



Canadian Artists and Producers
Professional Relations Tribunal

Tribunal canadien des relations
professionnelles artistes-producteurs

GUIDE FOR SELF-REPRESENTED PARTIES

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Canadian Artists and Producers Professional Relations Tribunal

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Guide for self-represented parties

Introduction

This guidebook was written to assist self-represented parties to better prepare for Tribunal hearings. It is not meant to be a substitute for legal advice and does not replace the legislation and regulations of the Tribunal – the *Status of the Artist Act*, the *Professional Category Regulations*, and the *Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations*.

This guide should be read in conjunction with the *Tribunal Procedures*, which are available in hard copy and on the web site. Copies of the *Status of the Artist Act*, regulations, decisions and other information regarding the Tribunal and its proceedings are available in both official languages on the web site at: www.capprt-tcrpap.gc.ca.

General information

Do I need a lawyer?

A lawyer does not need to represent you at any stage of the Tribunal's proceedings. However, due to the complexity of a particular case, you may prefer to be represented by either a lawyer or an agent. If you do choose to be represented by a lawyer or an agent, this person must write to the Tribunal to confirm that they are representing you.

The Tribunal cannot represent you or any other person, provide legal advice, or assist you in hiring a lawyer or an agent. This guide will help you understand what is involved in the process and what you will be expected to do if you decide to represent yourself.

What is the Canadian Artists and Producers Professional Relations Tribunal?

The Tribunal is an independent adjudicative body responsible for administering Part II of the *Status of the Artist Act*. This means that it is similar to a court, but it is a specialized court, with an expertise in labour relations in the cultural sector. Its processes are not as formal as those found in the courts. However, like a court, the Tribunal must always act in a manner that is neutral, fair and efficient.

The Tribunal currently has five members who perform essentially the same role as judges. Panels of three members are assigned to hear and decide cases. Tribunal members come from diverse working backgrounds and they include individuals who are artists, academics, arts administrators and lawyers.

What does the Tribunal do?

It defines sectors that are suitable for collective bargaining and certifies artists' associations to act as bargaining agents for those particular

sectors. It also hears and decides other matters including complaints of unfair labour practices.

How do I know whether I have a matter that should go before the Tribunal?

Although they cannot give you legal advice nor can they assess the merits of any case, the Tribunal Secretariat may assist you in identifying sections of the legislation which may be relevant to your particular circumstance and may give you general information.

Can I get some assistance in processing my case?

You may call the Tribunal Secretariat for information. They can explain to you how to complete any forms, what information is required and the process involved in resolving your concern. The Tribunal's web site also contains information which may be helpful to you. As well, you should refer to the *Tribunal Procedures* for a step-by-step guide on how to file applications and complaints.

What to expect if you file an application or complaint

The Tribunal will contact you

When the Tribunal receives your application or complaint, it will write to you and the other participants involved. It will provide any necessary information to the participants and let them know of the next step in the process.

The Tribunal will assign a file number to the matter. You will need to include this file number on any documents that you send to the Tribunal or to other participants.

What you must provide to the other participants

The Tribunal may ask you and the other participants to exchange documents and information in order to understand the issues and uncover information that is important to the application or complaint.

Documents and information may be exchanged either through fax, mail, in person, or by a process server (someone who specializes in serving legal documents to parties). Further information about what you may be required to provide to other participants can be found in the section "Exchange of Documents and Information" and "Filing of Documents" in the *Tribunal Procedures*.

Other means of resolving or expediting a matter

In some cases, it may be possible to resolve a matter without a hearing and the Tribunal may recommend mediation. If all participants agree to mediation, a neutral third party (a mediator) will be assigned to your case and will help you reach a settlement that is acceptable to all participants. Mediation services are provided free of charge. More information can be found in the *Tribunal Procedures* under "Evidence Gathering and Mediation".

In other instances where mediation may not be appropriate, a preparatory meeting, sometimes called pre-hearing conference, may be an appropriate way to discuss and/or clarify issues that may help the hearing move along in a quicker and more efficient manner. More information about this topic can be found in the *Tribunal Procedures* under “Preparatory Meetings”.

Hearings

Can a participant use either English or French?

You are entitled to use either French, English, or both at the hearing.

Any document provided to the Tribunal or exchanged with other participants can be in English, French or both. You should be aware that the Tribunal does not translate documents that participants have exchanged. All documents prepared by the Tribunal are available in both official languages.

All Tribunal Decisions and Orders are also available in both official languages.

How will I know when the hearing will take place?

The Tribunal will write to you and the other participants in advance and advise you as to the date, time and location of the hearing.

If you are unable to attend the hearing, you need to request in advance an adjournment. You can refer to the “Adjournments and Postponements” section in the *Tribunal Procedures* for additional information on how to request an adjournment.

The Tribunal tries to ensure that all hearing locations are wheel-chair accessible. The location of a hearing is determined by convenience to the participants and public interest. Hearings can take place anywhere in Canada.

See Appendix “A” to view how a typical hearing room is set-up.

What should I be thinking about?

In deciding how to prepare for the hearing, remember that it is always better to be over prepared than under prepared. Understanding the Tribunal’s hearing process can better prepare you for your own hearing.

The Tribunal’s decision-making must be fair and also be seen to be fair.

This means that decisions are made without favouring any one participant (impartiality) and that the reasons behind the decision-making can be understood by all participants (transparency).

For the Tribunal to act in a fair manner, its decisions must be based on information obtained at the hearing. This means that any evidence and arguments that are important in supporting your case must be brought to the attention of the panel at the hearing. Any additional information cannot be given to the panel after the hearing, unless the Tribunal specifically asks you to do so.

You and the other participants can only influence the panel during the hearing. Any private communication between a participant and the Tribunal members, outside the hearing or without the presence of the other participants, is not allowed.

In planning the list of issues you want to bring to the Tribunal's attention, think about if you have any proof relating to those issues to present before the Tribunal. This will help make your arguments stronger.

Finally, think about the other participants' position – their strengths, weaknesses and resources. This will give you a better idea how to prepare for your own testimony.

What about witnesses?

Panel members often have a basic understanding of the facts and the participants involved. Witnesses have first-hand knowledge of them. They can help the Tribunal to better understand the facts. When witnesses give testimony, a participant's position will be strengthened by this first-hand knowledge.

When you look for potential witnesses to support your position, remember that the Tribunal looks for credibility in witnesses. Witnesses should be believable and trustworthy. They can be professionals, specialists in their field, or any individual having specific knowledge of the facts.

The Tribunal has the power to ensure that a witness attends its hearings. If you believe that a witness, who is crucial to your case, will not attend the hearing, you may ask the Tribunal to issue a "Summons to Witness". See the *Tribunal Procedures* at the section entitled "Witnesses". This will ensure that the witness will attend the hearing.

In certain situations, the Tribunal may accept a witness' "affidavit" testimony instead of oral testimony. An affidavit is a written statement of the facts confirmed by a commissioner of oaths.

If you are thinking of using affidavit testimony, you should contact the registrar to obtain directives. The Tribunal may give less weight to an affidavit than oral testimony. Because the witness is not present to answer questions, the panel and the other participants are unable to ask questions to verify the information. A checklist for preparing an affidavit can be found in the *Tribunal Procedures* in the section entitled "Affidavits".

After choosing your witnesses, it is important that you meet with them before the hearing. Make sure they understand the reason for their attendance – to give testimony on matters of which they have personal knowledge, under oath or affirmation, which will support your position. You should also prepare a list of questions which you should review with your witnesses prior to the hearing.

What if I have documents?

In addition to your witnesses, you may have documents that you would like to bring to the Tribunal's attention. All documents whether provided before or during the hearing must be provided to the panel members as well as all other participants. You must provide the Tribunal with six copies of any document you wish to bring to their attention. See the "Filing of Documents" section in the *Tribunal Procedures* and the section entitled "How do I file exhibits?" included in this guide.

Presenting your case

You and the other participants will receive the "Order of Proceedings" a few weeks before the hearing. This document tells you how the hearing will unfold. It also sets out approximate time lines.

You should be aware that any participant may ask the Tribunal to "exclude the witnesses" from the hearing room. This is to ensure that witnesses do not tailor their testimony after having heard others testify. They may remain in the hearing room once they have finished testifying.

Opening statements and preliminary matters

The presiding member of the panel will make an opening statement to explain why the participants are here and to set down the "ground rules" for the hearing. He or she will ask those in attendance if they have any preliminary matters to bring to the panel's attention. This is your opportunity to, for example, request any changes to the Order of

Proceedings, get clarification on a particular issue, request an adjournment, ask for the exclusion of witnesses, etc.

Each participant will then be asked to make an opening statement. The opening statement paints the “big picture” of what you want to say. You should outline the issues in your opening statement and focus on the outcome that you seek. Because the opening statement is a broad and general statement, it is not presented with a lot of detail. However, you should provide a brief summary of the evidence you will be presenting. This will include the name of witnesses and the how their testimony will be used to support your case.

In ending your opening statement, you may wish to make a link between the opening statement and the closing argument (explained in a later section). A good way of doing this is to state what you will be asking the Tribunal to do, and on the basis of what arguments. This will help you and the panel to better understand what you are trying to prove.

Examination-in-chief

After opening statements, the applicant or the complainant will be asked to call its first witness. If you are the respondent or an intervenor in the matter, you will be presenting your case after the applicant or the complainant. The witness will be asked to solemnly affirm that they will tell the truth.

If you are representing yourself, you are allowed to be your own witness in addition to any other witnesses you may have. Since there will be no one to ask you questions, it is up to you to recount your story in the most straightforward and logical way. The witness’ role is to provide facts and information to the Tribunal.

A witness’ role is not to advocate a cause, nor is it to tell the Tribunal how the case should be decided. It is up to the Tribunal make its own determination after listening to all the evidence and arguments presented.

Finally, if you are well prepared for your examination, you should be able to anticipate any questions that might be unfavourable to you, asked to your witness by another participant during “cross-examination” (explained below). Good preparation may allow you to bring up unfavourable issues in a more favourable light during your own examination.

For additional information on how to conduct an examination-in -chief, please refer to the “Questioning of witnesses” section of the guide.

Cross-examination Once the examination-in-chief is completed, the other participants are entitled to question the witness.

The purpose of the questioning is to test the credibility of the witness, to bring out any weak or contradictory evidence in the testimony or to get clarification on a particular point. In some cases, a cross-examination may be more difficult because the witness does not want to reveal or admit certain things. In this situation, certain lawyers may adopt a more aggressive approach in their questioning. This, however, is allowed during cross-examination.

You will also be given the opportunity to cross-examine the other participants' witnesses. After the cross-examination is completed, the panel may have some questions for the witness.

For additional information about the types of questions that may be asked during cross-examinations, please refer to the "Questioning of witnesses" section of the guide.

Re-examination The purpose of re-examination is to address issues raised during the cross-examination testimony. Re-examination can also be used to explain or clear up any confusion associated with the cross-examination.

You can re-examine any of your witnesses immediately after cross-examination. To ensure that witnesses give independent testimony, you are not allowed to discuss beforehand with the witness, any of the proposed re-examination evidence.

In re-examining your witness, you must remember to only ask questions that relate to the material raised in the cross-examination. If you believe that the witness made a mistake during the cross-examination, you are allowed to correct the mistake, i.e. asking if the witness understood the question.

The difficulty with minimizing the damage, or clearing any confusion from the cross-examination, is that the witness may repeat the damaging testimony or give even more damaging evidence to clarify any previous testimony.

The re-examination is not an opportunity to introduce new evidence or redo a poor examination-in-chief. If you attempt to do this, one of the other participants will likely object.

Reply evidence After the other participants have finished presenting their case, the applicant or complainant may find it necessary to call new witnesses to

clarify some misconceptions, to contradict or qualify new facts or issues raised by the other participants.

When presenting reply or rebuttal evidence, you should follow the same process described above starting with the examination-in-chief of the witness.

Final argument The closing or final argument is your opportunity to summarize the most relevant evidence presented before the Tribunal. No additional evidence may be presented during the closing argument. It is best to prepare an outline of what you want to say during your closing argument. It is also your chance to present the arguments in favour of your case and point out the weaknesses in the other side's case. You can also provide the Tribunal with case law that supports your position.

During this time, you should explain any evidence that may be confusing. You should leave the panel with a simple solution. Based on your evidence, you need to tell the Tribunal what you want them to do, how it should be done, and why.

The applicant or complainant will be the first and last person to speak because that person is entitled to a right of reply.

This ensures that the participant who has the burden of proof has the last word in the matter and is thus able to rebut points made in argument by the other participants.

Technical and procedural issues

What are exhibits? Exhibits are documents, pictures, maps, diagrams, charts, samples, etc. or any other thing you want to bring to the panel's attention. In the case of Tribunal proceedings, exhibits generally consist of documentary evidence.

How do I file an exhibit? If you wish to make use of a document as evidence, *i.e.* file an exhibit at an oral hearing, you should provide a copy to the witness and all other participants and remit six copies to the registrar.

The presiding member will ask whether there are any objections to the evidence being made an exhibit. If someone objects to the filing of the exhibit, that person will have to explain why they object to its production. You will be asked to respond and the person making the objection will be asked to reply. The panel will then decide whether or not the document should be admitted.

Participants may object to the filing of a document because they believe it is not relevant. It will be up to you to explain why the document is relevant. In other instances, a participant may object to the filing on the grounds that the document is a forgery or has been altered. Having a copy of the original document with you is always useful.

If you attempt to file a long report that the other participants have not had an opportunity to review in advance, they may object to the filing of that exhibit especially if you intend to rely heavily on it. In the case of long and complex documents, it is preferable to provide copies to the Tribunal and the other participants well in advance of the hearing.

Also, it may be necessary to lay the “proper foundation” before a document can be marked as an exhibit. For example, if your witness is the person who prepared the document, he or she should be asked to identify it. Another example would be a diagram or a photograph that you wish to introduce into evidence. Laying the proper foundation would mean that someone, hopefully the person who created it, would establish that he or she took photo X on X date or that he or she prepared the diagram or the chart etc. Once this is done, the exhibit can be marked.

If there are no objections, the registrar will describe the exhibit, give it a number and distribute copies to the panel members. You should write the number on your copy and refer to it when talking about that particular piece of evidence. This is important because the panel may be dealing with a large number of exhibits and it will be easier for them if you refer them to the number of a particular exhibit.

How do I deal with objections?

A participant may have a number of reasons for making an objection. If there is something you wish to object to, you should let the presiding member know you have an objection. You should then state your objection and the reason why you are objecting. At that point, the presiding member will seek the views of the other participants and you will be given an opportunity to reply to the comments of the other participants. The panel will then make a ruling on your objection and announce its decision.

If someone objects to something you have done, the presiding member will seek your views on the objection and let the person who objected have the last word. The panel will then make its ruling and announce its decision.

What is a motion and how do I deal with it?

For detailed information about motions, please refer to the “Bringing a Motion” section in the *Tribunal Procedures*. Essentially, a motion is

a request to the Tribunal to make a decision on a matter related to the proceeding but which does not directly deal with the substance of the case. Motions may be made in writing or they may be made orally in the course of the hearing.

An example of a motion would be a request to begin the hearing at a later time than the one that appears on the Order of Proceedings. If you wanted to make such a request, you would let the presiding member know you have a motion to make. You would explain the reasons for the request. The other participants would be given the opportunity to comment on your request and you would be given an opportunity to reply to their comments. The panel would then consider your request, make a decision and announce that the motion was granted or rejected. This is how oral motions are treated in the course of a hearing.

Some motions may be made in writing prior to the hearing. Participants are given the opportunity to comment on the motion and the participant who brought the motion is given the opportunity to reply to the comments of the other participants before the Tribunal makes a decision.

There are many types of motions and it would be impossible in the context of this guide to address all the different possibilities.

Questioning of witnesses

When doing an examination-in-chief (discussed above), your questions should be short and open-ended in order to elicit “the story” from your witness. You cannot phrase your questions in such a way that you are “putting words in the witness’ mouth”. That is called a leading question and it is not allowed in examination-in-chief. A leading question occurs when you lead the witness to an answer. It is important not to suggest to your witness an answer, or ask your witness to agree or disagree with a statement or document, as these would be leading questions.

Here is an example of a leading question:

Q: Can you explain to the panel how you were constantly asked to change the rehearsal schedules even though you had explained that this would cause major upset within the cast?

How to elicit the same information without leading the witness:

Q: Can you explain to the panel what happened with the rehearsal schedules?

If you do not get all the information you need, ask one or more follow-up questions:

Q: If I understand you correctly, there had been a lot of changes requested. What, if any, impact did that have?

There are exceptions to this rule. You may ask leading questions at the beginning of your examination when you are establishing a witness' identity, profession, work experience, etc. and when cross-examining a witness.

During cross-examinations, most of your questions should be leading because you want to control what the witness says. Lawyers know that you should never ask a question if you do not know what the answer will be. Here are some examples of questions that are used when cross-examining a witness:

Q: It would be accurate to say that you requested many changes?

Q: It would also be accurate to say that you were told several times by different individuals that these changes would upset many people?

Q: Many people did come to you to complain, isn't that correct?

Questioning that may elicit objections from other participants:

- asking questions pertaining to matters that are irrelevant;
- asking the witness to speculate as to the answer (e.g. "If this were to occur, what do you think would happen?");
- repeatedly asking the witness a question which has already been answered.

*Evidence vs
Argument*

When acting as one's own counsel, it may be tempting to "fill in the blanks" or to comment on a witness' testimony as you question that person especially when you have intimate knowledge of the matter. A lawyer, or a person acting in lieu of, cannot testify in the place of their witness. It is inappropriate to do so and the other participants will likely object to your "giving evidence". What you must do is ask additional questions to elicit the testimony you require.

Another common pitfall for self-represented parties is to argue their case as they are testifying or when cross-examining the other participants' witnesses.

The following excerpts demonstrate how evidence and argument can be mixed up (the italicised text is considered argument):

- I had to make several phone calls to them but I finally received the documents two weeks later. *As you are aware, that's 10 days after the deadline stated in the Tribunal Procedures and clearly demonstrates that they were acting in bad faith.*

- We exchanged several proposals but were unable to come to an understanding as to the wording. We agreed we would meet again tomorrow. The next day they sent another fellow and he had no idea what he was supposed to do. I had to go over everything with him. It became clear to me that they were stalling in the hope that I would withdraw my complaint. *This is yet another example of the methods of intimidation used over and over again with artists they engaged and I strongly believe that the Tribunal should find that my position is the correct one.*

Conclusion

The key to success when representing oneself is preparation and understanding the process. Reading previous decisions rendered by the Tribunal related to matters that may be similar to yours may also help you to understand the Tribunal's thinking and the kind of evidence which may be required to prove your case.

APPENDIX "A"

LAYOUT OF A TYPICAL HEARING ROOM



