

## New Rules of Practice for Copyright Board of Canada Proceedings Are Now in Effect

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On March 1, 2023, the Copyright Board of Canada published the final version of its Rules of Practice and Procedure in the Canada Gazette.<sup>1</sup> The Rules are now in effect as Regulation SOR/2023-24 under the *Copyright Act*, pursuant to Part VIII.

Although the Copyright Board was established in 1989, it has never adopted formal rules of procedure until now. Instead, it has generally issued an individual Directive on Procedure for each tariff proceeding. In adopting the new Rules, the Board aims to “increase consistency between processes and predictability for parties by providing clear and standardized rules for tariff and arbitration proceedings.”<sup>2</sup> The Rules seek to provide parties and the public with reliable directions on how to participate in Board proceedings and an understanding of what to expect when they participate.

The Rules contain new or clarified requirements for Board proceedings in the following key areas:

- **Filing of Proposed Tariffs:** Part 3 of the Rules outlines the information that parties must submit to the Board when filing a proposed tariff or related objection. Among other things, collective societies are required to provide a Notice of Grounds within seven days of filing a tariff proposal, describing the uses covered under the proposed tariff and explaining the basis for the proposed royalty rate. Parties who object to the proposed tariff must provide a Notice of Grounds for Objection, outlining the nature or reasons for their objections. Both requirements are broadly consistent with practice notices issued by the Board in August 2022 and amended in March 2023.<sup>3</sup>
- **Conduct of Proceedings:** Part 4 of the Rules outlines and standardizes how proceedings are to be conducted. As part of this standardization, parties are now required to file a Joint Statement of Issues within 90 days of starting a proceeding or in response to an order by the Board. This Joint Statement of Issues outlines the specific issues that the parties have agreed should be considered by the Board during the proceedings. If the parties cannot agree on the issues, they are each required to file individual Statements of Issue.
- **Case Management:** Part 4 of the Rules also clarifies the Board’s case management authority in accordance with section 66.504 of the *Copyright Act*. The Rules outline matters that may be considered during case management conferences, including the clarification, simplification, and elimination of issues to be considered or any other issues to be resolved. They also allow case managers to issue binding orders on procedure where necessary.
- **Evidence:** Part 5 of the Rules clarifies various practices related to the use of evidence in

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proceedings, including matters related to the confidentiality of documents and standards for the participation of expert witnesses and the submission of expert reports. The Rules also formalize the Board's ability to supplement the record of a proceeding: they confirm the Board's power to subpoena witnesses or documents and would even allow the Board to engage independent experts of its own to address matters at issue in a proceeding.

- **Parties to Proceedings:** Part 6 of the Rules allows any person with an interest in a proceeding to make a request to the Board to participate in the proceeding as an intervener. When deciding whether to grant a proposed intervenor's request, the Board must consider whether the proposed intervenor has a sufficient interest in the proceeding, whether the proposed intervenor will present information or submissions that are useful and different, whether the intervention would prejudice any party to the proceeding or interfere with the proceeding's fair and expeditious conduct, and any other factor that the Board considers appropriate.

Prior to publishing the final version of the Rules, the Board published a set of proposed rules and invited comments from stakeholders, including collective management societies, rightsholders, and representatives of creators and users of copyright. The consultation period, which ended in July 2022, did not result in any significant differences between the proposed and final versions of the Rules. It did, however, lead to some clarified language on various matters including the required contents of an expert witness report, filing requirements in oral hearings, service of documents by email, and the circumstances in which the Board may vary, supplement, or dispense with compliance with the Rules.

On the same day that the final version of the Rules was published, the Board announced that it had updated many of its Practice Notices to bring them in line with the Rules and assist parties in understanding the new requirements set out in the Rules. The Board also issued a new Practice Notice on Submitting Economic Evidence, replacing a previous guidance document.<sup>4</sup>

The Cassels Intellectual Property team has extensive experience representing parties in Copyright Board proceedings. If you have any questions about the new Rules, or about Copyright Board proceedings generally, please contact the authors of this article or any member of our Intellectual Property team.

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<sup>1</sup> Copyright Board Rules of Practice and Procedure, SOR/2023-24, Canada Gazette, Part II, Volume 157, Number 5.

<sup>2</sup> Copyright Board of Canada, "Rules of Practice and Procedure."

<sup>3</sup> Copyright Board of Canada, *Practice Notice on Filing of Grounds for Proposed Tariff*, PN 2022-06, and *Practice Notice on Filing of Grounds for Objections*, PN 2022-07 (both effective August 5, 2022 and amended March 1, 2023).

<sup>4</sup> Copyright Board of Canada, *Practice Notice on Submitting Economic Evidence*, PN 2023-009 (effective March 1, 2023).