



## Pre-hearing Exchange of Document Lists

### Purpose of this Direction

Unless otherwise directed by a panel of the Federal Public Sector Labour Relations and Employment Board (“the Board” or FPSLREB), the pre-hearing disclosure of lists of documents necessary to enable a party to participate in an adjudication process is required.

The purpose of the pre-hearing exchange of Document Lists is to require the parties to share with the other parties all arguably relevant documents on the matter before them. That exchange early in the proceedings means that the parties will not be taken by surprise, which will reduce potential adjournment requests and will expedite Board proceedings.

### Application of the Direction

1. This direction applies to all FPSLREB files, including any within the jurisdiction of its predecessors (the Public Service Labour Relations and Employment Board (PSLREB), the Public Service Labour Relations Board (PSRLB), and the Public Service Staff Relations Board (PSSRB)), except for files relating to staffing complaints pursuant to the *Public Service Employment Act*.
2. Board files include any grievance, complaint, or application filed with the FPSLREB, the PSLREB, the PSRLB, or the PSSRB.
3. “Document” in this direction includes any paper document and digital-form data, including emails, memos, letters, notes, photographs, sound recordings, videotapes, films, charts, graphs, maps, plans, surveys, and books of account.
4. “Day” means a calendar day.

### Pre-hearing Exchange of Document Lists

5. The Board issues a schedule for each month of the year setting out all hearings in a particular month. The schedule for each month is typically sent between four and six months in advance and lists the cases scheduled to be heard. Some files are scheduled on short notice and do not fall within the Board’s normal scheduling process. For those files, the Board shall deal with the pre-hearing exchange of Document Lists on a case-by-case basis.
6. Sixty days before the first scheduled hearing date, as noted in the schedule, every party shall deliver to every other party a Document List disclosing, to the full extent of the party’s knowledge, information, and belief, all documents arguably relevant to the matter(s) at issue set out in the Board file scheduled to be heard.
7. If a party fails to produce the required Document List, the other party may apply to the Board for an order directing that the non-complying party produce one within the time set by the Board.

8. The Document List shall contain the following, in separate schedules:
- a. all documents arguably relevant to any matter at issue in the party's possession, control, or power, including, but not limited to, all documents upon which the party intends to rely;
  - b. all documents arguably relevant to any matter at issue that were formerly in the party's possession, control, or power, together with a statement of when and how the party lost possession or control of or power over them and their present location, if known;
  - c. all documents arguably relevant to any matter at issue that the party knows exist and of which the party has never had possession or control but for which it has in its power the ability to obtain possession or control or of copies of them, as well as a statement of their present location, if known; and
  - d. all documents with
    - i) any claim that they are confidential or contain confidential information, and a statement of the grounds for the confidentiality claim, and
    - ii) any claim that they are privileged, and a statement of the grounds for each claim of privilege,
    - iii) all documents subject to a potential statutory objection.

9. All documents set out in the Document List shall be described with sufficient information to enable them to be properly identified. An email should be identified as such and should state the date and time it was sent, the sender and the recipients, the subject, and a brief statement as to its content, including any attachments.

#### Supplementary Document List

10. A party that has provided a Document List and that comes into the possession or control of, or obtains power over, an arguably relevant document or that becomes aware that the Document List is inaccurate or deficient shall as soon as possible provide a supplementary Document List adding the document or correcting the inaccuracy or deficiency.

#### Request to Produce Documents and Request for an Order to Produce Documents

11. A party may deliver to any other party a "Request to Produce Documents" with respect to any document identified on that other party's Document List if it is identified as being in that other party's possession, power, or control. A party who has received such a request shall, within seven days, produce the documents requested to the requesting party, failing which the requesting party may contact the Board to facilitate that production.

12. If a requested document is not in the possession, power, or control of the party that included the document in its Document List, the parties shall try to resolve the issue between them.

13. The parties may contact the Board to request an “Order to Produce Documents” should they be unable to obtain a document through a Request to Produce Documents.

#### Delivery of Document List and Request to Produce Documents

14. The Document List and a Request to Produce Documents shall be delivered to the addresses of the parties as the Board set out on the contact list. If a party is represented by legal counsel, the delivery to a party shall be considered effective by making the delivery to the party’s legal counsel, or if that party is represented by a bargaining agent representative, making the delivery to the party’s bargaining agent representative shall be considered effective.

#### Failure to Comply

15. If a party fails to comply with this direction by failing to provide the Document List within the set time frames or fails to produce a document, the Board or adjudicator assigned to hear the matter may, among other statutory authorities, exercise its or his or her discretion by making determinations at the hearing. For example, it or he or she may refuse to accept the document into evidence or may draw adverse inferences.

16. If a party fails to comply with this direction by failing to request the production of documents, and during the course of a hearing, a document otherwise disclosed is entered into evidence, an adjournment or a postponement request may be refused.

#### Implementation

17. This practice direction comes into force effective Tuesday September 4, 2018, for all schedules issued after September 1, 2018. Please consult the website for information on the schedule.