

**VIA EMAIL**

November 24, 2020

Tricia Dorman  
Registrar  
Human Rights Tribunal of Ontario  
655 Bay Street, 14<sup>th</sup> Floor  
Toronto, ON M7A2A3

Dear Registrar:

**RE: IMPROVING ELECTRONIC AND TELECONFERENCE HEARINGS – MEETING THE NEEDS OF PEOPLE  
ACCESSING HRTO SERVICES**

The Human Rights Legal Support Centre (HRLSC) is one of the three pillars of the human rights system in Ontario. As an independent and accountable statutory agency, we provide a range of high-quality legal support services to those who have faced discrimination contrary to Ontario's *Human Rights Code*. The HRLSC is a key stakeholder of the Human Rights Tribunal of Ontario (HRTO). Our many years of experience in appearing before the HRTO have, to date, demonstrated the strength of the administrative justice system in this province. The effective adjudication strategies, expertise and knowledge base of the HRTO's members were keys to our shared success.

In providing legal services, including advice and representation, we assist clients with:

- filing human rights applications at the HRTO
- negotiating settlements;
- attending preliminary and summary hearings;
- attending mediations and hearings; and
- enforcing an HRTO order after a successful hearing or negotiated settlement.

The HRLSC is committed to protecting individuals disproportionately impacted and addressing discrimination that might arise during or after unexpected or emergency situations. In the context of this pandemic, human rights-related concerns we are currently assisting with include:



- workers suspected of having COVID-19 simply because of their race, place of origin, or disability;
- employment-related health and safety issues and interactions with disability-related accommodation; and,
- issues related to family status, including accommodations for workers with childcare responsibilities who were working at home.

Over the last two years, developments at the HRTO have undermined the ability to properly execute its mandate to deliver timely and effective adjudication. One has been a failure to appoint adjudicators replacing those who have left or have not been reappointed. The other has been a failure to effectively deal with the growing number and backlog of cases. As of March 2020, the worsening situation was exacerbated by the onset of the pandemic. We began to receive notice of cancelled hearings beginning in mid-March. Many of our clients had hearings put on indefinite hold. To date, we have only participated in one videoconference hearing across the whole HRLSC.

Many more of our retained matters are still in the queue, waiting to be either rescheduled or scheduled. We are concerned when we hear that hearings will only be scheduled for mid-2022. This could mean a delay of between 2-5 years for an outcome for human rights claimants.

Additionally, the HRTO's stakeholder advisory committee (Practice Advisory Committee or "PAC") was put on indefinite hiatus in 2019. The PAC was a vitally important forum for the HRTO to hear from its key stakeholders about emerging and ongoing practice and procedural issues to promote a more effective and efficient adjudication of human rights cases. On July 15, 2020, Sean Weir, the Executive Chair of Tribunals Ontario joined a webcast hosted by the Ontario Bar Association where he stated that each tribunal would be putting forward a plan for stakeholder advising and consultation. Four months later, we have yet to hear of any such plan, apart from this meeting.

We offer the following recommendations with respect to remote proceedings. Given that we have had very little experience with videoconference hearings, these are preliminary recommendations only.

### **1. Reestablish the HRTO's Practice Advisory Group**

We support the HRTO's current efforts to consult stakeholders. However, with so few videoconference hearings scheduled to date, it is incumbent on the HRTO to engage in further consultations as stakeholders have more experiences of these hearings. We call on the HRTO to reinstate the Practice Advisory Group and/or to hold consultations like these on a quarterly basis with stakeholders currently accessing the HRTO. Continuous consultation will provide better and more reliable user-experience feedback during this roll-out period.

### **2. Schedule more teleconference and videoconference proceedings**

We understand adjudicators were all trained to use Microsoft Teams in the early fall. Yet, we have not received any significant number of hearing notices, pertaining to either teleconference or videoconference proceedings. Many preliminary and summary hearings can take place by telephone. No special training or technology is usually needed for teleconference hearings. We urge the HRTO to begin to schedule its way out of the backlog. We appreciate the utility of the Case Management Conference Calls and ask that these continue to take place before the hearing date itself, as they properly identify any preliminary issues and encourage settlement discussions.



### **3. Ensure equitable access to HRTO proceedings**

We are concerned that teleconference, computer and wifi access have and will continue to prevent parties, members and representatives from fully participating in hearing proceedings, with the worst impacts on persons with disabilities or without access to high-quality internet connections and other needed technology. Although videoconference and telephone hearings are obviously preferable, in most cases, to waiting an indefinite period of time for an in-person hearing, technological solutions that might be used effectively to accommodate some parties cannot be imposed in a blanket manner that does not consider individual circumstances.

The HRTO must ensure that parties participating in videoconference hearings are provided with up-to-date and accurate information about how to access the platform. This includes ensure that the links to the HRTO's website provided to parties are "live" and link to the appropriate pages. The recent move to direct all HRTO links to the Tribunals Ontario landing page has made accessing this information unnecessarily complicated.

While we appreciate the Microsoft Teams User Guide published by Tribunals Ontario, the HRLSC is unable to supplement or guarantee the HRTO's ability to deliver remote hearings. While we and other legal service providers may facilitate access to remote hearings for clients to the extent that cost, space, health and safety and scheduling constraints allow, it is ultimately the HRTO's responsibility to ensure that parties have effective access to its proceedings.

The HRTO should, as soon as reasonably possible, communicate its plans for the resumption of in-person hearings, which must include plans to safely resume in-person hearings throughout the province once the HRTO has tested this process at existing hearing sites e.g., in Toronto, Ottawa, or Windsor.

### **4. Provide extensions and flexibility with respect to time limits**

Despite our best efforts, our clients' technological limitations and public health requirements mean that it often takes us significantly longer to make contact with prospective clients, get retained, obtain and review documents, provide advice and get instructions than was previously the case. We urge the HRTO to build in flexibility with respect to its time limits under the Social Justice Tribunals Ontario Common Rules and the HRTO Rules of Procedure.

### **5. Maintain public/open proceedings**

If the public, including students, media and observers, are denied access to remote hearings, then no one other than the participants in the proceeding can know what is going on. This represents a profound departure from the administrative tribunals' commitment to the open courts principle. Obviously unfettered access is likely not the route the HRTO would or should take. However, Tribunals Ontario has already stated that in the case of an open proceeding, the public may observe via teleconference provided by the tribunal: <https://tribunalsontario.ca/en/videoconferencing/>.



To our knowledge, the HRTO has not published a docket, or otherwise made available a list of proceedings. In fact, in our experience, it has asked that all participants, including observers, register in advance. We urge the HRTO to develop a clear process with respect to providing open proceedings while balancing the privacy concerns of the participants.

We appreciate this opportunity and thank you for your consideration of our suggestions.



Sharmaine Hall,  
Executive Director

