



**ONTARIO
BAR ASSOCIATION**
A Branch of the CANADIAN BAR ASSOCIATION

**Ontario Bar Association Submission Regarding
the Human Rights Tribunal of Ontario**

**Presented to the Standing Committee on
Government Agencies,
Legislative Assembly of Ontario**

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Introduction

Overall, the Ontario Bar Association (OBA) has positive comments regarding the operation and performance of the Human Rights Tribunal of Ontario, considering both its services and its changed mandate with the passage of the Bill 107, *An Act to Amend the Human Rights Code* and the full coming into force of the amendments on June 30, 2008. The Tribunal was charged with the task of implementing sweeping reforms within the human rights system in Ontario, and it has performed admirably in this regard.

This is evidenced by the fact that the new system is now up and running and that all of the relevant deadlines were met in achieving this goal. Furthermore, the new system appears, from the OBA's perspective, to be operating smoothly. This is due, in part, to the Tribunal's hard work in drafting several new sets of procedural rules within a compressed time frame. The Tribunal has not only promulgated a new procedural code for new Applications, but also established procedural rules for both Expedited and standard Transitional Applications that originated under the previous human rights regime.

The OBA's submissions on the operation and performance of the Human Rights Tribunal are organized under sub-headings which relate to different aspects of the new regime. Nevertheless, it is the functioning of all of these elements together which is crucial to the smooth and user-friendly operation of this human rights system.

Direct Filing

One of the most significant changes that the Human Rights Tribunal has implemented has been the move toward the "direct filing" of human rights claims by Applicants (formerly called complainants). Whereas previously, the Commission performed a "gate-keeper" function in evaluating the merits of claims brought by members of the public, Applicants under this new regime can file their Applications directly to the Tribunal. What this means in practice, is that more members of the public are able to have their human rights claims heard in an open forum than tended to be the case under the previous system.

Although one of the consequences of this reform is that more Applications are proceeding to an open adjudicative stage in the human rights process, the OBA has found that the Tribunal has been keeping pace. In fact, the Tribunal appears to have actually improved on the timeliness of adjudication, as compared to the previous system. The end result is greater access to justice.

Merit-Based Appointments

Another important change in the structure of the Human Rights Tribunal are the statutory requirements now in place regarding the qualifications of appointees to the Tribunal.

Given that the new mandate of the Tribunal is to provide Applicants and Respondents with “early, direct and informed access to a Tribunal member who has expertise in human rights law and in modern dispute resolution practices,” the fact that the Tribunal is now fully staffed with qualified persons, and that the necessary appointments were made within a relatively short period of time, is deserving of recognition (<https://www.pas.gov.on.ca>).

The OBA sees the move toward embedding formal qualification and expertise requirements for appointment into legislation as a very positive step in the improvement of adjudicative services to the public. Furthermore, the OBA suggests that this aspect of the Human Rights Code be considered as a model for other adjudicative. This will reduce the likelihood of pure patronage appointments in the administrative justice sector.

Support Centre

Given the neutral adjudicative role of the Tribunal and the fact that the Commission will not be processing Applications, the Human Rights Legal Support Centre is a key component of this new regime. The Support Centre is operating and fully staffed. This goal was achieved within a short period of time.

The OBA notes that the Support Centre is already extremely busy serving the public by assisting people with their Applications. With the “direct access” model now fully implemented, the Support Centre is performing a crucial function in ensuring that although the initial application process is now more thorough and detailed, this does not prevent Applications from being made.

Forms

Along with the new system and procedures, the Tribunal has issued a series of new forms, both for the Transitional Application process, and for the new Application process under s. 34. As soon as these new procedures came into effect, the forms were made available by the Tribunal online.

The forms require more detail from Applicants in the initial stages of making an Application than was required of Complainants under the old system. The OBA recognizes that there is a trade-off in having initial Application forms which are more substantive and require greater detail than the forms used under the old system; however, the advantages in having more information available at an earlier stage are clear. Given that the Commission is no longer involved in processing and investigating complaints, it is necessary that the Tribunal have sufficient information in order to meaningfully

adjudicate these Applications. Respondents also need this detailed information early in the process in order to know the case they have to meet.

Furthermore, the OBA notes that the Tribunal has taken steps to mitigate the impact of the more detailed application forms in several ways. First, the Tribunal has endeavoured to make these forms available in a variety of accessible formats. Second, it has produced a series of user-friendly Applicant and Respondent guides that accompany the forms and explain what is expected in terms of the various sections. Third, the Tribunal has produced a “Plain Language” guide to make the Application process that much more straightforward.

Availability of Jurisprudence

Another positive step that the Tribunal has taken to improve access to the human rights regime in Ontario is that it has made its jurisprudence available on the www.hrto.ca website. The OBA sees this as an improvement in the system, especially given that decisions previously made by the Commission under the old regime were not made publicly available. This increased availability of jurisprudence will be an aid both to representatives and to self-represented parties. In the long-run, it may lead to an overall improvement of the level of advocacy before the Tribunal since the Tribunal’s rulings and the law will be transparent.

Conclusion

The OBA’s review of the performance and operation of the Human Rights Tribunal is generally positive. Given the tight deadlines that the Tribunal has coped with, and given the extent of the procedural changes that it has been charged with implementing, the Tribunal is deserving of recognition for its achievements thus far. The Tribunal has taken a number of positive steps to improve the accessibility of open adjudication by qualified experts in the human rights regime.