

VIA EMAIL

November 19, 2024

Human Rights Tribunal of Ontario (HRTO)
c/o Registrar
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6
HRTO.registrar@ontario.ca

RE: HRTO Consultation – ISAC’s Recommendations on proposed changes to HRTO Rules of Procedure

Dear Registrar:

The Income Security Advocacy Centre (ISAC) writes in response to the HRTO’s request for stakeholder feedback on proposed changes to its Rules of Procedure. [ISAC](http://www.incomesecurity.org) is a specialty legal clinic funded by Legal Aid Ontario. ISAC’s mandate is to advance the rights and interests of low-income Ontarians with respect to income security and employment. We carry out our mandate through test case litigation, policy advocacy, community development, and public education. Founded in 2001, we are governed by a community Board of Directors representing all regions of Ontario. We regularly advise and represent low-income clients appearing before the HRTO who face significant access to justice barriers.

Summary of Concerns

ISAC agrees that the HRTO must take steps to streamline its processes and deal with its significant backlog of cases. However, the HRTO must ensure that speed and efficiency do not come at the cost of procedural fairness and access to justice, especially for unrepresented parties. With the proposed changes, the HRTO appears to be prioritizing a quick process over a fair and accessible process. We are concerned that this approach will harm the marginalized communities most in need of the protections of the *Human Rights Code*.

Proposing vague reforms fails to facilitate meaningful consultation

The information the HRTO has posted about the proposed changes is insufficient to inform meaningful consultation from stakeholders. For example, we are unable to respond to the unspecified proposed limits to when a Request for an Order During Proceeding can be made because the HRTO has provided no details on what the limits will be.

This cursory approach to consultation indicates that the HRTO intends to make these changes regardless of the feedback it receives from the people and organisations it serves. This process does not reflect transparency or authentic engagement. ISAC echoes Tribunal Watch Ontario in

questioning whether a consultation without the opportunity to review the proposed rules is consistent with s. 43(7) of the *Human Rights Code*. Subsection 43(7) requires the HRTO to hold public consultations before making the Tribunal's procedural rules.

We appreciate the HRTO responding to stakeholder feedback by extending the time period for consultation. ISAC hopes this responsive approach will also lead the HRTO to provide a draft version of the new rules for public comment to facilitate meaningful consultation.

Eliminating requests for interim remedies and expedited hearings will leave some applicants without a remedy

The rights enshrined in the *Human Rights Code* are meaningless without an enforceable remedy. Eliminating requests for interim remedies and expedited hearings will mean that no effective remedy is available in some cases. Given that the average case processing time at the HRTO in 2022-2023 was 588 days, the removal of expedited and interim processes is all the more concerning.¹

Both expedited hearings and interim remedies are most relevant for applicants in the direst circumstances, including those facing terminal illness and children being denied necessary accommodations to participate in education.²

The HRTO has not provided any details about the underlying problem the Tribunal seeks to address by eliminating expedited hearings and interim remedies. Expedited hearings are already limited to circumstances that are truly urgent or where a refusal to expedite will render the remedy for the alleged human rights breach moot or unavailable. Similarly, interim remedies are an extraordinary step and rarely granted. If requests for interim remedies and expedited hearings are being overused, the solution is not to get rid of them, but to make changes to limit their misuse. These could include clearer guidance on the request forms or amendments to the rules regarding when such requests are permitted.

Eliminating summary hearings will undermine procedural fairness

The HRTO proposes to remove summary hearings as an option with the aim of “support[ing] a streamlined hearing process”. Eliminating summary hearings raises three main concerns.

First, ISAC is concerned about the negative impact on unrepresented applicants, who make up 80% of the HRTO's caseload.³ The summary hearing process serves an important purpose for unrepresented applicants who may not have pleaded their claim with perfect clarity in their application. Many unrepresented applicants, as individuals without legal training who may also experience language and literacy barriers, are not able to articulate their claims clearly. But this does not necessarily mean that they lack a legitimate claim under the *Code*. As a result, the summary hearing process provides a crucial opportunity for unrepresented applicants to better

¹ [Tribunals Ontario 2022-23 Annual Report](#), “Human Rights Tribunal of Ontario”, Table 2.

² See e.g., [R.B. v. Keewatin-Patricia District School Board](#), 2013 HRTO 130.

³ Tribunals Ontario Open Data Inventory 2024 statistics show approximately 80% of applicants are self-represented at the time of filing: <https://tribunalsontario.ca/en/open/data-inventory-reports/?x=0&n=7>.

articulate their claim and the evidence available to them, in some circumstances with guidance from an adjudicator.

Second, we are concerned that the elimination of summary hearings will relegate more applications to the Notice of Intent to Dismiss (NOID) process, where they can be disposed of more hastily. This change appears designed solely to ease the Tribunal's growing backlog of over 9,500 cases at the expense of procedural fairness and access to justice.⁴ There is already a serious problem with the ever-increasing issuance of NOIDs.⁵

Summary hearings have a different purpose than NOIDs. NOIDs are meant to deal with applications that are not within the HRTO's jurisdiction. In contrast, summary hearings are meant for cases that fall within the HRTO's jurisdiction but may or may not be able to succeed at a hearing on the merits. Under s. 43(2) of the *Human Rights Code*, an application that is within the jurisdiction of the HRTO **shall not be finally disposed of** without affording the parties an opportunity to make **oral submissions** in accordance with the rules. This oral hearing requirement reflects the gravity of ending an individual's discrimination claim. Eliminating summary hearings would circumvent this important procedural protection for applicants and directly contravenes the Tribunal's obligations under s. 43(2).

Third, we are concerned that eliminating summary hearings is part of a trend away from a direct access model and towards a gatekeeper system, contrary to the Legislature's intention in the 2008 reforms. In 2022-2023, the HRTO issued only 30 decisions on the merits while 93% of applications were dismissed on procedural or jurisdictional grounds **without an oral hearing**.⁶ Clearly, applicants are struggling to get through the door. The proposed changes would further curtail access to the HRTO.

If the HRTO is concerned that the summary hearing process is unnecessarily slowing down applications, the Tribunal can make changes to the summary hearing process rather than scrapping the process entirely. We suggest that the HRTO develop options to improve and simplify the summary hearing process and hold public stakeholder consultations on these options. More information is necessary to inform meaningful feedback on any reforms to the summary hearing process. Reduction of the Tribunal's backlog is necessary and important. But eliminating the summary hearing process entirely is not the way to do it.

The HRTO should not amend Rule 13 to align with the Practice Direction on Jurisdiction

On this point, ISAC agrees with and adopts [Tribunal Watch Ontario's submissions](#). Whereas the HRTO used to dismiss cases only where it was "plain and obvious" that they fell outside of the HRTO's jurisdiction, they can now be dismissed on a "balance of probabilities" standard. This

⁴ [Tribunals Ontario 2022-23 Annual Report](#), "Human Rights Tribunal of Ontario", Table 1.

⁵ See e.g., Frank Nasca "Jurisdiction and Access to Justice: An analysis of Human Rights Tribunal of Ontario-issued Notices of Intent to Dismiss" (2022) 35(3) *Canadian Journal of Administrative Law & Practice* 253.

⁶ [Tribunals Ontario 2022-23 Annual Report](#), "Human Rights Tribunal of Ontario", Table 2; Jeff Gray, "[Ontario Human Rights Tribunal dismisses 93% of complaints with no hearing, watchdog says](#)" *The Globe and Mail* (11 November 2024).

has resulted in a dramatic increase in early dismissals and has particularly impacted individuals with disability and race-based discrimination claims.⁷ This negative change should not be incorporated into the Rules.

Eliminating Case Management, fax, and hand-delivery may harm vulnerable parties

Not everyone in Ontario has equal access to the technology necessary to file documents electronically. Parties in rural and remote communities may not have dependable or high speed internet access. Many low-income households only have internet access through smartphones, which makes e-filing challenging.⁸ This leaves the most vulnerable unrepresented applicants without a quick and inexpensive filing option to meet deadlines. Maintaining fax and hand-delivery as options would represent a minor expense for the HRTO that could assist applicants without other options.

In addition, Case Management Conference Calls (CMCC) provide an opportunity for the HRTO to assist parties in understanding the legal process and narrow the issues in dispute. Eliminating CMCCs will further disadvantage unrepresented parties, could lead to unnecessarily broad or protracted proceedings, and undermines the HRTO's goal of streamlining proceedings.

Conclusion

ISAC hopes that the HRTO will provide a complete draft of the proposed rule changes to enable meaningful consultation with stakeholders. In the interim, we provide the above preliminary feedback on the concerning changes the HRTO has proposed. We urge you to pursue efficiency without compromising procedural fairness and access to justice for applicants seeking to enforce their human rights.

Thank you for considering our feedback. We would be pleased to discuss any of the above with you.

Sincerely,



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per: Income Security Advocacy Centre | Centre d'action pour la sécurité du revenu

⁷ Frank Nasca “Jurisdiction and Access to Justice: An analysis of Human Rights Tribunal of Ontario-issued Notices of Intent to Dismiss” (2022) 35(3) *Canadian Journal of Administrative Law & Practice* 253.

⁸ Tribunal Watch Ontario, “[The Digital Transformation at Tribunals Ontario: The Impact on Access to Justice](#)” (2021), p 9.