# HRTO Rules of Procedure

**Submitted to:** Human Rights Tribunal of Ontario

**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

## Table of Contents

Executive Summary ..... 3
Ontario Bar Association ..... 3
Comments & Recommendations ..... 3
The Need for a Meaningful Consultation: ..... 3
Elimination of Case Management Conferences and Summary Hearings ..... 4
Requests for Orders During Proceedings ..... 5
Expedited Proceedings and Interim Remedies ..... 5
Mandatory Mediation ..... 6

## Executive Summary

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. While we share the goals of streamlining HRTO processes to facilitate fair, just and expeditious resolutions of cases, we are concerned with the lack of sufficient time and details to provide meaningful feedback on the proposed changes.

## 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 members of the OBA's Constitutional, Civil Liberties and Human Rights Law section, and reviewed by members of the OBA's Labour & Employment Law section. Members of these sections have extensive experience with HRTO proceedings, representing both applicants and respondents.

## Comments & Recommendations

***The Need for a Meaningful Consultation:***

The consultation posted by the HRTO does not provide sufficient time or details necessary for a meaningful consultation. The consultation period is two weeks, which is insufficient for most organizations to provide substantive and thoughtful feedback. The information provided in the consultation is a series of bullet points that summarize the proposed

changes, and in many cases, simply summarize the intended outcome, without red-line language, a consultation document, or other information. For example, a bullet point that says an amendment will simplify a process (Rule 10) does not provide any information on what is being proposed.

We urge the HRTO to revisit this consultation and provide both sufficient time and information to allow for meaningful feedback. A redline version of proposed changes should be included as part of a consultation document that provides context, background, and rationale for the proposed amendments.

***Elimination of Case Management Conferences and Summary Hearings***

The HRTO is considering eliminating Case Management Conferences ("**CMCs**") and Summary Hearings. There is no clarity on why this would be a beneficial change, with the only comment being that "these have not led to efficient resolution of applications". No information, data, or rationale is provided beyond this comment, and there is no explanation on how the replacement of these processes will serve the same functions.

CMCs, like in the court context, serve an important function. They enable the Tribunal to focus on the issues and move cases forward in a more efficient manner. Summary hearings are similarly important, as they enable parties to dispose of key legal issues that are crucial to the file and may eliminate the need for a hearing on all or part of the issues. If eliminated, parties will be required to prepare for hearings on issues that could or ought to have been disposed of through these processes. In our view, eliminating these processes will decrease efficiency and add costs to the parties.

It is unclear how cases deemed not to be within the jurisdiction of the Tribunal would be treated, whether it is due to timeliness, no *prima facie* case, or otherwise. Would these cases be decided in writing, or would they be left to the merits hearing that is often many years away, to be potentially dismissed the morning of the hearing. As a specific example, a member noted a case, originally filed 5 years ago, in which a party recently received an order

from the Tribunal. The order stated that at the beginning of the merits hearing, the Tribunal will hear submissions on the preliminary issue of whether the application should be dismissed in whole or in part due to delay. The issue of delay was not raised by either party or the Tribunal. It is hopefully undisputed that cases should not be dismissed due to the Tribunal's own delay.

***Requests for Orders During Proceedings***

No information was provided on why limits need to be placed on requests for orders during proceedings, what the proposed limits would be, or how those changes would benefit the Tribunal and the parties. Limiting requests for orders during proceedings in conjunction with the elimination of CMCs and Summary Hearings will force parties to full hearings on issues that could be more efficiently disposed of or narrowed through the CMC or Summary Hearings processes.

***Expedited Proceedings and Interim Remedies***

No details were provided on why access to expedited hearings and interim remedies need to be eliminated. In both cases, the only information provided is that this would "support a streamlined hearing process". A streamlined hearing process is the objective of the proposals – not the rationale or the methods proposed to achieve it. It is not clear how eliminating these tools would increase efficiency, and simply stating this begs the question.

We note that interim remedies can be particularly important in certain cases, for example, in cases involving accommodations in the educational setting. Given that in many cases, it is presently taking more than 5 years to get to a merits hearing, a child without access to interim remedies could go without necessary accommodations for their entire elementary school education, causing irreparable harm. We understand that the bar for obtaining interim remedies is very high. Eliminating them entirely seems unnecessary and potentially harmful, particularly if the Tribunal is also eliminating expedited hearings.

***Mandatory Mediation***

While mandatory mediation may serve an important goal in resolving cases, some issues need to be considered. Mediation is not appropriate in every context. For example, it may not be appropriate in cases involving sexual violence, other violent incidents connected to a Code ground, and cases involving significant power imbalances. Electing to litigate a matter versus being directed to mediate a matter are different processes, and an applicant may have very different views on the appropriateness of each.

The comment in the consultation note about tying the timing of witness and documentary disclosure to the mediation (rather than the hearing date) can be interpreted in different ways and it is not clear what change the Tribunal intends to make. One interpretation was that disclosure would be required in advance of mediation, whereas others understood that the disclosure would be required within some specified period after mediation. If the timing of disclosure is going to be tied to mediation, it would be most helpful to require disclosure in advance of mediation, so that the parties and the mediator have a better picture of what the evidence will be at the hearing.

A push toward mandatory mediation should be done in coordination with the Human Rights Legal Support Centre ("**HRLSC**"), as currently, there are limited direct legal services and representation offered by the HRLSC. Self-represented litigants, particularly where trauma is involved, need to have the advice necessary to navigate the mediation context. Having trained mediators with the necessary expertise on the legislation would be beneficial, but HRLSC coordination would have additional positive effects on mediations and the overall efficiency of the Tribunal, making it more likely that the issues can be resolved.

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