

INTRODUCTION

This document has been prepared in response to email correspondence, dated February 13, 2012, from David Lepofsky, Chair of the Accessibility for Ontarians with Disabilities Act Alliance (AODAA). This is supplementary to three earlier packages of materials prepared by the HRLSC in December and January to assist Mr. Lepofsky in preparing submissions to the Ontario Human Rights Code Review, including materials posted on the HRLSC website: <http://www.hrlsc.on.ca/en/HumanRightsReview.aspx>

In his correspondence of February 13, 2012, Mr. Lepofsky acknowledges that the HRLSC has already provided answers to some of these latest questions in the materials sent to him in December and January. Further clarification is requested and provided in six (6) areas.

Our answers must be subject to some qualification. The HRLSC has two sources for statistical information for most of the period under consideration, both now replaced – a telephone intake system inherited from the Ontario Human Rights Commission and a very basic data management system. The Ministry of the Attorney-General provided funding to replace both systems: in February 2011, we installed the first version of a case management system and in November 2011, we installed a new telephone system. Neither of the earlier systems provided the detailed data that is being sought by the AODAA. For example, the best data that we have for 2009/10 is in our Annual Report.

With respect to telephone data, the raw numbers available from the old telephone system cannot be interpreted except as informed by current data. We have provided both the old and the new data below.

With respect to legal services, the old data management system simply cannot provide the information sought. In answering detailed questions about the services provided by our lawyers, we can only rely on the data from the current fiscal year. Below we have provided data for the six (6) month period from April 1, 2011 to September 31, 2011. This is the period that was used in the information package prepared for the AODAA in December 2011; given the time constraints, the best we can do is to clarify and build on the numbers provided at that time. The current data from our new case management system is representative of legal work in past years and will support projected figures for a 12-month period.

INFORMATION REQUESTED

1. Number of people who tried to call and whose calls were not answered, on an annual basis;
2. Number of calls where the HRLSC answered and provided advice, on an annual basis;
3. Number of callers seeking legal advice or assistance about a possible *Code*-infringement;
4. Number of people seeking assistance or representation in making an application to the Tribunal: how many got assistance or representation and how many did not;
5. Number of people seeking assistance or representation for an upcoming mediation: how many got assistance or representation and how many did not;
6. Number of people seeking assistance or representation for an upcoming hearing: how many got assistance or representation and how many did not.

1. Number of people who tried to call and whose calls were not answered, on an annual basis

The former and current HRLSC telephone intake systems both track calls, not individuals. We have previously provided the AODAA with information on our call response rate, year to year:
<http://www.hrlsc.on.ca/en/HumanRightsReview.aspx>.

The information available for the period up to November 2012 is taken from the telephone intake system inherited from the Commission. Just as the Commission regularly reported in its Annual Reports, every unanswered call does not represent a separate individual seeking legal services.

The new telephone intake system now provides an improved service to callers and a detailed breakdown of the calls that enter our system. Based on this breakdown, we can now see that less half of our incoming calls are now choosing to go into the queue for legal services. As shown below, often callers get the information that they want before going into the queue and hang up. This has reduced the number of calls in the queue, allowing us to answer a significantly higher percentage of calls. Callers who enter the queue for legal services are now better informed about our services and their options when their call is answered.

As previously reported, the other factor that has improved our response rate is the participation of our law student placements through the new Osgoode Anti-Discrimination Intensive Program.

Based on 3-months statistics from our new telephone system, we can project a breakdown of calls for our first 12-month period as set out below. This is the most reliable information that we have about our current capacity but the breakdown below should also inform the analysis of our statistics for the last almost 4 years.

	Initial 3 months	Projected for 12 months
Calls offered	15,518	62,072
Caller abandons call after 1 st message identifying the Centre	2,191	8,764
Caller diverts to reception	2,411	9,644
Abandoned calls from employers, landlords, business/services/facilities operators	617	2,468
Caller diverts to staff directories	618	2,472
Caller diverts to seeking fax or address information	81	324
Caller chooses information options	4,422	17,688
Caller chooses to enter legal services queue (includes callers entering queue after information option)	7,560	30,340
Call answered in legal services queue	5,746	22,984
Call abandoned in legal services queue before answered	1,814	7,256
Percentage of calls answered in legal services queue (5,746 / 7,560)		76%
Percentage of calls abandoned in legal services queue		24%
Overall percentage of calls abandoned (1,814 / 15,518)		11.6%

This breakdown of calls, available for the first time in November 2012, allows us to re-interpret the volume of abandoned calls in previous years. As previously reported, our annual abandonment rate under our old telephone intake system averaged 46%. We can now see, for example, that about 4% of abandoned calls were likely callers who listened to our recorded information and decided that they did not need to speak to a Human Rights Advisor. Based on the new data, we can assume that another 4% would have been respondent-side callers who hung up when advised by the taped message that our service is not available to them. Prior to November 2011, we had no way of identifying and breaking out these calls.

Bearing that in mind, here is a complete breakdown for each year:

Phone Statistics - Inquiry Queue Only

Period (by anniversary)	Calls Offered	Calls		Answer Rate
		Answered	Calls Not Answered	
June 30/08 – June 30/09	36,300	18,938	17,362	52%
July 1/09 - June 30/10	39,100	22,014	17,086	56%
July 1/10 - June 30/11	42,404	22,366	20,038	53%
Total	117,804	63,318	54,486	54%

The number of answered calls is not the same as the number of answered inquiries. This is, in part, because some inquiries come to us in person or through direct referrals. The inquiries numbers, as previously provided, are:

- June 30/2008 to June 30/2009: 21,524
- June 30/2009 to June 30/2010: 25,288
- June 30/2010 to June 30/2011: 25,288

2. Number of calls where the HRLSC answered and provided advice, on an annual basis

As noted above, in answering the remaining questions, we have to draw on data from our new case management system for the current fiscal year. These figures are representative of previous years, except for our first year.

Every inquiry from a member of the public is recorded in our case management system.

In the first 6 months of the current fiscal year, we answered and provided advice in response to 12,178 inquiries from 9,054 individuals. In response to each inquiry, a Human Rights Advisor provided information and assistance, ranging from advice in identifying a potential human rights infringement; information on the HRTO process for applications, mediations or hearings; referral to one of our lawyers, or where appropriate, referral to another agency (e.g. Immigration Canada, Office of the Worker, Employment Standards Office, etc.).

Many callers phone more than once, with different questions. For example, before filing an application, individuals will often call several times for advice about an unfolding situation in their workplace or for assistance in completing the HRTO application form.

3. Number of callers who were seeking legal advice or assistance about a possible *Code*-infringement

Almost 30% of our inquiries are not seeking legal assistance in addressing a *Code*-related issue. We regularly assist and refer individuals who are seeking assistance in resolving a legal problem that falls *outside* the *Code*, such as non-*Code*-related workplace harassment. The HRLSC also regularly answers inquiries from individuals who are seeking general information, not legal assistance, such as information about anti-discrimination policies on the Ontario Human Rights Commission website.

Of the 12,178 inquiries answered in this 6-month period, 3,415 inquiries were seeking assistance in dealing with a situation that did not involve discrimination or were asking for general human rights-related information. The remaining 8,763 inquiries were about situations or incidents where a possible human rights violation had occurred.

The 8,763 *Code*-related inquiries are broken down below as: pre-application inquiries; application-stage inquiries; mediation-stage inquiries; hearing-stage inquiries; and post-hearing or enforcement inquiries.

We have previously provided a breakdown of our *Code*-related inquiries by percentage:
<http://www.hrlsc.on.ca/en/HumanRightsReview.aspx>.

- 82% are at the pre-application stage: individuals who want to discuss an incident of possible discrimination; whether or not they should file an application; and how to obtain and complete the form;
- 7% are at the application stage: individuals who want more detailed legal assistance or representation in completing and filing an application;
- 5% are at the mediation stage: seeking legal assistance or representation with respect to in an upcoming mediation;
- 3% are at the hearing stage: seeking legal assistance or representation with respect to an upcoming hearing; and
- 2% are at the post-hearing stage: seeking legal assistance or representation in enforcement or with respect to a reconsideration or judicial review application.

The numerical breakdown of the 8,763 *Code*-related inquiries is set out below. This is for a 6-month period and these are inquiries, not individuals.

Pre-application inquiries:	7,245
Application-stage inquiries:	675
Mediation-stage inquiries:	452
Hearing-stage inquiries:	270
Post-hearing inquiries:	83
Other (Transitional, Conflict etc.):	37

4. Number of people seeking assistance or representation in making an application to the Tribunal: how many got assistance or representation and how many did not

The HRLSC collects data relevant to this question in two categories: pre-application inquiries and application-stage inquiries. Detailed information is provided below in these two categories. Here is a summary for the 6-month period:

- 7,920 (7,245 + 675) *Code*-related inquiries were received from 5,769 individuals;
- 5,769 individuals received assistance from a Human Rights Advisor;

Of these:

- 840 individuals received follow-up assistance from a Human Rights Advisor;
- 204 individuals were assisted in negotiating a pre-application settlement;
- 866 individuals received legal services from an HRLSC lawyer;
- 56 individuals received legal services from an HRLSC lawyer at an "Application Clinic"; and
- 60 individuals received representation in preparing and filing their Tribunal application.

a. Pre-application inquiries

In the first 6 months of the current year, the HRLSC responded to 7245 *Code*-related inquiries at the pre-application stage from 5,365 individuals. Each one of these 5,365 individuals received information, advice and assistance from one of our Human Rights Advisors. This would include, for example, talking to a caller about a work situation in which he or she is experiencing ongoing racial harassment or a continuing refusal to accommodate special needs. Our Human Rights Advisors talk to callers about how the *Code* could provide protection. Many callers have questions about the risks in filing an application – will the individual lose his or her job or damage their relationship with a service provider by filing a claim? We help individuals understand what the process will be like if they decide to proceed.

Human Rights Advisors answer questions about how to complete the application form for the Human Rights Tribunal, whether or not it appears that the claim at issue is well-supported by evidence or likely to succeed. Based on our numbers, it is likely that most applicants to the Tribunal have received assistance from the HRLSC at the pre-application stage, in understanding the process and in preparing their application.

The 5,365 individuals with pre-application inquiries were all at an early stage: all would get assistance in understanding how the *Code* could help in addressing their situation and many would call back later to get more specific assistance in completing the Tribunal application form or to request assistance from a lawyer when their mediation was scheduled. Other callers proceed on their own to complete and file the application and do not request further assistance at any point. Many decide against taking any legal steps.

Of the 5,365 individuals, our Human Rights Advisors called 733 people back on one or more occasions to provide more information after the initial call. An example of when this might occur would be a situation where there is a jurisdictional issue: the Human Rights Advisor might discuss the facts with a lawyer and then call back the individual to advise them if the Ontario Tribunal would not be able to assist them because the discrimination occurred in an area of federal or other provincial jurisdiction.

An additional 145 individuals were referred to our Early Intervention team who try to resolve the human rights issue immediately by contacting the potential respondent and negotiating a resolution. We do this if the caller is seeking assistance to prevent the imminent loss of their employment or to allow them to secure or save their housing. If settlement discussions are not successful, we assist in preparing the application.

Approximately 684 of these early inquiries resulted in an individual being scheduled for an immediate interview with an HRLSC lawyer. This is offered if there are legal issues of a preliminary nature, such as when an individual is facing a limitation period, has previously signed a release or has to make difficult choices about what legislative scheme or forum is best for them (for example, SBT, LTB, OLRB, WSIAT, grievance/arbitration).

We want to point out that under the former human rights process in Ontario, a would-be complainant was never entitled to this kind of lawyer assistance before filing a claim.

Individuals requesting assistance at the pre-application stage do not generally request to meet with a lawyer as opposed to a Human Rights Advisor. Our Human Rights Advisors are able to answer most questions that arise and are readily able to consult with our lawyers.

If our lawyers were regularly scheduled to meet with all or most callers at the pre-application stage, they would have little time left to provide representation at mediations or hearings.

b. Application-stage inquiries

The HRLSC identified 675 inquiries as application-stage inquiries during the 6-month period. The 675 inquiries were from 404 individuals, each of whom requested in-depth assistance or representation in completing and filing a Tribunal application. Each individual received extended legal assistance in respect of their application to the Tribunal, either through our Human Rights Advisors or through our lawyers, or both.

Of these 404 people who contacted the HRLSC for assistance in filing an application:

- 107 individual received extended legal assistance on one or more occasion through a Human Rights Advisor;
- 59 individuals asked for and received assistance in settling their dispute from our Early Intervention team or one of our lawyers. If the issue was not resolved to the satisfaction of the claimant, these individuals received assistance from a lawyer in completing and filing their application;
- 56 individuals obtained assistance from an HRLSC lawyer at an Application Clinic;
- 182 individuals received legal assistance from an HRLSC lawyer.

As previously reported, the HRLSC went on the record at the Tribunal to file applications on behalf of 60 individuals during this period.

Callers do not generally request full representation at the pre-application or application stage – instead, they request assistance in understanding their legal options and in completing and filing the Tribunal application form. Given that over 3,000 applications are filed at the Tribunal every year, and that the HRLSC answers pre-application inquiries from 5,365 individuals and application-stage inquiries from

another 404 individuals, it, it is clear that the HRLSC does not have the resources to go on the record to prepare and file applications for all of those who might accept pleadings-stage representation if offered it.

Significantly, only approximately 2% of filed applications are rejected for filing by the HRTTO. It would not be the best use of our limited resources to schedule more lawyer time for preparing applications. Certainly, if we did so, it would diminish our ability to provide representation at the current level.

The 60 individuals for whom we went on the record to file the application were all individuals who, in our assessment, could not have proceeded adequately on their own, even with the assistance of a Human Rights Advisor.

5. Number of people who wanted assistance or representation for an upcoming mediation: how many got assistance or representation and how many did not

As previously reported, in the first 6 months of the current fiscal year, the HRLSC received a total of 452 inquiries seeking mediation assistance from 271 individuals. Each of the 271 individuals received assistance from a Human Rights Advisor. Each of the 271 individuals was offered legal assistance from one of our lawyers unless:

- The individual had previously met with one of our lawyers about the same application and had been given a legal opinion that the application did not fall under the Code or there was no basis upon which the Tribunal could find discrimination;
- The individual had previously been threatening, discriminatory or abusive with staff or the professional relationship had otherwise broken down; or
- The mediation was scheduled within the following week and there was no lawyer available. (Mediations will not be adjourned to accommodate new counsel).

As previously reported, 215 individuals met with a HRLSC lawyer during this period. This means that about 50 individuals seeking assistance at mediation had previously met with one of our lawyers and received a negative assessment of merit or had called too late.

Of the 215 individuals who received legal services from a lawyer, the HRLSC became retained and provided representation to 145 at mediation.

The remaining 70 individuals received legal assistance from the HRLSC lawyer, but not representation. Legal assistance would include advice on the merits of the claim; the range of likely remedy if successful; and appropriate public interest remedies. Quite often, we provide applicants with copies of HRTTO decisions that support their application so that they can provide these to the mediator and to the other side.

If the HRLSC had more lawyers or more trained paralegals, we would provide representation to more applicants at mediation. Our settlement rate at mediation is over 80%, considerably higher than the HRTTO average.

Within current resources, we make decisions about which individuals to represent at mediation based on the factors in our Service Eligibility Guidelines, posted on our website. Based on data currently available, we cannot give you a precise breakdown with respect to which factors were determinative in each case in deciding to represent 145 individuals and to provide services short of representation to 70 individuals. We will be collecting this more detailed data when the second phase of our new case management system is implemented later this year.

We can advise generally that we will not provide representation at mediation if our legal opinion is that the application lacks merit. In making decisions about representation at mediation, we also consider, based on our interview(s) with the applicant, whether it appears likely that he or she can articulate their interests effectively in the mediation process without representation.

Where an individual has an arguable case and would face barriers in self-representing at mediation, such as language, literacy or disability-related barriers, the HRLSC consistently provides representation at mediation.

6. Number of people seeking assistance or representation for an upcoming hearing: how many got assistance or representation and how many did not

As previously reported, in the first 6-month of this fiscal year, the HRLSC answered a total of 279 inquiries from 170 individuals seeking assistance or representation with respect to an upcoming hearing. During the same period, our lawyers met with 183 individuals seeking assistance or representation at a hearing.

Every caller was offered an interview with a lawyer unless:

- The individual had previously met with one of our lawyers about the same application and had been given a legal opinion that the application did not fall under the Code or there was no basis upon which the Tribunal could find discrimination; or
- The individual had previously been threatening, discriminatory or abusive with staff or the professional relationship had otherwise broken down.

If the hearing was coming up within the next 2 or 3 weeks, the caller would be referred to an interview so that a lawyer could determine if it would be appropriate to seek an adjournment to provide representation.

The fact that our lawyers met with 183 individuals who were requesting assistance with an upcoming hearing even though only 170 requests were received in this period indicates that some interviews were tied to requests from before April 1, 2011.

During the same period, our lawyers became retained to provide representation at an upcoming hearing in 96 new cases.

Although some of the 96 retainers may be in respect of lawyer interviews from an earlier period, this means that during this 6-month period, our lawyers provided legal services in respect of about 80 hearings where we were not retained to provide representation. In these cases, HRLSC lawyers provided a legal opinion on the merits of the application and a range of services which could include: assisting with disclosure and

witness statements; reviewing the Response and the disclosure from the respondent; reviewing the evidence and the law; providing advice on the presentation of evidence at the hearing, legal research, etc.

In deciding which individuals to represent, our lawyers applied our Service Eligibility Guidelines. In general, we will not provide representation if we conclude that there is a significant legal or evidentiary barrier to success at a hearing, but we will make exceptions even in these circumstances where there are other compelling reasons to provide representation.

In making decisions about representation at hearings, we also consider, based on our interview(s) with the applicant, whether it appears likely that he or she would be able to self-represent effectively at a hearing.

A significant number of applicants approach the HRLSC for legal services for the first time before their hearings. Applicants at this stage are sometimes tied to their own assessment of their case. It is not unusual for applicants to not accept our advice about how we could or would argue their case and to decide that they would prefer to represent themselves.

Based on data currently available, we cannot provide a detailed breakdown of which factors were determinative in deciding to represent 96 individuals at hearing and to provide services short of representation to another 80 individuals. The legal merits of the application would have been a factor in a very significant number of the cases where we were not retained or did not agree to become retained.

There is evidence that we are making good assessments about the ability of applicants to self-represent with our assistance. The HRLSC undertook a review of Tribunal decisions on the merits for a 10-month period in 2010. We examined decisions where the applicant was self-represented and found that we had provided legal assistance to 90% of the winning applicants.

What about applicants who self-represented and lost? We found 40% had not contacted the HRLSC for assistance at any point. Of the remaining self-represented applicants who lost and who had contacted the HRLSC for assistance, none had been encouraged to self-represent on the basis that they would be able to do so effectively. In every case, the HRLSC had advised the individuals that their application was not supported by the evidence and/or the law.

For more information on how decisions are made, see the information previously provided entitled *Service Eligibility Questions and Answers: How the Centre Provides Legal Services*. We cannot provide a detailed breakdown of the reason why representation was not provided in each of these 80 or so cases.

The HRLSC cannot provide representation to more applicants within its current resources.