

EMPLOYMENT STANDARDS TRIBUNAL

PRACTICE DIRECTIVE 2026-008 DIRECTOR'S RECORD

[2026-07-01]

PART 1 - GENERAL

1. AUTHORITY AND PURPOSE

- 1.1. Sections 112(5) of the Employment Standards Act (**ESA**) and 68(5) of the Temporary Foreign Worker Protection Act (**TFWPA**) require the Director of Employment Standards (the "**Director**") to provide the Tribunal with the record that was before the Director when the determination was made, including any witness statement and document considered by the Director (the "**Director's Record**").
- 1.2. This Practice Directive sets out requirements for the Director's Record, including:
 - its content, organization, and delivery to the Tribunal and the parties;
 - the distinction between the Director's Record and new evidence; and
 - the process by which the Tribunal may invite submissions on whether the Director's Record is complete.

PART 2 – SCOPE OF THE DIRECTOR'S RECORD

2. CONTENT OF THE DIRECTOR'S RECORD

- 2.1. The Director's Record consists of all material that was **before the Director** when the determination or any variation of it was made.
- 2.2. The Director's Record also consists of all materials before the Director as the result of an order referring a matter back to the Director.
- 2.3. The Director's Record does **not** include:
 - materials created after the determination unless section 2.2 applies; or
 - new evidence or submissions prepared for the purpose of the appeal.
- 2.4. Materials that are not part of the Director's Record may only be considered by the Tribunal if permitted under the ESA, the TFWPA, the **Rules of Practice and Procedure**, or a Tribunal direction.

- 2.5. The specific contents of the Director's Record may vary depending on whether the appeal is from
- a determination issued against a corporate entity or sole proprietor, or
 - a determination issued against a director or officer, including liability under section 96 of the ESA and section 59 of the TFWPA.
- 2.6. The Director's Record should include, where applicable, legible copies of materials that were before the Director including, without limitation:
- the complaint form;
 - corporate registry searches;
 - notices and demands;
 - workflow sheets;
 - delivery or tracking records;
 - documents produced in response to demands for records;
 - all correspondence between the delegate and any party or other person;
 - memoranda of communications;
 - investigation notes;
 - witness statements;
 - audio or video recordings;
 - exhibits from any oral hearing; and
 - any other materials that were before the Director.
- 2.7. Additional materials must be included where applicable, including:
- related determinations;
 - documents relating to director or officer liability; and
 - prior determinations relevant to penalty escalation.

3. DISTINCTION BETWEEN THE DIRECTOR'S RECORD AND NEW EVIDENCE

- 3.1. Parties must clearly distinguish between:
- arguments based on the Director's Record; and
 - any request to rely on new evidence.
- 3.2. The Tribunal determines whether any new evidence will be accepted and considered.

PART 3 - DIRECTOR'S OBLIGATIONS

4. DIRECTOR'S OBLIGATIONS TO PROVIDE THE DIRECTOR'S RECORD

- 4.1. When directed by the Tribunal, the Director must:
 - provide the Director's Record to the Tribunal; and
 - deliver a copy of the Director's Record to each party to the appeal.
- 4.2. The Director must provide a **complete copy of the Director's Record to the Tribunal**, subject to any permitted or required redactions.

5. REDACTIONS

- 5.1. The Director's Record must be prepared in accordance with applicable privacy obligations, including the redaction of personal information such as:
 - social insurance numbers;
 - dates of birth; and
 - other personal identity information.
- 5.2. Contact information and other information may be redacted where disclosure is not required or has been restricted.
- 5.3. Redactions must be identified and explained in the cover letter accompanying the Director's Record.

6. ORGANIZATION OF THE DIRECTOR'S RECORD

- 6.1. The Director's Record must be:
 - complete and organized in a logical and accessible manner;
 - consecutively page-numbered; and
 - structured to allow efficient review by the Tribunal and the parties.
- 6.2. Where a partial copy of the Director's Record is delivered to a party, it must be derived from the complete Director's Record.

7. DIRECTOR'S RECORD INDEX

- 7.1. The Director's Record must include an index that:
 - identifies the contents of the Director's Record; and
 - identifies the location of each document within the Director's Record.
- 7.2. The index for any partial Director's Record must reflect the materials included in that version.

8. DIRECTOR'S COVER LETTER

- 8.1. The Director must provide a cover letter to the Tribunal that:
- identifies documents in the Director's Record that were not disclosed before the determination;
 - identifies any redactions;
 - confirms the method of delivery and the particular email address or mailing address used to deliver the Director's Record to each party; and
 - attaches the Director's Record Index.
- 8.2. Where different versions of the Director's Record are provided, the Director must include the corresponding indices and cover letters provided to the parties.

PART 4 - SUBMISSIONS ON THE DIRECTOR'S RECORD

9. SUBMISSIONS ON THE COMPLETENESS OF THE DIRECTOR'S RECORD

- 9.1. A party may challenge the completeness of the Director's Record on the basis that it does not include all material that was before the Director.
- 9.2. After the Director's Record is received, the Tribunal may issue directions respecting the next steps in the proceeding, including whether submissions on the completeness of the Director's Record will be invited.
- 9.3. Where such an invitation is made, a party raising a challenge must:
- identify the specific document or category of material alleged to be missing;
 - explain why the material is believed to have been before the Director;
 - file submissions on the party's challenge within any deadline set by the Tribunal.
- 9.4. The Tribunal may determine the process for receiving submissions, including whether to seek submissions from:
- the Director; and/or
 - any other party.
- 9.5. The Tribunal may:
- direct that the Director's Record be supplemented;
 - determine whether additional material forms part of the Director's Record; or
 - determine the scope of the Director's Record for the purpose of the proceeding.

10. RELATIONSHIP TO SUBMISSIONS AND EVIDENCE

10.1. Parties must base their submissions on:

- the Director's Record; and
- any additional materials permitted by the Tribunal.

10.2. A challenge to the completeness of the Director's Record is **not** a request to introduce new evidence.

10.3. Requests to introduce new evidence must be made separately and in accordance with applicable Practice Directives or Tribunal directions.

PART 5 – EFFECTIVE DATE AND TRANSITIONAL

11. EFFECTIVE DATE AND TRANSITIONAL APPLICATION

11.1. This Practice Directive applies to proceedings before the Tribunal on or after July 1, 2026, unless the Tribunal orders otherwise.

12. REPEAL

12.1. The Practice Directive dated April 10, 2025, respecting the delivery of the ESA section 112(5) record is repealed as of the effective date of this Practice Directive.