



# Human Rights Tribunal of Ontario

## Guide to Preparing for a Hearing before the Human Rights Tribunal of Ontario

Disponible en français

This document provides information about preparing for and participating in a hearing before the Human Rights Tribunal of Ontario (the HRTO).

This document provides general information only. It should not be taken as legal advice, a determination of how the HRTO will decide any particular issue, or a substitute for the HRTO’s Rules of Procedure, Practice Directions, or Policies.

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.hрто.ca>) or contact the HRTO.

This document is available on the internet at <http://www.hрто.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.

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## **Hearings before the HRTO**

Where the parties have chosen not to participate in the HRTO's mediation process or where mediation does not result in a settlement, the application will go to the hearing stage.

A hearing at the HRTO is a legal proceeding. It provides an opportunity for each party to present its position, including facts and legal arguments, to the HRTO adjudicator hearing the case. An adjudicator is an impartial (neutral) decision-maker with experience, knowledge and training in human rights law and issues.

At a hearing, subject to the direction and rulings of the HRTO adjudicator, a party may expect to question witnesses and introduce documents as evidence. The parties make arguments about the facts and the law at the hearing, following which the adjudicator writes a written decision determining whether discrimination has been proven. If the adjudicator finds there was a violation of the *Code*, a financial award and/or future compliance remedies may be ordered. The decision is provided to the parties. The HRTO's decisions are published on the internet ([www.CanLII.org](http://www.CanLII.org)) and are available for any member of the public to read.

## **Confirmation of Hearing**

When the HRTO determines that the application is ready to proceed to a hearing, it will send the parties a Confirmation of Hearing which sets the date, time and location of their hearing. Any requests to reschedule the hearing must be made in accordance with the HRTO's [Practice Direction on Scheduling of Hearings and Mediations, Rescheduling Requests, and Requests for Adjournments](#).

The Confirmation of Hearing also starts the clock for disclosing all arguably relevant documents to the other parties and for delivering witness summaries and the documents which the party plans to use in the hearing, to the other parties and to the HRTO.

## **Disclosure of Documents**

The purpose of the HRTO's requirements for disclosure of documents is to ensure a fair and expeditious process. Each party has a right to know what the other side's case is about. Disclosure helps the parties prepare for the hearing. If the parties have fully disclosed their positions, documents and witnesses, the hearing runs more expeditiously and fairly, and no one is taken by surprise.

**Within 21 days of the Confirmation of Hearing, each party must deliver to every other party:**

- A list of all arguably relevant documents in their possession. Arguably relevant documents are documents that have some relevance and connection to an issue or issues in dispute in the application, including the remedy being asked for. These include documents that the party intends to use at the hearing and documents that the party does not intend to use but are otherwise relevant to the case.
- Where privilege is claimed over any document, the party must describe the nature of the document and the reason for claiming that the document is privileged (e.g. the document is a communication between the party and its lawyer for the purpose of getting legal advice). If a party is not sure if a document is privileged, it should get legal advice; and,
- A copy of each document on the list, except for any documents over which privilege is claimed.

**The documents should not be filed with the HRTO.** But, Statements of Delivery (Form 23) must be filed with the HRTO to confirm that this requirement has been met. Some parties have thought that the documents should be attached to the Statement of Delivery. This is not necessary.

**Then, forty-five days (45) prior to the scheduled date for the hearing, the parties must deliver to every other party, and file with the HRTO:**

- A list of documents that the party plans to rely on at the hearing; and
- A copy of each document on the list (if it has not already been provided), or confirmation that each document has already been provided as required above.

Note: The parties should only include the documents they intend to rely on at the hearing. These are the documents the party believes are necessary to prove or support their position, including their position on remedy. Often this will be a much smaller number of documents than the party disclosed as arguably relevant to the issues in dispute. These are the documents which the party must file with the HRTO.

**Example:** Jane Doe and ABC Company receive a Confirmation of Hearing from the HRTO dated September 10, 2009. It states that the hearing will begin on January 15, 2010.

- Jane Doe and ABC Company must send each other their list of arguably relevant documents and copies of each document on their list by October 1, 2009 (21 days from September 10<sup>th</sup>). They must also file Statements of Delivery (Form 23) with the HRTO by October 1, 2009 confirming that they have done this.
- By December 1, 2009 (January 15<sup>th</sup> less 45 days), they must send each other a list of documents they intend to rely on at the hearing and, if they have not already done so, a copy of each document. They must also file the list of documents and a copy of each document on the list with the HRTO by this date.

## **Other information about Documents and Disclosure**

Unless the HRTO directs otherwise, rescheduling the hearing date does NOT change the dates for disclosure and production.

Documents can include written documents (policies, memos, emails, contents of a human resources file etc.) as well as other things such as photographs, sound recordings, videotapes, charts, graphs, maps, floor plans, information stored electronically and even physical objects.

There is an ongoing obligation to disclose. This means that if a party finds a new document or learns that information has changed after the above deadlines are met, it must deliver the new document or information to the other parties right away.

If a party seeks production of additional arguably relevant documents from a party or non-party, it may request a production order from the HRTO after the deadlines for disclosure have passed. To request production, the party should complete a Request for Order During Proceedings (Form 10) and send it to the other parties and, to a non-party where production of documents is sought from the non-party. The Request for Order, along with Statements of Delivery (Form 23) must be filed with the HRTO. A party or non-party who receives a Request for Order for production of documents may respond within 14 days by sending a Response to Request for Order During Proceedings (Form 11) to the other parties and filing it with the HRTO, along with Statements of Delivery (Form 23).

Failing to disclose arguably relevant documents has serious consequences. Another party can ask the HRTO for an Order requiring the documents to be shared. If a party wants to use a document to support its case but has not met the deadlines for giving it to the other parties, the HRTO can refuse to consider the document, even if it would be helpful to the party's case. The HRTO can take any other action it considers appropriate if documents are not shared with the other parties as required by the HRTO's rules.

## **Witnesses**

Witnesses are people who can provide evidence (information) about an issue or fact that is relevant to the dispute between the parties. For example, a witness may have been present at a relevant event and may have information about what they saw or heard. Witnesses can have other types of personal knowledge or information. For example, a witness may know about an important document, such as an organization's policy, and may be able to explain how it was developed, applied in the past and how it relates to the events at issue in the application.

Generally, witnesses are required to focus on giving information about issues and facts rather than offering their opinion about a claim. The exception to this is expert witnesses. A party may want to call an expert witness, who has special experience,

education, training or skills that qualifies them to give an informed opinion about some matter that is relevant to the application, to testify.

**The HRTO's Rules require the parties to provide a list of witnesses they plan to present to the HRTO and a brief summary of the witness' evidence (sometimes referred to as will-say statements) to each other not later than 45 (forty-five) days before the first scheduled hearing day.** This helps to ensure a fair and efficient process in which participants can prepare for the hearing and are not taken by surprise.

In addition, if a party wants to call an expert witness, it must include a copy of the expert witness' written report, or a full summary of the expert witness' proposed evidence, as well as a curriculum vitae (résumé) setting out the expert's qualifications.

Each party must file the witness list that was delivered to the other parties with the HRTO, along with Statements of Delivery (Form 23) confirming that the witness list was provided to the other parties as required by the HRTO's rules.

**Example:** The hearing in the Application involving Jane Doe and ABC Company is scheduled to begin on January 15, 2010. Each party must provide the other party with its witness list and a brief summary of each witness' evidence by December 1, 2009 (45 days before the first hearing day) and must file the list with the HRTO by the same date. Statements of Delivery (Form 23) must also be filed with the HRTO by December 1, 2009.

### **Ensuring a Witness Attends a Hearing (Summonses)**

Each party is responsible for making sure that a witness the party wishes to call to give evidence, shows up on the dates scheduled for hearing the application.

If a party is concerned that a witness may not attend to give his or her evidence at the hearing, or if the party wants added assurance that a witness will come to the hearing, it can summon the witness. It must do so by contacting the HRTO to get a signed Summons to Witness (Form 24). Sometimes a witness wants a Summons in order to be able to be absent from work.

The Summons will be signed by a HRTO adjudicator but will otherwise be blank. The party must complete the Summons to Witness by filling in the following information:

- The name of the witness;
- The address of the witness;
- The date, time and location of the hearing;
- Any documents that the witness must bring with him/her;
- The date the summons was completed; and,
- The name, address and telephone number, and Law Society of Upper Canada Number (for lawyers and paralegals) of the person issuing the summons.

Delivery of the Summons to the witness is the responsibility of the party who wants to summon the witness. The Summons must be served on (given to) the witness in person. The witness is entitled to be paid \$50/day for each they are needed to attend and a travel allowance (\$3.00/day if the hearing is in the city or town in which the witness lives; if the hearing is within 300 km of where the witness lives, \$0.24/km for the distance between the witness' residence and where the hearing is being held; and if more than 300 km, the minimum return air fare plus \$0.24 each way from the witness' home to the airport and the airport to the hearing). The witness is entitled to get their attendance money, in cash, at the time they are served with the Summons. A witness who is summoned but does not attend at the hearing, or produce the documents or things specified in the Summons, without lawful excuse, may be subject to contempt proceedings in the Superior Court of Justice.

### **Case Assessment Directions**

Closer to the hearing date, an HRTO adjudicator will review the documents and witness statements in the file and may decide to issue 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 Case Assessment Direction may identify issues the parties will be required to address at the hearing, and the order in which those issues will be heard.

**A Case Assessment Direction is a decision of the HRTO. The parties must always be prepared to address any issues identified in the Case Assessment Direction at the hearing.**

**A Case Assessment Direction does not mean the adjudicator has made a decision about the outcome of the application before listening to the parties. It is intended to help the parties proceed in a way that is fair, just and expeditious.**

### **Hearing Participants**

The participants in a hearing include:

- The applicant who filed the claim of discrimination with the HRTO;
- The respondent(s), i.e. all the person(s) or organization(s) that are said to be responsible for the discrimination that is said to have taken place, and any person or organization against whom an order is sought; and
- Any intervenors that the HRTO has said can participate in the hearing.

Other persons who may be present at the hearing are representatives of the participants (lawyer, paralegal or other representative), witnesses, spectators (people who have come to watch the hearing, including in some cases the media), interpreters (for persons who require language interpretation or sign language interpretation) or

support persons. Parties should be aware of the HRTO's Policy regarding representatives: [Policy on Representation before the HRTO](#).

It is important to note that unless the HRTO decides otherwise, hearings are open to the public.

## **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). The HRTO will also provide interpretation services to a party or witness at the hearing in languages other than English, French, ASL or QSL. Notify the Registrar of this need as soon as possible as it can take some time to retain qualified interpreters. The HRTO's [Practice Direction on Requests for Language Interpretation](#) is available on the HRTO website at [www.hrto.ca](http://www.hrto.ca) or by phone.

## **Accommodation of Code-related Needs**

People who are involved in HRTO proceedings are entitled to accommodation (special arrangements) 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 HRTO 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 HRTO's [Policy on Accessibility and Accommodation](#) for more information, including information on how to make an accommodation request.

## **Failure to Attend a Hearing**

If a party was notified of the hearing but does not attend, the HRTO adjudicator can, and in most cases will, go ahead without that party. If the applicant does not attend the hearing, the application will usually be dismissed. If another party does not attend, the adjudicator can determine that the party is not entitled to further notice of the proceedings and may lose their right to present evidence or make submissions (arguments) to the HRTO. The HRTO will generally proceed in that party's absence, and may deem them to have accepted all of the allegations put forward by the parties who are present.

If a witness does not attend a hearing, the adjudicator will consider whether the witness was subject to a Summons and, if so, whether there should be any steps taken to enforce the Summons. After considering the importance of the witness to determining

the application and the reason, if known, for the witness's absence the adjudicator may decide to go ahead without that witness or adjourn (reschedule) the hearing.

### **The Role of the Adjudicator During the Hearing**

The HRTO adjudicator will ask parties and representatives to complete an appearance sheet at the beginning of the hearing. The adjudicator will introduce him or herself and ask the parties and representatives to introduce themselves. The adjudicator will explain the hearing process to everyone.

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 issues are considered or 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.

A hearing before the HRTO is generally less formal than a Court trial. Also, the adjudicator may consult with the parties to determine whether there are any issues or facts that are not in dispute and can be agreed to. The adjudicator may ask parties about the relevance of particular witnesses or documents they wish to present as evidence.

### **The Evidence at a Hearing**

Unless all the parties agree about what the facts are, evidence will have to be presented. This will usually involve the parties and their witnesses testifying under oath or affirmation as well as presenting documentary evidence.

In order to ensure that all the evidence they give will be true, the adjudicator will ask each witness:

Ms / Mr. xxx, you are about to give evidence before the Human Rights Tribunal of Ontario. The Tribunal is dependent upon you to tell the truth in these proceedings. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Do you understand that intentionally breaking that promise would be perjury and a criminal offence under the law?

Each witness gives their evidence only once. All parties will have a chance to ask relevant questions of each witness.

Any documents a party wants to rely on to assist the HRTO adjudicator in understanding the case should also be presented as evidence. If there are no objections to the document, the HRTO adjudicator will identify the document as an exhibit. If there are disputes about particular documents, the document may have to be “introduced” or identified by a witness who created, sent or received the document. Questions may be asked about the document.

Parties should come to the hearing prepared to present evidence about whether or not discrimination occurred as well as evidence concerning the remedy that the HRTO should order should it decide that the *Code* was infringed. If an applicant is asking for monetary compensation, he or she must be ready to explain to the HRTO the amount of money being asking for and how that amount was calculated using concrete evidence such as pay stubs and receipts. Respondents should also be prepared to explain and provide evidence as to what they believe to be an appropriate remedy and why.

After the parties have presented the evidence, each party has an opportunity to review the evidence and the law and to tell the HRTO adjudicator how the case should be decided. It is important to note that the HRTO adjudicator must base his or her decision only on the evidence and argument heard at the hearing. It is therefore necessary to present all the relevant information at the hearing as there will not be another opportunity to do so.

## **The Decision**

The HRTO adjudicator will rarely make a decision at the hearing. The adjudicator will consider everything he or she heard or read and make the decision later. Once the decision is made, a copy of the decision with reasons will be sent to the parties. HRTO decisions are published on the Canadian Legal Information Institute website [www.CanLII.org](http://www.CanLII.org).

The application will be dismissed if the adjudicator finds there was no violation of the *Code*. If the adjudicator finds that discrimination or harassment occurred, he or she will explain which respondents are responsible and decide an appropriate remedy. The decision will give reasons for the result.

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*.

It is important to note that the purpose of the *Code* is remedial, not punitive. If the HRTO determines that a *Code*-protected right was infringed, its order will focus on compensating for the infringement of the right, and trying to ensure that in the future, human rights will be respected.

## **Enforcement of Orders**

The HRTO's orders are legally binding and must be complied with. If an applicant believes that a respondent is not complying with a HRTO's order or is having trouble obtaining the remedy that the HRTO ordered the respondent to provide, the decision may be registered with the Superior Court of Justice of Ontario and is enforceable as if it is an order of that Court. The HRTO cannot assist with the enforcement of orders. Individuals should seek legal advice.

## **Contacts**

### **To contact the HRTO:**

Richard Hennessy  
Registrar Human Rights Tribunal of Ontario  
655 Bay Street, 14th floor  
Toronto, ON M7A 2A3  
Tel (Toronto): (416) 326-1519  
Tel (toll-free): 1-866-598-0322  
TTY: (416) 326-2027  
TTY (toll-free): 1-866-607-1240  
Fax: (416) 326-2199  
Fax (toll-free): 1-866-355-6099  
E-mail: [HRTO.Registrar@ontario.ca](mailto:HRTO.Registrar@ontario.ca)  
Website: [www.hrto.ca](http://www.hrto.ca)

### **For Transitional Applications or Commission Referred Complaints:**

Patricia M. Grenier  
Registrar – Transition  
Human Rights Tribunal of Ontario  
655 Bay Street, 14th Floor  
Toronto, ON M7A 2A3  
Tel (Toronto): (416) 326-1312  
Tel (toll-free): 1-866-598-0322  
TTY (Toronto): (416) 314-2379  
TTY (toll-free): 1-800-424-1168  
Fax: (416) 314-8743  
E-mail: [HRTO.Registrar-Transition@ontario.ca](mailto:HRTO.Registrar-Transition@ontario.ca)  
Website: [www.hrto.ca](http://www.hrto.ca)

### **For Assistance or Representation:**

Human Rights Legal Support Centre  
180 Dundas Street West, 8th Floor  
Toronto, ON M7A 0A1  
Tel (Toronto): (416) 597-4900

Tel (toll-free): 1-866-625-5179  
TTY (Toronto): (416) 597-4903  
TTY (toll-free): 1-866 612-8627  
Website: [www.hrlsc.on.ca](http://www.hrlsc.on.ca)

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

Justice Ontario

Website: [www.attorneygeneral.jus.gov.on.ca/english/justice-ont/](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:**

Ontario Human Rights Commission

180 Dundas Street West, 8th Floor

Toronto ON M7A 2R9

Tel (Toronto): (416) 326-9511

Tel (toll-free): 1-800-387-9080

TTY (Toronto): (416) 314-6526

TTY (toll-free): 1-800-308-5561

E-mail: [info@ohrc.on.ca](mailto:info@ohrc.on.ca)

Website: [www.ohrc.on.ca](http://www.ohrc.on.ca)

**Sources of Information about Human Rights**

- Ontario Human Rights Commission's website has information on the Code and human rights law and policy including discrimination, harassment, defences and exceptions to the *Code*: [www.ohrc.on.ca](http://www.ohrc.on.ca)
- Canadian Legal Information Institute (CanLII) is a free internet resource offering access to legal documents and copies of the HRTO's decisions issued since 2005: [www.CanLII.org](http://www.CanLII.org)
- The Canadian Human Rights Reporter is available online (for a fee) or in many law libraries: [www.cdn-hr-reporter.ca](http://www.cdn-hr-reporter.ca)
- Quicklaw is an online legal database (for a fee): [www.lexisnexis.ca/en/quicklaw/](http://www.lexisnexis.ca/en/quicklaw/)
- Supreme Court of Canada decisions can be found on the Court's website : [scc.lexum.umontreal.ca](http://scc.lexum.umontreal.ca)
- The Ontario Courts website contains legal decisions from the Superior Court of Justice and the Court of Appeal: [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca)
- The Ontario Workplace Tribunals Library is open to the public and has information about human rights: <http://www.owtlibrary.on.ca/>