



Information on the Process for Resolving Human Rights Applications before the Human Rights Tribunal of Ontario

Disponible en français

This document, in question and answer format, provides information about the process for resolving human rights applications before the Human Rights Tribunal of Ontario (the HRTO).

This document provides general information only. It should not be taken as legal advice or a determination of how the HRTO will decide any particular issue.

This document applies to new applications filed under Part IV of the Ontario *Human Rights Code* after June 30, 2008. For information about transition applications related to human rights complaints that were filed with the Human Rights Commission before June 30, 2008, please see the information on Transitional Applications on the HRTO's website (<http://www.hrto.ca>) or contact the HRTO.

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.

What does the Human Rights Tribunal do?

The HRTO has a mandate to resolve claims of discrimination and harassment brought under the Ontario *Human Rights Code* (the "Code") in a way that is fair, just and expeditious. It does this in accordance with its core values which are:

- accessibility, both physically and functionally;
- fairness;
- transparency;
- timeliness; and
- the opportunity to be heard.

What is the Ontario *Human Rights Code*?

The *Code* is a law that protects people in Ontario from discrimination and harassment in the areas of employment; housing; goods, services and facilities; contracts; and, membership in trade and vocational associations. The *Code* prohibits discrimination and harassment on any of the following grounds:

- Race
- Colour
- Ancestry

- Place of origin
- Citizenship
- Ethnic origin
- Disability
- Creed
- Sex, including sexual harassment, pregnancy, and gender identity
- Sexual orientation
- Family status
- Marital status
- Age
- Receipt of public assistance (Note: applies only to claims about housing.)
- Record of offences (Note: applies only to claims about employment.)

What is discrimination?

Not all unfair conduct or unequal treatment is covered by the *Code*. For the *Code* to apply, unequal treatment must have occurred in one of the five areas listed in the *Code*: employment, housing, goods, services and facilities, contacts and membership in trade and vocational associations. The unequal treatment must have been based on one or more of the above grounds.

What is harassment?

Harassment is a form of discrimination. The *Code* defines harassment as a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome. It includes offensive comments or actions based on one or more of the above grounds.

What is accommodation and undue hardship?

The *Code* states that employers, landlords and service providers are required to accommodate (make alternate arrangements for) human rights related needs unless doing so would cause undue hardship due to cost or health and safety concerns. Some examples of accommodations include providing sign language interpreters for persons who are Deaf when receiving medical treatment at a hospital, providing time off work to attend pregnancy-related medical appointments, or modifying dress codes to allow the wearing of religious clothing.

What else does the *Code* cover?

The *Code* also prohibits:

- Discrimination because a person has a relationship, association or other dealing with a person or persons who are identified by one of the grounds listed above.

- Reprisal, or threats of reprisal, because a person has claimed rights, or taken part in a proceeding under the *Code*, or refused to infringe another's rights.
- Sexual solicitation or advances by a person who is in a position to give or deny a benefit, and reprisal or threats of reprisal for rejecting a sexual solicitation or advance.

Are there situations where the *Code* allows unequal treatment?

Yes, the *Code* provides certain defences and exemptions to discrimination. For example, although the *Code* states that a person cannot be treated differently because of their age, it allows different insurance rates based on age.

Another example of an exemption occurs in housing. The *Code* allows an owner to refuse to rent to someone based on their gender or race if:

- the owner or his or her family also lives on the premises; and,
- the owner or his or her family would be sharing a kitchen or bathroom with the tenant.

To find out more about the *Code*, contact the Ontario Human Rights Commission.

How does the HRTO resolve claims under the *Code*?

A claim of discrimination or harassment can be brought to the HRTO by filing an application. The HRTO handles all new human rights applications under the *Code* and is the decision-making body for all applications claiming a violation of human rights under the *Code*.

The HRTO processes applications following its Rules of Procedure, Practice Directions and Policies (available at www.hrto.ca) and may also be guided by prior HRTO decisions (available on CanLII at www.canlii.org).

The HRTO resolves applications by helping the parties settle the claim through its mediation process. If the parties do not agree to mediation, or mediation does not resolve the application, the HRTO holds a hearing to decide the application.

As the HRTO has the power to hold hearings, make decisions and order remedies, it is a quasi-judicial adjudicative agency. The decision-makers are called Vice-chairs, Members or adjudicators. All HRTO decision-makers are impartial and neutral with experience, knowledge and training in human rights law and issues. The HRTO also has staff who process applications.

How does a person with a human rights claim begin the process?

Persons who want to make an application to the HRTO may ask for advice from the Human Rights Legal Support Centre. The Centre is independent of the HRTO and offers

free services throughout the province, giving legal advice and other assistance to individuals who believe that another individual, an organization, corporation, or government agency or department has violated their rights under the *Code*.

People may also get help from other legal clinics, a private lawyer or a paralegal, or may choose to file an application on their own.

The HRTO process begins when a person files a completed application form with the HRTO. The person is then called the applicant.

The application form (Form 1) can be downloaded from the HRTO's website or obtained by contacting the HRTO. The completed form can be dropped off, mailed, faxed or e-mailed to the HRTO. The form can also be filed directly through the HRTO's website using a Smart Form.

When should an application be filed?

An application should be filed within one year of the date on which discrimination is alleged to have occurred. If there was more than one discriminatory event, the application should be filed within one year of the last event. Applications filed after one year are not permitted unless the HRTO finds that there was a good reason for filing late and that the delay will not negatively affect other people involved in the application.

What information is asked for on the application form?

The application form asks the applicant to identify who they believe is responsible for the human rights violation claimed. This person or organization is called the respondent. There can be more than one respondent. The applicant must also provide a detailed first-person account of the situation that led to the claim. Questions on the form include:

- In what area and on what grounds do you believe your rights were infringed?
- What happened that makes you feel that you were discriminated against?
- What do you want to have happen in response to your application?
- Do you want to see any changes in policies or practices?

The form also asks the applicant to list the important witnesses and documents related to the application that the applicant has on-hand. The applicant is asked to explain very briefly why each proposed witness can help prove their case (for example, if a witness was there when an incident happened, the applicant would say that on the form).

The applicant has the opportunity on the form to tell the HRTO about any relevant documents that other people have and that the applicant needs in order to prepare his or her case.

The form also asks the applicant to identify anyone else who may be affected by the application, for example, the applicant's union.

What happens if a submitted application is not complete?

The HRTO will contact an applicant to ask for additional information when minor information is missing from the application form, such as a postal code or telephone number.

The HRTO may return the application to the applicant when too little information is provided on an important issue or when a required section of the form is blank. The HRTO will give the applicant information about how the application is incomplete. The applicant will have twenty (20) days to fill in the missing information. The HRTO cannot provide any legal advice, but will give the applicant information about the services of the Human Rights Legal Support Centre and other places to ask for assistance.

If the applicant does not provide the missing information needed to complete the form, the HRTO will review the form and, on a case-by-case basis, decide if there is enough information to begin the process of dealing with the application.

How does the respondent find out about the application?

The HRTO will send each respondent a copy of the application as soon as it is accepted for processing. In most cases, once an application is accepted for processing it will be sent to the respondent within a week. The HRTO will remove information about the applicant's witnesses from the application form. If the applicant has asked to be contacted through an alternate contact, the applicant's personal contact information will also be removed.

How does the respondent answer the application?

Each respondent must use the HRTO's response form (Form 2) to respond to the issues raised in the application and will have thirty-five (35) days to complete and return the response form to the HRTO.

Questions on the response form include:

- Did the applicant tell you about the human rights concern?
- Did you investigate?
- Do you have a human rights policy?
- What is your response to what the applicant says happened and the applicant's proposed remedy?

The respondent must also list the important witnesses and documents that they have on-hand. The respondent will be asked to explain very briefly why each witness can help prove their case (for example, if a proposed witness was there when an incident happened).

The respondent will also have the opportunity to list relevant documents that other people have and that they need to prepare their case.

Except in four situations, a respondent must file a complete response to the application. The HRTO will not consider requests to decide preliminary objections or issues before the complete response is filed. The exceptions are where the respondent asks the HRTO to dismiss an application because a court is already dealing with the same matter, there was already a human rights complaint about the same matter, or because the applicant and the respondent have already entered into a settlement agreement and the applicant signed a release. As well, the respondent can deliver and file a Request for Order During Proceedings (Form 10), claiming the HRTO does not have jurisdiction over the matter because the respondent is federally regulated, before filing a complete response.

What happens if a submitted response form is not complete?

The HRTO will contact a respondent to ask for additional information when minor information is missing from the response form, such as a postal code or telephone number.

The HRTO may return the response form to the respondent when there is not enough information on an important issue or when a required section of the form is blank. The HRTO will give the respondent information about how the response is incomplete. The respondent will have twenty (20) days to fill in the missing information. The HRTO cannot provide any legal advice, but will give the respondent information about possible places to get help.

If a respondent does not provide the missing information needed to complete the response, the HRTO will accept the response and the respondent will be bound by the information provided in the incomplete form, unless the HRTO rules otherwise.

An application to the HRTO begins a legal proceeding. Therefore, a respondent who has had notice of the application but fails to file a response may be subject to orders, including monetary compensation, without having an opportunity to participate further in the process.

Will the applicant have a chance to reply to the respondent's information?

Yes, the applicant has a chance to reply to the respondent's information. The HRTO will send the applicant a copy of the response form and ask the applicant to reply to any new matters raised. The HRTO will not send information about the respondent's witnesses to the applicant.

Does the Commission get a copy of applications? Can the Commission participate in the HRTO's process?

The Ontario Human Rights Commission has the right to be informed of applications before the HRTO, and receives copies of all applications and responses. The Commission can intervene in any application with the consent of the applicant. As well, the Commission can ask to intervene without the applicant's consent, subject to any directions or terms that the HRTO sets after hearing from the parties.

The Commission also has the right to bring its own application to the HRTO if the Commission is of the opinion that the application is in the public interest.

Can the HRTO refuse to consider an application?

The HRTO can only hear matters that fall within the scope of the *Code* and that the HRTO has the legal authority (jurisdiction) to deal with. The HRTO does not have the power to handle an application if:

- the application does not relate to a ground of discrimination (for example, race or disability) or an area of activity (for example, housing or employment) covered by the *Code*;
- the events happened outside Ontario;
- the organization that is said to have discriminated is a federally-regulated company or industry such as a chartered bank, an airline, a television or radio station, a telephone company or a company that operates buses and railways that travel between provinces;
- the human rights claim is already before the courts, or the subject of a court decision; or
- there was already a complaint to the Ontario Human Rights Commission related to the same or substantially the same matter.

If it appears that the HRTO may not have the authority to handle the application, the applicant will be notified and have an opportunity to tell the HRTO why the application is within the HRTO's jurisdiction.

The HRTO will process an application where it has decided that it has the authority to do so. If the HRTO decides that it does not have the authority under the *Code* to deal with the application, it will dismiss the application with written reasons.

Can an application be filed if the same issues have been dealt with through another process?

The *Code* allows the HRTO to dismiss all or part of an application where the HRTO finds that another proceeding has appropriately dealt with the substance of the application. This avoids duplication of proceedings or re-opening issues that have already been dealt with elsewhere.

If the applicant initiated another process which is complete, a respondent may ask the HRTO to dismiss the application. The HRTO will not make a decision to dismiss the

application without giving the applicant and respondent a chance to state their position on whether the other process appropriately dealt with the substance of the application.

What if the other process is ongoing?

The HRTO may decide to defer an application if the same issues are still being considered in another proceeding and the results would also apply to the parties.

Before the HRTO decides to defer an application, both the applicant and the respondent will have a chance to state their position on whether a deferral is appropriate.

In general, the HRTO's goal is to discourage the applicant and the respondent from raising preliminary technical legal objections that will slow down the process. The HRTO will try to make procedural and preliminary decisions quickly, so that the parties can get to a resolution without unnecessary delay. However, the HRTO will only deal with issues at a preliminary stage where it will assist in the fair and expeditious resolution of the application.

How does the HRTO assist the parties to resolve the application?

In the application and response forms, the parties are asked if they want to participate in mediation to try to resolve the application. If the parties agree, the HRTO will schedule a mediation session before they are required to exchange documents.

In addition, even if the parties do not choose mediation at this stage, at any time after the application is filed, either the applicant or respondent, or both of them together, can ask the HRTO to assist them resolve the issues in dispute through mediation. An HRTO adjudicator may contact the parties to explore opportunities for settlement.

Mediation is always a voluntary process. If the parties have no interest in trying mediation, the application will go directly to the hearing stage.

The HRTO will not usually allow parties to postpone scheduled steps in the hearing process or hearing dates for purposes of mediation or settlement discussions.

What happens at an HRTO mediation?

The HRTO will mediate disputes using an active listening approach. This means that parties will have an opportunity to tell an HRTO adjudicator, with experience in human rights law, what happened and what they would like to see done about it. The HRTO adjudicator will ask the parties questions and help them to explore a fair resolution of the matter.

The adjudicator will consider what the applicant and respondent have said and the information in the documents provided. The adjudicator will not decide for the applicant or

respondent, but will give both parties the opportunity to find a resolution to the situation that is satisfactory to both sides.

Mediation is always a voluntary process, and any proposed settlement must be accepted by both the applicant and the respondent. If the parties are unable to reach a resolution they are prepared to accept, the application will go to the hearing stage. If the parties settle the case in mediation, the HRTO will issue an order disposing of the application and the HRTO's file will be closed.

What other steps does the HRTO take to resolve an application?

The HRTO can:

- Schedule a short hearing to decide important preliminary issues.

In certain circumstances, a short hearing might be scheduled to allow parties to make oral submissions before an adjudicator makes a decision. This may happen when there is an issue about whether an application is properly within the authority of the HRTO, or when another tribunal has already considered the same issues in another proceeding involving the same parties. It could also be scheduled where the respondent has failed to respond to an application, but the applicant wants to make submissions in person.

- Schedule a conference call with the applicant and respondent to discuss how the HRTO can deal with the application and case management issues.
- Conduct a case assessment.

Through this process, an HRTO adjudicator will identify the main issues that need to be addressed at a hearing, any common ground between the parties and any procedural issues that need to be decided before the start of the hearing. The goal is to help the parties (including self-represented parties) have an efficient hearing on the real substance of the dispute.

- Hold a hearing.

At the hearing, the adjudicator will address any preliminary issues. The adjudicator will then listen to information presented by the applicant and the respondent and by any witnesses. The applicant and the respondent will also be able to explain to the adjudicator why the HRTO should make a certain decision. The adjudicator will then close the hearing. The adjudicator will write a decision after reviewing all the information and submissions presented at the hearing.

These process options are not exclusive of each other. In some cases, an application will go through all of the above steps.

What happens before the hearing?

The parties will receive a Confirmation of Hearing from the HRTO which tells them the date and location of their hearing. Within twenty-one (21) days from the date of the Confirmation of Hearing the parties are required to exchange all arguably relevant documents with each other. Then, forty-five days (45) prior to the scheduled date for the hearing, they must tell each other and the HRTO about relevant documents they want to use at the hearing and about any witnesses they intend to call to give evidence at the hearing.

Closer to the hearing date, an adjudicator may review the documents and witness statements in the file and decide whether to produce a Case Assessment Direction that will assist the parties to be prepared 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 who the parties should bring to the hearing to testify about what happened and what documents need to be given to the other side and filed with the HRTO. The parties must always be prepared to address any issues identified in the Case Assessment Direction at the hearing.

At the commencement of the hearing, the adjudicator may consult with the parties and decide what the main issues are, what facts appear to be undisputed, what evidence needs to be presented, and in what order witnesses should be heard. The parties will always be able to make submissions before a determination on procedure is made.

What is the role of the adjudicator during the hearing?

The adjudicator can focus the hearing and ask questions, and may, through consultation with the parties, decide on the structure of the hearing, including the order in which witnesses testify. However, the adjudicator is a neutral decision-maker and cannot take responsibility for identifying and leading the evidence.

It is up to the applicant and the respondent to bring forward evidence to support their respective positions.

What can a hearing adjudicator decide?

The adjudicator can decide to dismiss the application or can find that discrimination or harassment occurred and can order a remedy for the applicant. A remedy could be a monetary award or an order that the applicant be given an opportunity to return to work, for example, with appropriate accommodation. The respondent may be ordered to correct the discriminatory situation, to develop policies or hold training sessions for staff. The adjudicator may also order actions to promote future compliance with the *Code*.

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

There is no right of appeal from an HRTO decision, but a party can ask for a reconsideration of the decision in some cases. Grounds for reconsideration include:

- when new facts come to light that were not available at the time of the hearing and would have had an impact on the HRTO's decision
- when a party did not receive notice of the hearing and was unable to participate, through no fault of the party
- when the HRTO considers it advisable and proper to reconsider the decision, for example because it believes the decision departed significantly from established case law, and there is a broader public interest in reconsidering the decision

A party may also apply to the Divisional Court for judicial review of the decision. Applications for judicial review are governed by the Rules of Civil Procedure.

How long is the HRTO's process supposed to take?

The HRTO's goal is to have the hearing completed within one year of receiving a completed application form. It is hoped that most applications will be settled much more quickly through the mediation process.

In what languages does the HRTO conduct its proceedings?

HRTO proceedings can be conducted in English, French or bilingually and, where requested, with interpretation in American Sign Language (ASL) or Quebec Sign Language (QSL). Persons who require interpretation for another language to be able to participate in an HRTO mediation or hearing may ask the HRTO to provide appropriate interpretation services by contacting the HRTO's Registrar.

Does the HRTO accommodate human rights related needs?

Yes. The HRTO wants to ensure that everyone who uses its services can ask for and receive accommodation (alternate arrangements) for their human rights related needs to be able to participate in its proceedings on an equal basis.

The HRTO is committed to being accessible and providing 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, unless doing so would cause undue hardship. For further information, including the process for requesting accommodation, please see the HRTO's Policy on Accessibility and Accommodation.

Contacts

To contact the HRTO or to submit a new application:

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Website: www.hrto.ca

For Transitional Applications or Commission Referred Complaints:

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For Assistance or Representation:

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Website: www.hrlsc.on.ca

For information on finding a lawyer, paralegal or community legal clinic (in 170 different languages)

Justice Ontario

<http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/>

Tel (toll-free): 1-866-252-0104

TTY (Toronto): (416) 326-4012

For information about the Code, human rights issues in Ontario or human rights education:

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