case may be;
- (b) delivering the materials by courier;

- (c) electronic transmission;
- (d) process server; or
- (e) any combination of the above.

25. Notwithstanding rules 22 and 23, where the Judge, Complainant or party is represented by a lawyer, service may be effected by sending the materials to that lawyer, by mail, courier, or electronic transmission, or any combination thereof, and such service shall be deemed good and sufficient.

26. Where it appears service on the Judge, the Complainant or any other party using one of the methods above is impractical, the Judge, Complainant or party wishing to serve the materials may seek an order from the Council for an alternative method of service by motion.

27. The Judge, the Complainant or any other party, or their legal counsel as the case may be, shall notify the Council and each other in writing of any change of address for service, including an email address, within five days after the change.

Hearings and Evidence

28. The Council is not bound by the laws of evidence applicable to judicial proceedings.

29. The Council may receive evidence

- (a) by oral testimony;
- (b) by affidavit; or
- (c) in such other manner as it considers appropriate.

30. Any evidence that has been produced by an independent expert for use by a party or the Council is subject to examination by the parties at a hearing.

31. The Council has the same power as vested in a court of record in civil cases, including the power:

- (a) to administer oaths and affirmations;
- (b) to enforce the attendance of any person as a witness;

(c) to compel any person, including the territorial Judge who is the subject of the Complaint, to give evidence; and

(d) to compel any person to produce any document or thing.

32. A party shall notify the Council and all other parties before a hearing of any witnesses expected to attend on behalf of the party.

33. A party may make an opening statement at the beginning of a hearing.

34. Following opening statements, the Council shall receive evidence from the parties and any witnesses.

35. Witnesses must affirm or swear that the evidence they are giving is true.

36. A party or the Council may question a witness of any party.

37. The Council shall inform the witness of their right to object to answer any question under s 5 of the *Canada Evidence Act*,

38. A witness shall be deemed to have objected to answer any question on the ground that the answer may tend to incriminate the witness or may tend to establish the liability of the witness to a civil proceeding at the instance of the Crown or of any person, and no answer given by a witness at a hearing shall be used or be admissible in evidence against them in any trial or other proceedings taking place after the inquiry, other than a prosecution for perjury in the giving of that evidence.

39. Evidence which would not be admissible in a court by reason of a privilege under the law of evidence is not compellable at the hearing.

40. A party may make a closing statement at the end of a hearing.

41. Where the time scheduled for an oral hearing is insufficient, the Council may adjourn the hearing and continue it at a later date.

42. Any person, including a party to the complaint, who is disruptive during a hearing may be removed from the hearing room or disconnected from the video or telephone conference at the instance of the Council.

43. The Council may arrange for security at a hearing.

44. A party shall notify the Council of any electronic equipment or accommodations that may be required at hearing at least 10 days in advance.

45. The Council shall arrange for the hearing to be recorded and no other audio, video or photographic recording will be permitted.

46. Subject to any Council directions or orders respecting confidentiality, a party may obtain a transcript of the hearing.

47. A party ordering a transcript is responsible for associated costs.

48. The Council may take such steps or make such decisions as it considers just and reasonable if a party fails to attend a hearing.

Determining Compensation

49. At a hearing of a complaint, the Council shall address whether compensation should be paid to the Judge or the Complainant for legal services reasonably required for the purposes of the proceedings.

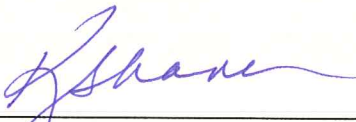
50. Without limiting the foregoing, the Judge and the Complainant may make written or oral submissions and provide evidence about legal costs they have incurred.

51. The Council shall make its recommendations regarding compensation to the Minister in accordance with ss 31.61 and 31.7 of the Act.

Dispositions

52. The Council's decision respecting the complaint and any compensation shall be in writing and provided to the Minister of Justice, the Judge, the Complainant and any parties.

Adopted by the Judicial Council August 5, 2022



Justice Karan M. Shaner,
Designated Chair