



Human Rights Tribunal of Ontario

Guide to Section 53(3) Applications

Introduction

Complaints that were filed with the Commission prior to June 30, 2008, that have not been finally dealt with by the Commission, withdrawn, or settled will be “continued” for a period of 6 months: June 30, 2008 to December 31, 2008. These will be referred to in this guide as “continued complaints.”

At any time between June 30, 2008 and December 31, 2008, an individual who has a continued complaint at the Commission, may choose to abandon their continued complaint, and file an application with the Tribunal under section 53(3). These will be referred to as section 53(3) applications.

The Tribunal has developed an expedited process to resolve section 53(3) applications. This guide explains how the Tribunal will handle section 53(3) applications under its expedited process.

Questions and Answers

Who can choose to abandon a continued complaint and make a section 53(3) application to the Human Rights Tribunal?

Any individual who filed a complaint at the Commission prior to June 30, 2008, and whose complaint has not been finally dealt with by the Commission, withdrawn, or settled, may file an application under section 53(3).

When can an individual choose to abandon their continued complaint at the Commission and file an application directly to the Human Rights Tribunal under section 53(3)?

From June 30, 2008 until December 31, 2008 an individual can choose to abandon their continued complaint at the Commission and file a section 53(3) application.

Must an individual abandon their complaint at the Commission between June 30, 2008 and December 31, 2008?

No, the choice to file a section 53(3) application using the Tribunal’s expedited process is optional.

What happens to a continued complaint at the Commission after December 31, 2008, if it is not abandoned and a section 53(3) application filed at the Tribunal?

An individual with a continued complaint at the Commission after December 31, 2008 may make an application under **section 53(5)** to the Tribunal **between January 1, 2009 and June 30, 2009**, if their complaint has not been finally dealt with by the Commission, withdrawn, or settled.

Will the Tribunal process be the same whether the individual chooses to wait until January 1, 2009 and make a section 53(5) application?

No. The Tribunal's process for section 53(5) applications will be a process that mirrors the more formal hearing process for applications where no complaint was made to the Commission.

What kinds of complaints are suitable for the Tribunal's expedited procedure for section 53(3) applications?

The Tribunal's expedited procedure is best-suited for applications that:

- Do not raise significant public policy issues;
- Do not involve complex questions of fact or law;
- Do not require the addition of more parties;
- Do not require amendments to the complaint;
- Do not require expert evidence (other than medical reports);
- Do not require the intervention of the Commission or other parties.

Making a Section 53(3) Application

What does a person have to do to abandon their complaint at the Commission and file a section 53(3) application with the Tribunal?

An applicant must complete a short application form (Form A), attach their Commission complaint and any amended complaint to the Form A and deliver the completed Form A with the attachments to the respondent(s) named in the continued complaint. The completed Form A and attachments and a Statement of Delivery (Form C) must be filed with the Tribunal.

How will the Commission know if a person abandons their complaint?

The Tribunal will advise the Commission that a person has abandoned their complaint and chosen to file a section 53(3) application.

Does a respondent to a continued complaint have to consent to the abandoning of the complaint at the Commission and the filing of a section 53(3) application at the Tribunal?

No, the transition provisions of the *Code* provide that the person who filed the continued complaint may chose to file a section 53(3) application.

What does the respondent have to do when the section 53(3) application is delivered?

The respondent must complete a brief response form (Form B) and attach the response to the complaint they filed with the Commission. If the respondent did not file a response to the complaint at the Commission, the respondent must complete section 2b of the response giving their position on the allegations and remedy sought by the applicant. The Form B and all attachments must be delivered to the applicant and any other respondents. The completed Form B and attachments must be filed with the Tribunal along with a Statement of Delivery (Form C) 35 days after the application was delivered to the respondent.

What happens if the respondent does not respond at all?

If the respondent does not send the Tribunal a completed response form, the Tribunal may issue a decision against the respondent based on the information in the application.

The respondent can ask the Tribunal to set aside that decision if it can be proved he or she did not receive the application, through no fault of his or her own, or that there were compelling reasons for not responding. The respondent also has to show that he or she has a defence to the application.

The 53(3) Application Process

What is the first step after the application and response have been filed?

The Tribunal will schedule mediation in every section 53(3) application. Mediations will normally occur between two and four months after the application is filed. However, if the Tribunal receives a higher than anticipated number of 53(3) applications it may take longer to schedule the mediation.

Will the parties be consulted on the date for mediation?

No, in most cases the Tribunal will set the date for mediation immediately upon receiving the application.

What happens if a party is not available on the date scheduled for mediation?

You are expected to be available on the date scheduled for mediation. In extraordinary cases, you may ask to change the date. Examples of extraordinary circumstances include: previously scheduled medical appointments that cannot be changed or previously scheduled absence from the country that cannot be changed. Advise the Tribunal and the other parties immediately if you are not available on the scheduled date. The Tribunal will decide whether to reschedule the mediation.

What does a party need to do to prepare for the mediation?

Each party to the mediation should consider carefully how they would like the application resolved. Think about your position: what are its strengths and weaknesses and how you will prove your claims. If you have documents which support your claims bring them to the mediation. What do you think would be a reasonable offer to settle and why is it reasonable. Be prepared to explain your position to the mediator.

What will happen at the mediation?

A member of the Tribunal, with expertise in human rights law, will meet with you. The mediation is confidential. Statements made and positions taken cannot be used in any later part of the process without everyone's consent.

The person who attends the mediation should have authority to settle the application. For example, if the respondent is a company, a person who has authority to sign an agreement on behalf of the company should be at the meeting. Similarly the applicant should be prepared to sign a settlement that day, if the terms are agreeable.

Generally, the mediator will ask each party to explain briefly what happened and what they would like to see done about it. The mediator will consider what the applicant and respondent have said and the information in the documents provided, if any. The mediator will not decide for the applicant or respondent, but will discuss options with the parties and try to assist the parties to come to an agreement.

What happens if the parties agree to a settlement of the application?

When the parties reach a resolution of all issues through mediation, they will be encouraged to reduce their agreement, if any, to writing and sign it on the day of the mediation. A settlement of an application agreed to in writing and signed by the parties is binding on the parties.

What happens if a party breaches the terms of a settlement?

A party who believes that another party has contravened the settlement may make an application to the Tribunal under section 45.9(3) of the *Code*.

What if mediation does not lead to a resolution of the matter?

If there is no agreement the mediator will assist you to complete a case management checklist. The checklist will help you prepare for the next stage of the process: the case resolution conference.

The Tribunal will schedule a case resolution conference before another member of the Tribunal who has expertise in human rights law.

Will parties be consulted on the date of the case resolution conference?

Yes, generally the Tribunal will consult with the parties and schedule a date for the case resolution conference.

What does a party have to do to prepare for the case resolution conference?

30 days after the mediation the applicant must deliver a statement of facts on which the applicant intends to rely and a description of the remedies sought on the respondent and file these documents, and a completed Statement of Delivery (Form C), with the Tribunal. At the same time the applicant must also produce to the respondent all documents arguably relevant to the application in the applicant's possession and which are not privileged.

The respondent has 45 days after the mediation to deliver a statement of facts and provide their response to the remedies sought to the applicant and file these documents, and a completed Statement of Delivery (Form C), with the Tribunal. At the same time the respondent must produce to the applicant all documents arguably relevant to the application in the respondent's possession and which are not privileged.

No later than 20 days before the case resolution conference the parties must deliver to each other and file with the Tribunal a copy of all documents on which they intend to rely at the case resolution conference, a list of their witnesses, and a statement of any additional facts on which they want to rely. At the same time the parties must file a Statement of Delivery (Form C) of these documents with the Tribunal.

What does a party bring to the Case Resolution Conference?

The parties should bring their witnesses, the statement of facts and additional facts, if filed, and all documents on which they intend to rely which were filed with the Tribunal.

If a party is concerned that a witness may not attend to give his or her evidence at the hearing, it can summon the witness. It must do so by contacting the Tribunal to get a Summons to Witness (Form D).

What happens at a Case Resolution Conference?

The Case Resolution Conference is the “hearing” of the application although it is conducted with less formality and the member takes an active role in directing the Conference.

The member is in charge of conducting the Conference and determining how the Conference will proceed. After hearing from the parties, the member will decide which witnesses need to give evidence and in what order, may take the lead in questioning of the witnesses, and may ask the parties to focus their evidence or submissions on certain issues.

What happens if I need a document in the possession of another party and they refuse to provide me with a copy?

You may write to the Tribunal and request that the party who has the document provide you with a copy. You must make your request to the Tribunal well in advance of the Case Resolution Conference, so that the other party can deliver the required document to you in time for you to file the document with the Tribunal 20 days in advance of the Conference.

What does the Case Resolution Conference decide?

The member will hear the relevant information and arguments and decide whether the applicant experienced discrimination or harassment. The decision will be based on the evidence and arguments presented at the Case Resolution Conference.

The member may tell the parties the decision immediately after the Case Resolution Conference. More often, the member will end the Conference without making a decision but will indicate that the decision is “reserved”. This means that the member will consider the information and arguments and will send the parties a decision later. In either case the member will give written reasons for the decision.

The member can decide that the *Code* has been violated if the member is convinced that it is more likely than not that discrimination or harassment has occurred. If the member finds that there has been discrimination or harassment, he or she must also decide what damages the applicant suffered as a result and what may be needed to prevent future discrimination.

For example, the member may order the respondent to pay money to compensate the applicant for financial losses or order the respondent to rehire the applicant. The respondent may also be ordered to hold training sessions for staff.

The member may decide that no discrimination or harassment took place and that the *Code* was not breached. The application will then be closed and nothing else will happen.

The Tribunal's rules do not authorize the Tribunal to order the losing side to pay the winner's legal costs.

What can an applicant or respondent do if they disagree with the decision?

Tribunal decisions are final and are not subject to appeal.

In certain limited circumstances you may ask the Tribunal to reconsider its decision. See the [Plain Language Guide](#) for information about making a request for reconsideration.

The Tribunal's decision may be judicially reviewed by making an application to the Divisional Court. The application for judicial review is governed by the Rules of Civil Procedure. More information about the judicial review process can be found by visiting the [Divisional Court](#) website.

Other Important Information

Legal Representation

A party or witness may be self-represented or represented by a lawyer or paralegal licensed by the Law Society of Upper Canada (LSUC). A party or witness may be represented by an unlicensed person if that person falls within a category the LSUC has exempted from its licensing requirements. The current exemptions permit an unpaid friend or family member, an employee or volunteer from a trade union, and students, volunteers and employees of Legal Aid clinics, among others, to act as a representative. The LSUC's website contains a complete list of the approved [exemptions](#).

A person who is not licensed, whose license is suspended or who is not in an exempted category will not be permitted to act as a representative in a Tribunal proceeding. For further information on representatives, please see the Tribunal's Policy on Representation.

Language of Hearings

Hearings may be conducted in French, English or bilingually and, where requested, with interpretation in American Sign Language (ASL) or Quebec Sign Language (QSL). An individual who requires interpretation services in a language other than English, French, ASL or QSL in order to participate in a hearing may request that the Tribunal provide appropriate interpretation services. The Tribunal Registrar must be notified as soon as possible of such requests. The Tribunal has a [Practice Direction on Requests for Language Interpretation](#).

Accommodation of Code-related Needs

People who are involved in Tribunal proceedings are entitled to accommodation for needs related to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy and gender identity), sexual orientation, age, marital status, family status and disability (*Code*-related needs), unless to do so would cause undue hardship.

The Tribunal has implemented a number of measures to promote a barrier-free built environment, to incorporate principles of universal design and to meet recurring accessibility needs. In addition, participants including parties, witnesses and representatives can request accommodation on a case-by-case basis. Anyone requiring accommodation should consult the [Tribunal's Policy on Accessibility and Accommodation](#) for more information, including information on how to make an accommodation request.

Hearing Location

In addition to Toronto, the Tribunal will hold hearings in the following regional centres: Kingston; London; North Bay; Ottawa; Sarnia; Sault Ste. Marie; Sudbury; Timmins; Thunder Bay; and Windsor. The Tribunal may sit in a location other than the ones listed above depending on the needs of the parties, their witnesses and the financial constraints of the Tribunal. Any request for a change in venue should be made in writing as soon as possible.