



# **HUMAN RIGHTS TRIBUNAL OF ONTARIO**

**Rules of Procedure for Transitional Applications under  
Sections 53(3) and 53(5) of the Human Rights Code**

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**Rules of Procedure for Section 53(3) and 53(5) Applications**

(January 1, 2009)

Disponible en français

## TABLE OF CONTENTS

PREAMBLE .....		4
PART I	GENERAL RULES .....	4
Rule 1	Scope of Transitional Rules.....	4
Rule 2	Accommodation of <i>Code</i> -Related Needs .....	8
Rule 3	Non-Compliance with these Rules.....	8
Rule 4	Tribunal’s Powers .....	9
Rule 5	Conduct of Proceedings .....	10
PART II:	APPLICATIONS UNDER SECTION 53(3) OF THE <i>CODE</i> .....	12
Rule 6	Preparing and Filing the Section 53(3) Application.....	12
Rule 7	Preparing and Filing the Section 53(3) Response .....	13
Rule 8	Mediation Conference .....	13
Rule 9	Case Resolution Conference.....	13
Rule 10	Decisions under Section 53(3) Applications .....	15
PART III	APPLICATIONS UNDER SECTION 53(5) OF THE <i>CODE</i> .....	15
Rule 11	Tribunal Powers under Part III.....	15
Rule 12	Preparing and Filing the Section 53(5) Application.....	15
Rule 13	Response to Application under Section 53(5) of the <i>Code</i> .....	16
Rule 14	Request to Intervene .....	17
Rule 15	Dismissal of an Application Outside the Tribunal’s Jurisdiction .....	18
Rule 16	Deferral of an Application by the Tribunal.....	18
Rule 17	Mediation .....	18
Rule 18	Hearing.....	19
Rule 19	Request For An Order During Proceedings.....	20
Rule 20	Tribunal-Ordered Inquiries.....	22
Rule 21	Where the Substance of an Application Has Been Dealt with in another Proceeding .....	23
PART IV	OTHER PROCEDURAL MATTERS UNDER 53(3) AND 53(5) .....	23
Rule 22	Notice of Constitutional Question .....	23
Rule 23	Contravention of Settlements .....	23
Rule 24	Request to Amend Clerical Errors .....	23
Rule 25	Request for Reconsideration .....	24

## **PREAMBLE**

Section 53(3) of the *Transitional Provisions of the Human Rights Code Amendment Act, 2006* ("Amendment Act") provided that, during the six-month period commencing June 30, 2008, a person with a complaint continuing at the Ontario Human Rights Commission could abandon that complaint and, in accordance with the rules of the Human Rights Tribunal of Ontario, file an application with the Tribunal in respect of the subject-matter of the abandoned complaint. Section 53(4) of the *Amendment Act* required the Tribunal to make rules to ensure section 53(3) applications be dealt with in an expeditious manner.

After December 31, 2008 the subject-matter of a complaint that was not finally dealt with by the Commission, withdrawn or settled may be brought to the Tribunal as an application made under section 53(5) of the *Code*. The Tribunal may accept s. 53(5) applications between January 1 and June 30, 2009.

These rules for transitional applications, amended as of January 1, 2009, confirm and continue the rules of procedure previously established for applications made to the Tribunal under s. 53(3) of the *Code* and establish a process for applications made under s. 53(5) of the *Code*. The process for dealing with applications made under s. 53(5) more closely mirrors the process established for new applications filed under section 34 of Part IV of the amended *Code*.

## **PART I      GENERAL RULES**

### **Rule 1      Scope of Transitional Rules**

#### Application and Interpretation of Transitional Rules

1.1 These Rules apply to all Applications filed under section 53(3) or under section 53(5) of the *Code* and will be liberally interpreted and applied by the Tribunal to facilitate an accessible process and to ensure a fair, just, and highly expeditious process for the determination of section 53(3) and 53(5) Applications. The Rules of Procedure for Section 53(3) Applications issued June 30, 2008 are revoked and replaced by these Rules.

1.2 The Chair of the Tribunal may also issue Practice Directions to provide further information about practice and procedure in respect of section 53(3) or 53(5) Applications.

## Forms

1.3 The Tribunal will establish Forms (“Forms”) that must be used in section 53(3) Applications and 53(5) Applications. Forms are identified in the List of Forms at the end of these Rules. The Forms are not part of these Rules.

## Definitions

1.4 In these Rules:

“Case resolution conference,” means that part of the proceeding where the member or Vice-Chair hears and determines a section 53(3) Application in accordance with these Rules;

“Code” means the Ontario *Human Rights Code*;

“Commission” means the Ontario Human Rights Commission;

“Complaint” is a complaint before the Commission that has not been settled, withdrawn or finally determined by the Commission;

“File” means file with the Tribunal and a “filing” is anything that is filed;

“Hearing” means that part of the proceeding where a member or Vice-Chair hears and determines some or all of the issues in a section 53(5) Application in accordance with the Rules;

“Holiday” means any Saturday, Sunday or other day on which the Tribunal’s offices are closed;

“Party” means, in the case of an application under s. 53(3) or 53(5) of the *Code*, any of the following:

1. the person who made the application;
2. any person against whom an order is sought in the application;
3. any other person or the Commission, if they are added as a party by the Tribunal.

“Proceedings” before the Tribunal include all processes of the Tribunal at any time following the filing of an Application until the Application is finally determined;

“Rules” means the rules governing section 53(3) and 53(5) Applications and, “Tribunal” means the Human Rights Tribunal of Ontario.

### Calculation of Time

1.5 Where an order of the Tribunal or a Rule refers to a number of days, the reference is to calendar days.

1.6 Where an action is to be done within a specified number of days, the days are counted by excluding the first day and including the last day.

1.7 When the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### Communications with the Tribunal and other Parties

1.8 Individuals are entitled to communicate with the Tribunal in English and French.

1.9 All written communications with the Tribunal must be addressed to the Registrar, with a copy delivered to all other parties.

1.10 A party and a party's representative must notify the Tribunal and all parties and their representatives, in writing, of any change in their contact information, as soon as possible.

### Representatives

1.11 Parties may be self-represented, represented by a person licensed by the Law Society of Upper Canada or by a person authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws.

1.12 A representative who ceases to represent a party in a proceeding before the Tribunal must immediately notify the Tribunal and all parties in writing.

### Filing Documents with the Tribunal

1.13 When filing any document with the Tribunal, except for an Application (Form A, or Form TR-1) or a Response (Form B, or Form TR-2), a party or any other person must include the following information:

- a) name of the Applicant and Respondent in the Application;
- b) name of the person filing the document, and, if applicable, his/her representative's name;
- c) mailing address, telephone number and, if available, e-mail address and facsimile number, of the person filing the document or his/her representative; and,

d) Application file number, if available.

1.14 Documents may be filed with the Tribunal by:

a) facsimile transmission (fax) to the Tribunal;

b) hand delivery, courier, or regular, registered or certified mail to the Human Rights Tribunal of Ontario;

c) e-mail sent to [hrto.registrar-transition@ontario.ca](mailto:hrto.registrar-transition@ontario.ca); or,

d) as directed by the Tribunal.

1.15 Filing is deemed to take place by:

a) fax, on the date automatically imprinted on the document by the Tribunal's fax machine, but if the fax confirmation receipt indicates a time after 5 p.m., filing will be deemed to have occurred the next day;

b) e-mail, on the date automatically electronically imprinted on the document by the Tribunal's electronic message delivery system, but if the e-mail confirmation indicates a time after 5 p.m., filing will be deemed to have occurred the next day;

c) hand delivery, courier, or mail, on the date of receipt stamped on the document by the Tribunal.

1.16 A party filing any document with the Tribunal must deliver a copy of the document to all other parties to the Application and must verify that s/he has done so by completing and filing a separate Statement of Delivery (Form C).

#### Delivery of Documents to Parties or other Persons

1.17 Documents must be delivered in one of the following ways:

a) hand delivery;

b) regular, registered or certified mail;

c) courier;

d) fax, but only if the document is less than (twenty) 20 pages in length or, if longer, with consent;

- e) e-mail, where the person or parties receiving the document has consented to email delivery; or
  - f) any other way agreed upon by the parties or directed by the Tribunal.
- 1.18 Delivery of a document is deemed to have occurred when delivered:
- a) by mail, on the 5th day after the postmark date;
  - b) by fax, when the person sending the document receives a fax confirmation receipt, but if the fax confirmation receipt indicates a delivery time after 5 p.m., delivery will be deemed to have occurred the next day;
  - c) by courier, on the second day after it was given to the courier;
  - d) by e-mail, on the day sent or if sent after 5 p.m., delivery will be deemed to have occurred the next day;
  - e) by hand, when given to the party or when left with a person at the party's last known address.

#### Verifying Delivery

1.19 A party responsible for delivering and filing a document under these Rules must file a Statement of Delivery (Form C) with the Tribunal. The Statement of Delivery must be filed with the document when the document is filed with the Tribunal.

### **Rule 2 Accommodation of *Code*-Related Needs**

2.1 Parties, representatives and witnesses are entitled to accommodation of *Code*-related needs by the Tribunal and should notify the Registrar as soon as possible if accommodation is required. The provisions of these Rules will be interpreted and applied in a manner that is consistent with the *Code*.

### **Rule 3 Non-Compliance with these Rules**

3.1 The Tribunal may finally determine an Application without further notice to any person who cannot be contacted by the Tribunal according to the contact information provided to the Tribunal by that person.

3.2 Where an Application (Form A or Form TR-1) is delivered to a Respondent who does not respond to the Application, the Tribunal may:

- a) deem the Respondent to have accepted all of the allegations in the Application, including the allegations set out in the complaint;
- b) proceed to deal with the Application without further notice to the Respondent;
- c) deem the Respondent to have waived all rights with respect to further notice or participation in the proceeding; and,
- d) decide the matter based only on the material before the Tribunal.

3.3 Where a party fails to deliver material to another party or person as required by these Rules, the Tribunal may refuse to consider the material, or may take any other action it considers appropriate.

3.4 Where a fact or issue is not raised in the Application (Form A or Form TR-1), complaint, Response (Form B or Form TR-2), the Response to the complaint, or in a supplemental statement of facts and issues filed after mediation, the Tribunal may refuse to allow the party to present evidence or make representations about the fact or issue unless satisfied there would be no substantial prejudice and no undue delay to the proceedings.

3.5 A technical defect or irregularity is not a breach of these Rules.

3.6 Where a party or other person fails to comply with these Rules, the Tribunal may relieve against a failure to comply with these Rules, with or without terms, where to do so would be fair and just and would not substantially prejudice a party or unduly delay the proceeding.

#### **Rule 4 Tribunal's Powers**

4.1 The Tribunal may exercise any of its powers under these Rules at the request of a party or on its own initiative in accordance with Rule 1.1.

4.2 The Tribunal may, on its own initiative or at the request of a Respondent dismiss part or all of an Application that is outside the jurisdiction of the Tribunal.

4.3 To ensure the fair, just and highly expeditious resolution of an Application under section 53(3) or section 53(5) of the *Code* the Tribunal may:

- a) lengthen or shorten any time limit in these Rules;
- b) add or remove a party;

- c) vary or waive the application of these Rules at any time on its own initiative or on the request of a party, with or without terms;
- d) defer consideration of an application;
- e) determine and direct the order in which issues in a proceeding will be considered and determined;
- f) define and narrow the issues in order to decide an Application;
- g) limit the evidence and the submissions of the parties on any issue;
- h) determine and direct the order in which evidence will be presented;
- i) admit evidence without examination under oath or affirmation;
- j) question a witness in chief or in cross-examination;
- k) require a party or other person to produce any document, information or thing;
- l) make such further orders as are necessary to give effect to an order or direction under these Rules;
- m) attach terms or conditions to any order or direction; and,
- n) take any other action that the Tribunal determines is appropriate.

## **Rule 5      Conduct of Proceedings**

### Summonses

5.1 On the request of a party, the Tribunal will provide a summons to witness and the party may complete the summons and insert the name of the witness.

5.2 Delivery of a summons to a witness is the responsibility of the party who obtained the summons and must be done in accordance with the instructions contained on Form D.

### Human Rights Commission

5.3 An Applicant or Respondent may ask the Commission to disclose information obtained during the course of the Commission's investigation to the party in accordance with section 53(7) of the *Code*.

#### Confidentiality of Documents

5.4 Parties and their representatives may not use documents obtained under these Rules for any purpose unconnected to the proceeding before the Tribunal.

#### Form of Proceedings

5.5 The Tribunal may conduct mediation, a case resolution conference under section 53(3) or a hearing under section 53(5) in person, in writing, by telephone, or by other electronic means, as it considers appropriate. However no Application that is within the jurisdiction of the Tribunal will be finally disposed of without affording the parties the opportunity to make oral submissions in accordance with these Rules.

5.6 The location of in-person proceedings will be determined by the Registrar, in accordance with the Tribunal's policies.

#### Recording of Proceedings

5.7 The Tribunal does not normally record or transcribe its proceedings. Where a case resolution conference or hearing is recorded the recording does not form part of the Tribunal's record of proceedings including any record filed in respect of an application made under the *Judicial Review Procedure Act*.

#### Language of Proceedings

5.8 The mediation, hearing or case resolution conference may be conducted in English, in French or bilingually and, where requested, with interpretation in American Sign Language (ASL) or Quebec Sign Language (QSL). Where a party wishes all or part of the mediation, hearing or case resolution conference conducted in French, or requires interpretation in ASL or QSL, the party must notify the Registrar as soon as possible.

5.9 An individual who requires interpretation services in a language other than English, French, ASL or QSL in order to participate at the mediation, hearing or case resolution conference may request the Tribunal provide appropriate interpretation services. The Registrar must be notified as soon as possible of such requests.

#### Public Proceedings

5.10 The Tribunal's proceedings, other than mediation, are open to the public, except when the Tribunal determines otherwise.

5.11 The Tribunal may make an order to protect the confidentiality of personal or sensitive information where it considers it appropriate to do so.

5.12 All written decisions of the Tribunal are available to the public.

#### Failure to Attend the Case Resolution Conference or Hearing

5.13 Where a party has been notified of the case resolution conference under a section 53(3) Application or the hearing under a section 53(5) Application and fails to attend, the Tribunal may:

- a) proceed in the party's absence;
- b) decide the Application based solely on the materials before it;
- c) take any other action it considers appropriate.

#### Tribunal Directions

5.14 At any point in the proceeding the Tribunal may issue case management directions.

5.15 In a section 53(3) Application, the Tribunal will not ordinarily permit the introduction of expert evidence other than medical reports, requests to add parties, requests to consolidate Applications or requests to intervene unless exceptional circumstances exist and doing so will not adversely affect the highly expeditious nature of the case resolution conference.

## **PART II: APPLICATIONS UNDER SECTION 53(3) OF THE CODE**

### **Rule 6 Preparing and Filing the Section 53(3) Application**

6.1. To file a section 53(3) Application an Applicant must complete the Application (Form A), deliver it to the Respondent(s) and file it with the Tribunal.

6.2. The completed section 53(3) Application (Form A) must be filed on or before December 31, 2008 and must include:

- a) the complaint or the amended complaint filed at the Commission; and,
- b) the Commission complaint file number.

6.3 Applications made in accordance with these Rules must be based on the subject matter of the complaint or amended complaint filed at the Commission and the Tribunal will not entertain preliminary requests to add grounds, expand the subject matter of the complaint or add parties to the Application.

## **Rule 7 Preparing and Filing the Section 53(3) Response**

7.1 To respond to a section 53(3) Application, a Respondent must complete a Response (Form B) and include a copy of any Response filed by the Respondent at the Commission. Where no Response was filed at the Commission the Respondent must provide a brief statement setting out its position on the facts and issues raised in the Application and include any additional material facts necessary to support its case.

7.2 The completed Response (Form B) must be delivered to the Applicant before being filed with the Tribunal. The Response must be filed with the Tribunal not later than thirty-five (35) days after the Application was delivered to the Respondent.

## **Rule 8 Mediation Conference**

8.1 Mediation discussions will be conducted in a confidential manner and the content of the discussions cannot be referred to at the hearing of the Application, or in any other proceedings, without the consent of all parties and the Tribunal.

8.2 Where an officer or other person attends the mediation as a spokesperson for a corporate Respondent or other organization, the spokesperson must have authority to participate in all aspects of the discussions and to settle any and all issues in dispute.

8.3 Where the terms of any settlement are in writing and signed by the parties the parties may ask the Tribunal to issue a consent order in accordance with s. 45.9 of the *Code*, or may ask the Tribunal to dispose of the matter in accordance with their agreement. All settlements filed with the Tribunal must include a provision waiving the right to make oral submissions and a provision requesting the Tribunal dispose of the Application in accordance with the settlement.

8.4 Where mediation is unsuccessful the mediator will assist the parties to complete a case management checklist and file it with the Tribunal as soon as possible and, in any event, within five days of the mediation.

## **Rule 9 Case Resolution Conference**

9.1 If the matter does not settle at the mediation conference, and unless otherwise directed by the Tribunal, the Applicant must deliver to the other parties,

and file with the Tribunal, no later than 30 days after the mediation, the following:

- a) a statement of any additional facts the Applicant intends to rely upon; and,
- b) a description of the remedies sought.

9.2 If the matter does not settle at the mediation conference, and unless otherwise directed by the Tribunal, a Respondent must deliver to the other parties, and file with the Tribunal, no later than 45 days after the mediation

- a) a statement of any additional facts the Respondent will rely upon; and,
- b) the Respondent's position with respect to the requested remedies.

9.3 If the matter does not settle at the mediation conference, and unless otherwise directed by the Tribunal:

- a) the Applicant must deliver to the other parties, no later than 30 days after the mediation conference, a copy of all arguably relevant documents in the Applicant's possession, except where privilege is claimed, and
- b) the Respondent must deliver to the other parties, no later than 45 days after the mediation conference, a copy of all arguably relevant documents in the Respondent's possession, except where privilege is claimed.

9.4 The Tribunal may refuse to consider or allow a party to rely upon any document not disclosed in accordance with these Rules at the case resolution conference.

9.5 The Applicant and the Respondent shall each, no later than 20 days prior to the case resolution conference:

- a) deliver to the other party a list of their witnesses, with a brief statement summarizing each witness' expected evidence, a list of all documents on which they intend to rely at the case resolution conference and copies of any documents not previously provided under Rule 9.3; and
- b) file with the Tribunal a list of their witnesses, with a brief statement summarizing each witness' expected evidence, and a

copy of all documents on which they intend to rely at the case resolution conference.

9.6 The case resolution conference will be conducted fairly and in an informal manner in accordance with the powers set out in these Rules.

9.7 The parties and their witnesses will attend the case resolution conference on the day(s) scheduled and bring any documents on which they intend to rely.

#### **Rule 10 Decisions under Section 53(3) Applications**

10.1 Tribunal decisions issued in respect of s. 53(3) Applications shall be determined based on the facts and applicable law but shall not be considered to have precedential value.

### **PART III APPLICATIONS UNDER SECTION 53(5) OF THE CODE**

#### **Rule 11 Tribunal Powers under Part III**

11.1 Without restricting any of the powers contained in Rule 4, the Tribunal may, in disposing of an application made under s. 53(5) and in exercising its discretion under Rule 4.3(m), consider and apply the Tribunal's powers contained in Rule 1.7 of the *Rules of Procedure for Applications under the Human Rights Code, Part IV*.

11.2 Applications under this Part will be processed in a way to ensure their fair, just and expeditious resolution. Where appropriate and the parties consent, the Tribunal may use procedures contained in Part II of these Rules applicable to s.53(3) applications to achieve the fair, just and highly expeditious resolution of s.53(5) applications.

#### **Rule 12 Preparing and Filing the Section 53(5) Application**

12.1 To file a section 53(5) Application an Applicant must complete the Application (Form TR-1), deliver it to the Respondent(s) and file it with the Tribunal. A complete Application must provide the information requested in every section of the Application form and must include all required attachments.

12.2 The completed section 53(5) Application (Form TR-1) must be filed between January 1 and June 30, 2009 and must include:

- a) the complaint or the amended complaint filed at the Commission; and,
- b) the Commission complaint file number.

12.3 Section 53(5) Applications made in accordance with these Rules must be based on the subject matter of the complaint or amended complaint filed at the Commission.

12.4 Where an Applicant wishes to add parties, combine two or more complaints to be dealt with together as a single application, or, having regard to Rule 12.3, amend the complaint, the Applicant may identify any such requests in their Application.

12.5 An Applicant who has commenced a civil proceeding in a court seeking an order under s. 46.1 with respect to any of the allegations in the Application must include a copy of the statement of claim with the Application.

### **Rule 13 Response to Application under Section 53(5) of the Code**

13.1 To respond to an Application under sections 53(5) of the *Code*, a Respondent must complete the Response (Form TR-2), deliver it to the Applicant and file it with the Tribunal not later than thirty-five (35) days after a copy of the Application was delivered to the Respondent.

13.2 The completed Response must include a copy of any Response filed by the Respondent at the Commission. Where no Response was filed at the Commission the Respondent must provide a brief statement setting out its position on the facts and issues raised in the Application and include any additional material facts necessary to support its case.

13.3 In the Response the Respondent may allege the issues in dispute in the Application are the subject of:

- a) a full and final signed release between the parties; or
- b) a civil court proceeding requesting a remedy based on the alleged human rights infringement;
- c) a complaint filed with the Commission the merits of which the Commission dealt with or which was withdrawn or settled in accordance with section 53(5) of the *Code*;
- d) another proceeding which has appropriately dealt with the substance of the Application; or
- e) are otherwise not within the jurisdiction of the Tribunal.

13.4 Where a Respondent has made an allegation under Rule 13.3, the Respondent must attach to the Response:

- a) a copy of the applicable release;
- b) the statement of claim or court decision;
- c) evidence that the complaint was dealt with, withdrawn or settled before the Commission;
- d) a copy of the decision or order in the other proceeding; or
- e) such other documentary evidence that supports the allegation, as the case may be.

The Respondent need not include the applicable document if it has already been included with the Application.

#### **Rule 14 Request to Intervene**

14.1 The Tribunal may allow a person, organization or the Commission to intervene in any case at any time on such terms as the Tribunal may determine. The Tribunal will determine the extent to which an intervenor will be permitted to participate in a proceeding.

14.2 A request to intervene by a person, organization or the Commission must be made in Form TR-3, Request to Intervene, and must be delivered to all parties and filed with the Tribunal.

14.3 A Request to Intervene must include an answer to each question in Form TR-3 and must:

- a) describe the issue(s) that the person, organization or the Commission wants to address;
- b) explain the proposed intervenor's interest in the issue(s) and its expertise, if any, regarding the issue(s);
- c) set out the proposed intervenor's position, if any, on each of the issues raised in the Application and the Response; and
- d) set out all the material facts upon which the proposed intervenor will rely.

14.4 Where a party wishes to respond to a Request to Intervene, the response must be in Form TR-5, Response to Request, and must be filed with the Tribunal no later than twenty-one (21) days after the Request to Intervene was delivered.

14.5 A copy of the Response to Request under Rule 14.4, if any, must be delivered to the proposed intervenor, all other parties and filed with the Tribunal.

### **Rule 15 Dismissal of an Application Outside the Tribunal's Jurisdiction**

15.1 The Tribunal may, on its own initiative or at the request of a Respondent, filed under Rule 19, dismiss part or all of an Application that is outside the jurisdiction of the Tribunal.

### **Rule 16 Deferral of an Application by the Tribunal**

16.1 On its own initiative or at the request of any party the Tribunal may, on such terms as it may determine, defer consideration of the Application if there are other legal proceedings dealing with the subject-matter of the Application.

16.2 Where a request for a deferral is filed by one of the parties, the party must include the following information with the request:

- a) identifying information about the other legal proceeding dealing with the subject matter of the Application; and
- b) a copy of the document that commenced the other legal proceeding.

16.3 The Tribunal will not defer consideration of a s. 53(5) Application without first giving all the parties an opportunity to make submissions on the issue of deferral.

16.4 Where a party wishes the Tribunal to proceed with an Application which has been deferred the request must be made in accordance with Rule 19.

16.5 Where an Application was deferred pending the outcome of another legal proceeding, a request to proceed under Rule 16.4 must be filed no later than sixty (60) days after the conclusion of the other proceeding, must set out the date the other legal proceeding concluded and include a copy of the decision or order in the other proceeding, if any.

16.6 The Tribunal may, on its own motion, require a deferred Application to proceed in appropriate circumstances.

### **Rule 17 Mediation**

17.1 At any time after an Application is filed, mediation assistance may be offered by the Tribunal or requested by a party.

17.2 Parties and their representatives who participate in mediation under Rule 17.1 must sign a confidentiality agreement before the mediation commences.

17.3 Where an officer or other person attends the mediation as a spokesperson for a corporate Respondent or other organization, the spokesperson must have authority to participate in all aspects of the discussions and to settle any and all issues in dispute.

17.4 All matters disclosed during mediation are confidential and may not be raised before the Tribunal or in other proceedings, except with the permission of the person who gave the information.

17.5 The Tribunal may determine that affected persons or organizations should receive notice of mediation and should be entitled to participate.

17.6 Where the terms of any settlement are in writing and signed by the parties the parties may ask the Tribunal to issue a consent order in accordance with s. 45.9 of the *Code*, or may ask the Tribunal to dispose of the matter in accordance with their agreement. All settlements filed with the Tribunal must include a provision waiving the right to make oral submissions and a provision requesting the Tribunal dispose of the Application in accordance with the settlement.

17.7 Where mediation is unsuccessful the mediator may assist the parties to complete a case management checklist. Where a case management checklist is completed the mediator will file it with the Tribunal as soon as possible and, in any event, within five days of the mediation.

## **Rule 18      Hearing**

18.1 Not later than thirty (30) days after the Tribunal sends a Confirmation of Hearing to the parties, the Applicant must deliver to the other parties and file with the Tribunal (together with a Statement of Delivery):

- a) a statement of any additional facts the Applicant intends to rely upon; and,
- b) a description of the remedies sought.

18.2 Not later than thirty (30) days after the Tribunal sends a Confirmation of Hearing to the parties, the Applicant must deliver to the other parties a copy of all arguably relevant documents in the Applicant's possession, except where privilege is claimed.

18.3 Not later than forty-five (45) days after the Tribunal sends a Confirmation of Hearing to the parties, the Respondent must deliver to the other parties, and file with the Tribunal (together with a Statement of Delivery):

- a) a statement of any additional facts the Respondent will rely upon; and,
- b) the Respondent's position with respect to the requested remedies.

18.4 Not later than forty-five (45) days after the Tribunal sends a Confirmation of Hearing to the parties, the Respondent must deliver to the other parties a copy of all arguably relevant documents in the Respondent's possession, except where privilege is claimed.

18.5 The Tribunal may refuse to consider or allow a party to rely upon any document not disclosed in accordance with these Rules at the hearing.

18.6 The Applicant and the Respondent shall each, no later than twenty (20) days prior to the Hearing:

- a) deliver to the other party or parties: a list of their witnesses, with a brief statement summarizing each witness' expected evidence; a list of all documents on which they intend to rely at the Hearing; and, copies of any documents not previously provided under Rule 18.2 and 18.4; and
- b) file with the Tribunal a list of their witnesses, with a brief statement summarizing each witness' expected evidence; and, a copy of all documents on which they intend to rely at the Hearing.

## **Rule 19 Request For An Order During Proceedings**

19.1 A party may request that the Tribunal make an order at any time during a proceeding by oral submission in the course of the hearing or by written request.

19.2 Where a request is made in writing, it must be made in Form TR-4, Request for Order During Proceedings ("Request for Order") and must be delivered to all parties and filed with the Tribunal.

19.3 A request for an order that a non-party provide a report, statement or oral or affidavit evidence must be in writing and must be delivered to the non-party in addition to the other parties to the proceeding.

19.4 A Request for Order (Form TR-4) must:

- a) describe the order requested;

- b) contain reasons for the request, including any facts relied on and submissions in support of the request;
- c) where the order requested is for production of a document(s) a copy of the party's written request for the document(s) and the responding party's response, if any, must be attached to the Form TR-4;
- d) include the documents relied on in support of the request, if any;
- e) indicate whether the requesting party wishes the Tribunal to deal with the matter in writing, in person, or electronically; and,
- f) indicate whether the consent of another party has been obtained as to any term of the order sought or as to the manner in which the request should be dealt with.

19.5 If the requesting party wants the Request for Order dealt with on an urgent basis, it must provide supporting reasons.

19.6 Unless the Tribunal directs otherwise, parties responding to the written Request for Order, must complete the Response to Request for Order ("Response to Request") in Form TR-5 and deliver a copy to all other parties and file it with the Tribunal not later than fourteen (14) days after the Request for Order was delivered. The Response to Request must include:

- a) the responding party's position on the order(s) requested and whether the Request for Order should be dealt with in writing, in person, or electronically;
- b) identify which facts in the Request for Order are accepted and which are disputed. Where the order requested is for production of documents the responding party must attach the written response to the request, if any;
- c) reasons and any submissions in support of the responding party's position;
- d) any additional facts relied on by the responding party; and,
- e) include any documents not included in the Request for Order upon which the responding party intends to rely.

19.7 The Tribunal will determine whether a Request for Order will be heard in writing, in person, or electronically and, where necessary, will set a date for the hearing of the Request.

## **Rule 20 Tribunal-Ordered Inquiries**

20.1 A party may request an Order from the Tribunal to appoint a person to conduct an inquiry under section 44(1) of the *Code*. A Request for a Tribunal-Ordered Inquiry must be made in Form TR-6, delivered to the other parties and filed with the Tribunal. The Request must be made promptly after the party becomes aware of the need for an inquiry.

20.2 A Request for Tribunal-Ordered Inquiry under Rule 20.1 must:

- a) describe the evidence or nature of the evidence to be obtained;
- b) explain why the evidence is necessary to achieve a fair, just and expeditious resolution of the Application;
- c) describe the efforts already made to obtain the evidence;
- d) provide reasons why an inquiry is necessary to obtain the evidence; and,
- e) propose terms of reference for the inquiry.

20.3 The other parties must deliver their response, if any, in Form TR-7, Response to Request for Inquiry, to all other parties and file it with the Tribunal not later than fourteen (14) days after the request was delivered.

20.4 A Response to Request for Inquiry must include complete submissions in support of the party's position.

20.5 An order made under section 44(1) of the *Code* will include terms of reference for the inquiry.

20.6 A person conducting an inquiry will prepare a written report and submit it to the Tribunal and the parties in accordance with the terms of reference established by the Tribunal.

20.7 A report submitted to the Tribunal under s. 44(14) of the *Code* is not evidence in a proceeding, unless:

- a) its author testifies in the proceeding and the parties are given an opportunity to question him or her;

- b) the parties otherwise agree to the admission of the report as evidence in the proceeding; or,
- c) the Tribunal otherwise directs.

**Rule 21 Where the Substance of an Application Has Been Dealt with in another Proceeding**

21.1 The Tribunal may dismiss part or all of the Application where it determines, under section 45.1 of the *Code*, that another proceeding has appropriately dealt with the substance of part or all of an Application.

21.2 The parties will have the opportunity to make oral submissions before the Tribunal dismisses an Application under Rule 21.1.

**PART IV OTHER PROCEDURAL MATTERS UNDER 53(3) AND 53(5)**

**Rule 22 Notice of Constitutional Question**

22.1 Where a party intends to question the constitutional validity or applicability of any law, regulation, by-law or rule or where a party claims a remedy under s. 24(1) of the *Charter of Rights and Freedoms*, in relation to an act or omission of the Government of Canada or the Government of Ontario, a Notice of Constitutional Question must be delivered to the Attorneys General of Canada and Ontario and all other parties and filed with the Tribunal as soon as the circumstances requiring the notice become known and, in any event, at least fifteen (15) days before the question is to be argued.

**Rule 23 Contravention of Settlements**

23.1 An application under s. 45.9(3) of the *Code* alleging contravention of a settlement must be filed under Rule 24 of the *Rules of Procedure for Applications under the Human Rights Code, Part IV*.

**Rule 24 Request to Amend Clerical Errors**

24.1 Within thirty (30) days from the date of a decision or order, a party may request that the Tribunal correct a typographical error, error of calculation, or similar error made in the decision or order. The Tribunal may, at any time, make similar corrections.

24.2 The request shall be considered by the same panel that rendered the original decision or order, unless the Tribunal Chair determines otherwise.

## **Rule 25 Request for Reconsideration**

25.1 Any party may request reconsideration of a final decision of the Tribunal within thirty (30) days from the date of the decision.

25.2 A Request for Reconsideration must be made in Form TR-8 and be delivered to all parties and filed with the Tribunal.

25.3 A Request for Reconsideration must include:

- a) reasons for the request, including the basis upon which the Tribunal is asked to grant the request for reconsideration;
- b) submissions in support of the request; and,
- c) remedy or relief sought.

25.4 A party who has been served with a Request for Reconsideration need not file a response with the Tribunal unless the Tribunal directs that a response is required. Where a party is directed to file a response to the request, it must be in Form TR-9, Response to Request for Reconsideration, and must include complete written submissions in support of its position.

25.5 A Request for Reconsideration will not be granted unless the Tribunal is satisfied that:

- a) there are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier; or
- b) the party seeking reconsideration was entitled to but, through no fault of its own, did not receive notice of the proceeding or a hearing; or
- c) the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance; or
- d) other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions.

25.6 The Tribunal shall not grant a Request for Reconsideration without providing the parties an opportunity to make submissions.

25.7 The determination of the Request for Reconsideration shall be conducted by written submissions unless the Tribunal decides otherwise.

#### Where Reconsideration Request Granted

25.8 Where the Tribunal considers it appropriate to reconsider its decision it may:

- a) make a decision on the substance of the Request without further submissions from the parties, or
- b) determine a procedure for rehearing all or part of the matter.

#### Reconsideration at the Initiative of the Tribunal

25.9 The Tribunal may reconsider a decision on its own initiative where it considers it advisable and appropriate to do so.

25.10 Where the Tribunal decides to reconsider a decision on its own initiative, it will determine a procedure for rehearing all or part of the matter, which will include an opportunity for the parties to make submissions.

## LIST OF FORMS REFERRED TO IN RULES

Form	Title	Rule
A	Application under s. 53(3) of the <i>Code</i>	6
B	Response to Application under s. 53(3) of the <i>Code</i>	7
C	Statement of Delivery	1.19
D	Summons to Witness	5
TR-1	Application under s. 53(5) of the <i>Code</i>	12
TR-2	Response under s. 53(5) of the <i>Code</i>	13
TR-3	Request to Intervene	14
TR-4	Request for Order	19
TR-5	Response to Request	19
TR-6	Request for a Tribunal-Ordered Inquiry	20
TR-7	Response to Request for Inquiry	20
TR-8	Request for Reconsideration	25
TR-9	Response to Request for Reconsideration	25
TR-10	Confirmation of Settlement	--