

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Practice Notice on Interrogatory Process

General Statement

[1] An interrogatory process permits parties to seek information from other parties to address issues relevant to a proceeding.

[2] To remain efficient, the burden imposed by the interrogatory process must be proportionate to the value the information sought is expected to have in the proceeding.

The Interrogatory Process

[3] An interrogatory process only occurs if it is ordered by the Board or case manager. Parties will be permitted to make submissions on whether such a process should occur, or not—and on any parameters of this process.

[4] If a case manager has been assigned in the proceeding, the issue of whether interrogatories should take place and their parameters may be considered at a case management conference (*Copyright Board Rules of Practice and Procedure*, Rule 30(2)).

[5] If an interrogatory process has been ordered by the Board, and no case manager has yet been assigned to the proceeding, a case manager will be assigned at that time.

[6] Pursuant to Rule 34, the Board or case manager may circumscribe the interrogatory process, such as by limiting the issues in relation to which questions may be posed, by limiting the number of questions a party may pose, or by limiting the number of questions that may be posed to a party.

[7] The interrogatory process will usually be established in a Schedule of Proceeding, which will set out the dates by which the various steps in the interrogatory process must be completed.

[8] The interrogatory process usually follows the following sequence:

1. Parties pose questions to other parties.
2. Parties raise any objections to questions and respond to those questions for which they have not raised objections.
3. Parties reply to any objections raised, and seek rulings from the Board.
4. The Board rules on any objections to questions.
5. Parties respond to any questions in accordance with rulings of the Board.
6. Parties identify questions that have not been answered fully.
7. Parties reply to any claims of incomplete responses, and seek rulings on these from the Board.
8. The Board rules on any claims of incompleteness.
9. Parties respond to questions in accordance with rulings from the Board.
10. Parties may make motions to permit Expanded Discovery, described below.

Posing Interrogatory Questions

[9] Unless the Board or a case manager orders otherwise, interrogatory questions can be addressed to any participating collective society or objector, including in a proceeding considering multiple proposed tariffs.

[10] Whether interrogatory questions may be put to an intervener, and whether an intervener may pose interrogatory questions, will depend on the terms of the Order that granted the person intervener status.

[11] Interrogatory questions must be served on the party to whom they are addressed, by the date set for that purpose, and presented in the form set out in **Annex A**. A copy of the questions is filed with the Board at the same time.

Permitted Scope of Interrogatory Questions

Information under respondent's possession or control

[12] Unless the Board or the case manager orders otherwise, a respondent

- is only required to provide information that is in their possession or control, and in the form that they have it; and

- is not required to seek information from persons whose interests they represent in a proceeding.

[13] As such, unless ordered otherwise, a collective society or a trade association will not be required to seek information from their members to respond to an interrogatory question.

[14] Generating new documents or information not required

[15] Unless the Board or the case manager orders otherwise, a respondent is not required to generate new documents or information to respond to an interrogatory question.

[16] The respondent may provide a response in the form of a short narrative.

[17] This may be the case, for example, where there are many responding documents, and the relevant information in these documents can easily be summarized by the respondent.

New analysis not required

[18] Unless the Board or the case manager orders otherwise, a respondent is not required to

- perform valuations or other analysis; nor
- perform any significant calculations (calculations such as summing or counting are permissible).

[19] For example, costing, pricing, and valuations do not have to be performed for the purpose of interrogatories. Such information only has to be provided if it already exists.

Census-like Requests

[20] Interrogators should avoid questions with census-type requests, especially if it is expected that responding fully

- i) would be overly burdensome (e.g., it would take a significant amount of resources, such as time, financial resources, personnel required to respond); and
- ii) would not provide significantly greater value than a sample of responding information.

[21] Examples of such requests include “supply all such agreements” and “supply all such analyses.”

[22] Instead, interrogators should ask for reasonable samples, and provide criteria for those samples (e.g., the viewership of X number of entities that have revenues greater than \$Y per month; and viewership of X number of entities that have revenues less than \$Y per month).

Best-responding Document

[23] Interrogators should avoid questions seeking all responsive documents where a single or best-responding document would suffice.

Objecting to Interrogatory Questions

The Objection Process

[24] The respondent and interrogator are strongly encouraged to first attempt to resolve any issues they may have about a particular question among themselves.

[25] The respondent serves any unresolved objections, including the reasons for the objections, on the interrogator.

[26] The interrogator then files with the Board and serves on the respondent—by the date set for that purpose—the text of the interrogatory question at issue, the respondent’s objection (including the reasons for the objection), and the interrogator’s response to the objection.

[27] The Board or case manager then rules on the objections.

Objecting - Burden

[28] If a respondent is of the view that responding to an interrogatory question would be burdensome and wishes to object on this ground, the respondent should provide some indicator of the expected burden. This may be done, for example, by providing an estimate of the number of documents that may have to be provided, an estimate of the number of documents that would have to be searched, or the expected hours of work that would be required.

[29] In the objection, the respondent may propose, to the Board, a modification to the question to reduce the burden.

Objecting - Confidentiality

[30] Confidentiality of responsive information is not a valid reason not to respond to an interrogatory question. Such information will be handled pursuant to a Confidentiality Order.

[31] If the Board has not yet issued a Confidentiality Order, parties may file a request under Rule 46. If the Board has issued a Confidentiality Order, where necessary, parties may request amendments thereto.

[32] Where a respondent claims privilege over responsive documents, they must provide *prima facie* evidence in support of their claim: that is, at least some evidence that would tend to establish the existence of the privilege.

Responding to Interrogatory Questions

[33] Respondents must respond fully to each interrogatory question.

[34] In providing a response, respondents must make reasonable efforts to locate and identify documents or records that may be responsive to the interrogatory question. Responses must be served on the interrogator, by the date set for that purpose and presented in the form set out in **Annex B**. Responses to interrogatories are not filed with the Board.

Form of Response

[35] A person reading the responses should be able to understand the context of the question posed without having to refer to a second document. For greater clarity, the entire context includes the parent question when responding to a sub or secondary question.

[36] As such, the respondent should reproduce the entire context of a question above their response. Where a response is in a medium that does not readily fit within the form set out in Annex B, include the entire context of the question at the top of the first page or equivalent thereto within the medium.

[37] Provide precise pinpoints where references are made to other responses.

Incomplete Responses to Interrogatory Questions

[38] Where a response to an interrogatory question appears to the interrogator to be incomplete, the respondent and interrogator are strongly encouraged to first attempt to resolve the issue among themselves.

[39] Any outstanding issues may be submitted to the Board for determination.

[40] The interrogator who contends that a response to a question is incomplete must serve the unresolved claims, including the grounds for so claiming, on the respondent.

[41] The respondent files with the Board, and serves on the interrogator—by the date set for that purpose—the question at issue, the response, the interrogator’s grounds, and the respondent’s grounds for claiming the response is complete.

[42] The Board or the case manager then rules on the claims of incompleteness.

Expanded Discovery

[43] In certain circumstances parties may wish to seek information beyond the scope usually permitted by the interrogatory process. For example, parties may seek information held by third parties or census-like information.

[44] Where such information is essential for its case, a party may make a motion to the Board or case manager requesting that the Board permit expanded discovery.

[45] Given the nature and burden of expanded discovery, parties should only file such a motion when the need is clear. For example, a party might seek a motion for expanded discovery

- after the normal interrogatory process, if the responses—or lack thereof—demonstrate the need for expanded discovery; or
- at the start of the interrogatory process, if parties know that a respondent does not possess or control any relevant information and that information is held by a third party.

The motion for expanded discovery must set-out

- a concise description of the information sought and the desired scope of the expanded discovery;
- grounds that support the claim that normal interrogatories would not provide the desired information;
- what the interrogator expects the information will demonstrate, and its relevance to an issue before the Board in the proceeding; and
- the magnitude of the expected effect on the Board’s determination.

[46] The motion is filed with the Board, and served on the respondent(s). In the context of this section, the term “respondent” includes any person that may be subject to the order and, where applicable, any party that is connected to such persons. For example, the motion must be served on a trade association and its members where the motion seeks to question members of the trade association.

[47] The respondent may file a response within 14 days of being served. The response may raise, for example, the burden or prejudice to the respondent, or to the third-party from whom the information is sought.

[48] The Board or the case manager then rules on whether such Expanded Discovery will be permitted, and what information may be thereby sought.

ANNEX A: FORM OF INTERROGATORIES

INTERROGATORIES

File/Proceeding: *(Board Assigned Name)*

From: *(Name of Party)*

To: *(Name of Party)*

Topic Heading *(If possible provide headings to organize questions)*

1. *(Question 1)*

- Related Issue(s): *(identify one or more issues set out in the Statement of Issues)*

2. *(Question 2)*

3. *(Question 3)*

(...)

ANNEX B: FORM OF RESPONSES

RESPONSES

File/Proceeding: *(Board Assigned Name)*

From: *(Name of Party)*

To: *(Name of Party)*

Topic Heading *(If possible, use headings provided by interrogator)*

1. *(Entire context of Question 1, including the parent question where the response addresses a sub-question)*

(Response: e.g. text, document, excerpt, data, image)

2. *(Entire context of Question 2)*

(Response)

3. *(Entire context of Question 3)*

(Response)

(...)