

**Legislation:**

Section 5.4 of the *Statutory Powers Procedure Act* ('the SPPA')

*Under section 5.4 of the SPPA, a tribunal may, at any stage of its proceedings up to the end of the hearing, make orders for the exchange of documents, the exchange of reports of expert witnesses, the provision of particulars and any other form of disclosure. The tribunal must adopt rules of practice in order to use this authority but cannot use these powers to require the production of privileged information.*

*Disclosure may be useful to facilitate a better hearing, especially if proper consideration is given to the type of proceedings, the knowledge of the parties about procedures, and the desire for an expeditious and fair procedure.*

*Note that the powers set out in these rules are in addition to the power the Board has to conduct inquiries or direct parties to file additional evidence as set out in s.201 of the RTA. Further discussion of the Board's powers under s.201 may be found in the Board's Guideline<sup>13</sup> – Other Powers of the Board.*

- 19.1 (1) A Member may, at any stage of the proceeding, before the hearing has been completed, direct or order a party to disclose and exchange documents or any other material relevant to the proceeding, within the time and according to the method that the Member directs or orders.**
- (2) A Member shall not direct or order the disclosure of privileged information.**
- (3) A party who breaches an order or direction for disclosure may not rely on the evidence that was not disclosed as directed or ordered, unless otherwise ordered.**

*The rules of natural justice provide parties with the right to know the case that they must meet at a hearing and the right to disclosure from an opposing party of all documents or other material relevant to the issues in the hearing. The scope of disclosure includes documents or other material that might enable the other party to advance its case or to damage the case of the adversary.*

*Although pre-hearing disclosure is not required, the Board encourages cooperation from parties in voluntarily disclosing and exchanging all relevant documents or other material, before the hearing. However, where necessary, a Member will make an order or issue a direction, in order to assist a party in obtaining disclosure in a manner that ensures a fair hearing.*

**19.2 A landlord who applies for an above guideline rent increase based on paragraphs 1 or 3 of subsection 126(1) shall be prepared to disclose at the hearing the rent for each rental unit in the residential complex, and the date that rent was established for a new tenant under section 113 of the RTA or last increased for an existing tenant.**

*On an application for an above guideline rent increase based on an extraordinary increase in the cost for municipal taxes and charges or utilities or both, or based on operating costs related to security services, the landlord does not have to file a detailed list of rents for all the rental units in the residential complex. They should, however, bring such a list to the hearing in case the total rent information for the complex is disputed by the tenant or questioned by the Member. In addition to the rent information (total rent charged for each unit, before any discounts, as of the month the application is made), the landlord should be prepared to give evidence as to the date that rent was established: if the rent was set for a new tenant, the date is when the tenancy began; if the rent was the result of an increase for an existing tenant, the date is when the rent last increased.*

*Where a landlord makes an application for a rent increase above the guideline based on capital expenditures incurred, they are required by paragraph 22(1)2 of O.Reg. 516/06 to file a detailed list of rents, among other materials, with the application.*