



December 7, 2020

Tricia Dorman  
Registrar  
Human Rights Tribunal of Ontario  
655 Bay Street, 14<sup>th</sup> Floor  
Toronto, ON M7A 2A3  
via email: [hrto.registrar@ontario.ca](mailto:hrto.registrar@ontario.ca)

**Re: Human Rights Tribunal of Ontario (the “Tribunal”) Request for Feedback on Improving Electronic Hearings**

Dear Madam Registrar,

The Ontario Bar Association (“**OBA**”) welcomes the opportunity to provide feedback on the Tribunal’s efforts at improving electronic hearings in light of the current pandemic. The OBA represents close to 16,000 lawyers, judges and notaries, law teachers and students across the province. We have been actively engaged in working with lawyers and judges across Ontario providing capacity and lessons for transitioning to electronic hearings. This submission has been prepared by the OBA Labour and Employment Law, Administrative Law, and Constitutional, Civil Liberties and Human Rights Law Sections. These sections include members who appear before the Tribunal regularly as applicants and respondents representing employers, management, employees and unions.

The OBA commends the Tribunal on its recent adoption of videoconference technology for hearings. The OBA has consistently advocated for the use of videoconference technology to move matters forward in an expeditious manner, provided that access to justice and fair outcomes are maintained. While we understand this has been implemented for safety reasons, as a result of the pandemic, the Tribunal should give some consideration to continuing videoconference hearings as an option after the pandemic. Further, we understand that the Tribunal is developing access points in Tribunal centres for the use of parties who otherwise lack the space or technology to participate in a videoconference hearing. We commend the Tribunal for this initiative and we hope that these access points will be operational soon, and that they will be available to parties across the province. Access to videoconference hearings cannot be dependent on parties' income.

While the experiences our members have had with videoconference hearings at the Tribunal have been deemed widely successful, concerns have been expressed about the use of telephone or teleconference technology (i.e., without video and referred to below as “**telephone**”) for mediations.

Specifically, our members have indicated that mediations by telephone tend to be cumbersome and less effective. Participants are unable to see the mediator or the other parties and counsel are unable to speak directly with the mediator or opposing counsel for sidebar discussions. This impedes the likely success of the mediation. Further, parties often need to disconnect and reconnect multiple times causing inefficiencies and delays and generally undermining the mediation effectiveness. Many of our members are regularly participating in videoconference mediations and arbitrations where these limitations do not exist and believe that this could lead to better and more effective mediations at the Tribunal. **To this end, the OBA encourages the Tribunal to conduct mediations by videoconference with preference for a platform that allows the parties to separate into breakout rooms.**

Similarly, our members have indicated that preliminary and summary hearings by telephone are less effective than those conducted by videoconference. Generally, the inability of the participants to see the decision-maker, the inability of the parties to have sidebar discussions with one another or the decision-maker, and the inability of counsel to draw the decision-maker's and other participants' attention to relevant documents and case law can be extremely limiting. **Accordingly, the OBA encourages the Tribunal to conduct summary and preliminary hearings by videoconference.**

To be clear, this is not to say that all matters before the Tribunal need to be conducted by videoconference during the pandemic. Case management conferences and preliminary hearings where the issues are narrow can be carried out effectively via telephone and should continue in this manner. Moreover, it is very important to note that videoconferencing could cause the Tribunal to become less accessible to persons without access to technology (including the very poor), persons in areas without adequate broadband coverage (including the majority of rural areas and First Nations reserves), and persons with disabilities that make the videoconferencing format inappropriate. These groups are among the most likely to experience discrimination and require the Tribunal's services. To this end, when determining the format and technology for any particular hearing, individual circumstances should be taken into account.

As noted above, since the beginning of the pandemic, the OBA has been working with Ontario's courts and judges to provide capacity and training for the courts to assist building up capacity for online hearings and we have developed a level of recognized expertise in these areas. To the extent we are able to assist with any capacity and/or training issues we would be pleased to discuss these in further detail with you.

Finally, on November 26, 2020 the OBA hosted a very successful 'think tank' with members from the Local Planning Appeal Tribunal. At the think tank, members of the Bar held discussions with members from the LPAT to develop best practices and procedures for the online environment. We would welcome the opportunity to facilitate a similar forum with the Tribunal.

Thank you again for all of your work on these matters. We look forward to working with the Tribunal to advance these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlene Theodore". The signature is fluid and cursive, with a large initial "C" and a horizontal line extending to the right.

Charlene Theodore  
President, Ontario Bar Association