

Information Bulletin

Hearings before the Human Rights Tribunal of Ontario

(Note: The information in this document relating to how hearings may be conducted also applies to Case Resolution Conferences in the Transitional Applications stream. All references to “hearings” in this document also apply to Case Resolution Conferences.)

This document provides general information about hearings before the Human Rights Tribunal of Ontario (the HRTO).

The procedure outlined in this document is for information only. It should not be considered legal advice. It is not a rule within the meaning of the HRTO’s Rules of Procedure or a formal HRTO Policy. The HRTO may vary the approach to hearing a case where appropriate.

This document is available on the internet at <http://www.hrto.ca> and in various accessible formats. For an alternative format or a paper copy, please contact the HRTO at: 416-326-1312, toll-free: 1-866-607-1240, TTY: 416-326-2027, TTY toll-free: 1-866-607-1240.

Introduction

The Human Rights Tribunal of Ontario is committed to a process that is:

- accessible;
- fair, just and expeditious;
- responsive to the parties that appear before the HRTO;
- appropriate to the nature of the particular case; and,
- able to determine the merits of an application, considering the facts and the relevant legal principles.

To achieve this, the HRTO’s approach to hearings is flexible taking into account the above factors. The overriding objective is always a fair and timely process and an outcome based on the facts, the law and the merits of the application.

Notice of Hearing

If parties to a human rights application do not agree to mediation, or if no settlement is reached through mediation, an application will proceed to a hearing.

The HRTO will send the parties a Notice of the hearing telling them the date and time of their hearing and where the hearing will be held. After receiving the Notice the parties must begin to prepare their case for presentation and meet

their obligations to share documents and witness lists with the other parties. This helps to ensure a fair and expeditious process in which participants can prepare for the hearing and are not taken by surprise. Parties are also required to file documents and witness summaries with the HRTO before the hearing.

Parties who do not share and file documents and witness lists as required by the HRTO's Rules of Procedure may be prevented from relying on the documents or witnesses at the hearing. The specific requirements for the exchange of documents and witness lists, and filing with the HRTO, are set out in the HRTO's Rules of Procedure and are also explained in the Notice of hearing sent to the parties.

Closer to the hearing date, an HRTO adjudicator (decision-maker) will review the documents and witness statements in the file and decide whether to issue a Case Assessment Direction to assist the parties to get ready for the hearing. In some cases, the preparation of the Case Assessment Direction may also involve a case conference call with the parties.

A Case Assessment Direction may deal with matters such as:

- what documents need to be given to the other side and filed with the HRTO prior to the hearing;
- which witnesses and documents the parties should bring to the hearing;
- whether issues raised by the parties will be dealt with as preliminary matters, and in which order.

The parties must always be prepared to address any issues identified in the Case Assessment Direction at the hearing.

Hearing/Case Resolution Conference

A hearing or Case Resolution Conference before the HRTO is a legal proceeding and the parties are expected to attend prepared to present their case through evidence (witnesses and documents) and submissions.

The HRTO adjudicator plays an active role in the hearing process with the goal of ensuring the fair, just and expeditious determination of the merits of an application. The procedure used in each hearing may vary depending on the nature of the case, the issues in dispute and the parties involved, including whether all parties are represented, or are self-represented.

The HRTO's Rules of Procedure allow the adjudicator to adopt non-traditional methods of adjudication in order to best focus on the human rights issues in dispute and reach a decision about whether the Ontario *Human Rights Code* (the "Code") has been violated. For example, the adjudicator may, through consultation with the parties, make determinations about what the main issues

are, what facts appear to be undisputed and may structure how the hearing takes place including the order in which witnesses will testify. The parties will always be able to make submissions before a determination on procedure is made.

An HRTO adjudicator also has the power to question witnesses, parties or representatives, receive testimony not taken under oath, limit the evidence or submissions on any issue or limit a party from presenting multiple witnesses to testify about the same facts in issue.

At the same time, however, the adjudicator is a neutral decision-maker and cannot take responsibility for identifying and leading evidence. It is up to each party to bring forward evidence to support its respective position.

After a hearing, the HRTO adjudicator will consider all the evidence and submissions in reaching a decision. Once the decision is made, a copy of the decision with reasons will be sent to the parties. The adjudicator may dismiss the Application after finding there was no violation of the *Code* or may find a violation of the *Code* and decide on an appropriate remedy. HRTO decisions are published on the Canadian Legal Information Institute website <http://www.canlii.org>.