HRTO Rules of Procedure

Submitted to: Human Rights Tribunal of Ontario (HRTO)

Submitted by: Ontario Bar Association

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ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

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Introduction

The Ontario Bar Association ("OBA") welcomes the opportunity to provide feedback on proposed updates to the Human Rights Tribunal of Ontario ("HRTO") Rules of Procedure ("Rules"). The following comments aim to support the Tribunal in streamlining its processes, improving accessibility and resolving applications more efficiently for parties. We note the need for more time to be provided for consultations in order to provide meaningful feedback on proposed changes, specifically those concerning several Practice Directions.

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared by the OBA's HRTO Working Group, which includes members of our Constitutional, Civil Liberties and Human Rights Law and Alternative Dispute Resolution sections and was reviewed by members of the OBA's Labour & Employment Law and Administrative Law sections. Members of these sections have extensive experience with HRTO proceedings, representing both applicants and respondents.

Comments & Recommendations

The Continued Need for Meaningful Consultation

We appreciate the Tribunal's provision of red-lined versions of the proposed changes, which is a welcome improvement to the consultation process. However, as raised in our 2024 submission,[1] effective and meaningful consultation requires adequate time for organizations to acquire substantive feedback and to engage with relevant expertise within their membership. Time is needed in order to convene an expert group, review and read the proposals, obtain feedback, and draft a submission for Board approval. We have attempted to provide the best feedback possible within the timeframe given, and consequently, our comments below address only the proposed Rule changes and do not extend to the Practice Directions.

Respectfully, we urge the Tribunal to revisit the consultation and provide sufficient time for meaningful feedback, or at a minimum, consider extending consultation periods in future initiatives.

Simplifying the Process for Withdrawing Applications (Rule 10)

The HRTO's consideration of amendments to enable applicants to withdraw applications by email is a positive change and represents a meaningful step toward a more user-friendly process. The OBA applauds this simplification as it is a practical and less formal approach to applying the Rules, which is in line with the Tribunal's goals of streamlining its processes, improving accessibility and resolving applications more efficiently.

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[1] Ontario Bar Association, "HRTO Rules of Procedure" (6 November 2024), online: Submission<https://oba.org/ON/media/web/PDFs/PublicPolicy/Submissions/2024/OBA-Submission-HRTO-Rules-of-Procedure-Amendments.pdf>.

However, we note that where a Request to Withdraw is filed after an application has been served on the respondent, the respondent is provided with an opportunity to make submissions. As such, the Rule should make clear that an applicant has the opportunity to reply. For example, the respondent may request dismissal rather than withdrawal, and this may prejudice the applicant's rights. Thus, it is imperative they have an opportunity to comment.

Updated Process for Dismissal of Applications (Rule 13)

The HRTO has proposed several amendments to Rule 13 to implement the guidance[2] outlined in *Bokhari v Top Medical Transportation Services*, 2026 ONSC 1073.[3] As such, the appropriate measure of these amendments is whether they align with what *Bokhari* requires.

Respectfully, the OBA takes issue with four of the Tribunal's proposed amendments. Firstly, pursuant to Rule 13.2, a Notice of Intention to Dismiss (NOID) would require an applicant to file written submissions within 28 days, two days fewer than the current practice. At first blush, the reduction may appear minor; however, it could have a significant impact on applicants who already must prepare substantive submissions within tight timelines. Specifically, this will prejudice self-representatives who may, at this stage, need to seek and retain counsel to assist them, which adds to their timeline. Thus, we recommend the Tribunal maintain the 30-day period.

More concerningly, however, is the proposed removal of 13.2(b), which requires the Tribunal to "set out **reasons** for the intended dismissal." Eliminating this explicit requirement raises procedural fairness concerns. Applicants ought to know the case to meet, as without clear reasons they are left to speculate about their grounds for dismissal.

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[2] As expressed by the Tribunal during their stakeholder town hall on May 22, 2026.
[3] *Bokhari v Top Medical Transportation Services*, 2026 ONSC 1073 [*Bokhari*].

Notably, *Bokhari* reinforces this concern. The Divisional Court found the Tribunal's Reconsideration Decision unreasonable in part because the Tribunal did not justify its departure from settled practice,[4] holding that the Tribunal "did not meet its justificatory burden." Removing the express obligation under 13.2(b) to "set out reasons for the intended dismissal" institutionalizes the kind of unreasoned screening *Bokhari* flagged and is contrary to the Tribunal's commitment to "support access to justice, by using plain language guidance and clear consistent communication in all aspects of [its] jurisdictional review process."[5]

As such, we strongly recommend that the Tribunal maintain the language in 13.2(b) as its removal risks inadvertently lowering the standard for reasons and could result in judicial review.

Thirdly, proposed Rule 13.6 requires that "where a Notice of Intent to Dismiss is issued after the Application has been sent to the Respondent(s), it will be sent to all parties to the Application. In such circumstances, all parties are permitted to file written submissions in response to the Notice of Intent to Dismiss." For clarity, the Rule should expressly state that where a respondent files written submissions, the applicant must have a right of reply. This language is particularly important in cases where respondents file submissions near the end of the 28-day period, leaving the applicant without an opportunity to respond unless a reply right is clearly provided. This concern is heightened in the case of self-representatives, who are unlikely to know that a reply is possible if not expressly provided for.

Lastly, Rule 13.7 clarifies that "the Tribunal may raise the question of its jurisdiction, or issue a Notice of Intent to Dismiss, at any stage in Application's processing." Respectfully, the OBA strongly objects to the proposed amendment.

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[4] *Bokhari, supra* note 3, paras 36–39.
[5] As expressed by the Tribunal during their stakeholder town hall on May 22, 2026.

A NOID is a screening mechanism that, at the start of proceedings, screens out applications that are outside the Tribunal's jurisdiction. An application will only be dismissed at this preliminary stage if it is "plain and obvious" on the face of the application that it does not fall within the Tribunal's jurisdiction.[6] Once an application has succeeded past the initial screening stage, jurisdictional questions should be dealt with through a summary hearing. Thus, allowing the Tribunal to issue NOIDs "at any stage" is contrary to the screening nature of the notice. We acknowledge that the Tribunal has the power, and responsibility to ensure it has jurisdiction over matters, and we are not suggesting that the Tribunal be restricted from addressing it.

Notably, *Bokhari* only contemplated later jurisdictional assessments where "deciding a jurisdictional question may require the Tribunal to resolve a factual dispute," and provided only two examples: limitation periods under s. 34(1)(a) and geographic jurisdiction.[7] Proposed Rule 13.7 is open-ended and does not track that distinction. As drafted, it permits the Tribunal to re-run the same legal characterization analysis *Bokhari* held belongs on the merits, contrary to the Court's express statement that "summary hearings on the merits are distinct from jurisdictional screening under r. 13."[8]

The OBA recommends that Rule 13.7 be redrafted to expressly limit late NOIDs to fact-dependent jurisdictional questions consistent with the scope of *Bokhari* outlined in para 43. We further note that at the HRTO stakeholder town hall on May 22, 2026, the Tribunal confirmed that where an application proceeds past initial screening, the Tribunal communicates this by registrar's letter rather than reasoned decision because the adjudicator is "not making a positive or final determination about the Tribunal's jurisdiction." Combined with 13.7's open-ended preservation of the Tribunal's ability to re-raise jurisdiction through a NOID, the practical effect is that jurisdiction is never finally

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[6] *Forde v Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389.
[7] *Bokhari,* supra note 3, at para 43.
[8] *Ibid* at para 30.

determined until the Tribunal dismisses. As *Bokhari* makes clear, "[m]anaging workload and efficiency cannot justify this result."[9]

Nonetheless, we were encouraged by Vice-Chair Langlois during the town hall meeting, where he explained that with respect to jurisdictional review, a NOID would be used for initial screening, a summary hearing would be used where the application has been accepted, and a Case Assessment Direction would be used after a merits hearing had been scheduled. We support this approach and believe it would make the "may issue a NOID at any time" rule unnecessary.

Furthermore, having the Tribunal raise jurisdictional concerns throughout proceedings risks creating a disruptive experience, contrary to the Tribunal's objectives of streamlining its processes and resolving applications more efficiently. This change would undermine the finality of NOIDs, create uncertainty for parties, and may disincentivize settlement.

The OBA recommends that the Tribunal attempt to resolve jurisdiction early in a case to the extent possible, and not repeatedly on the same issues and facts that were considered in a previous NOID, reiterating that we understand the Tribunal has the authority and responsibility to ensure it has jurisdiction over a matter. This would prevent situations where, years into a matter, after both parties have taken on significant expenses, the Tribunal raises jurisdictional issues that should have been addressed at the screening stage.

Clarifying the Mediation Process (Rule 15)

Proposed Rule 15.B.1 requires "mediation to be scheduled in every application filed with the Tribunal on or after June 1, 2025." This requirement excludes scenarios where an "application is dismissed at a preliminary stage as outside of the Tribunal's jurisdiction, or where the Tribunal determines that another proceeding is more appropriate."

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[9] *Ibid* at para 42.

The second exemption requires clarification, as it is unclear how the Tribunal is planning to treat such proceedings (i.e., dismissal or delay). To avoid uncertainty, we recommend the Tribunal address this ambiguity in the new Practice Direction on Mandatory Mediation,[10] clarifying how the Tribunal will treat applications in situations where "another proceeding is more appropriate," with examples of situations where they might defer to another proceeding.

Furthermore, as mentioned above, we are concerned about the reduced timeline from 30 to 28 days "to request to reopen an application that has been administratively closed under Rule 15.10." This could negatively impact parties who are suddenly required to respond, after an application has been outstanding for a long period of time. Thus, we recommend the Tribunal maintain the 30-day period.

Improving Reconsiderations Process (Rule 26)

Similar to our comments on Rule 13.6, Rule 26.4 requires explicit language that, if the respondent files a Response to Request for Reconsideration (Form 21) the applicant must have a right of reply.

Summary Hearings Updates (Rule 19A)

The HRTO is considering the removal of a summary hearing requirement where "a party [that] requests that an Application be dismissed pursuant to Rule 19A.3," must "deliver to the other parties a copy of the Practice Direction on Summary Hearing Requests."

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[10] Tribunals Ontario, "Updates to Human Rights Tribunal of Ontario Rules of Procedure and Practice Directions" (13 May 2026), online: Notice https://tribunalsontario.ca/hrto/consultation/.

We query the rationale behind this proposal as its current inclusion ensures that applicants (particularly self-represented individuals) have access to information they need to understand the process. Applicants may be unaware that the Practice Direction exists and removing the obligation to flag its importance risks leaving them without essential guidance, which places an additional burden on self-represented parties to try and determine what they must do, contrary to the Tribunal's goal of resolving applications more efficiently for parties. This concern is heightened by the fact that requests for summary hearings are often brought by represented respondents against non-represented applicants.

That said, if the concern is that respondents may not be able to find the Practice Direction, we recommend the Tribunal incorporate a hyperlink to the notice of the Practice Direction in Form 26. A similar approach can be seen in civil procedures, for instance Small Claims Court Form 7A, which includes a hyperlinked page with clear service instructions and resources.

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The OBA would be pleased to discuss this further and answer any questions that you may have.