



Psychiatric Patient Advocate Office

INFORMATION GUIDE

Human Rights Applications: Discrimination and Harassment

***DISCLAIMER:* This guide contains general information only. It is not legal advice about your situation. You should consult a lawyer or legal worker for advice about your particular situation.**

What is the Ontario Human Rights Code?

- The Ontario *Human Rights Code* (the *Code*) is an important law. It protects everyone in Ontario from discrimination and harassment. All other laws in Ontario must be consistent with the *Code*.
- As of June 30, 2008 there is new human rights legislation in Ontario. The Human Rights Commission no longer investigates individual human rights complaints. Instead, all applications are filed directly with the Ontario Human Rights Tribunal. A new Human Rights Legal Support Centre can help people who have been discriminated against file their application at the Tribunal.
- The **Ontario Human Rights Tribunal** (the Tribunal) is responsible for making sure that the *Code* is enforced and respected.
- You can file an application with the Tribunal if you believe you have been discriminated against or harassed because of your race, sex, sexual orientation, colour, ancestry, place of origin, ethnic origin, marital status (including common-law, divorced and separated relationships), age, disability, citizenship, family status or religion. You can also file an application if you are discriminated against in housing because you receive social assistance, or if you are discriminated against at work because of a criminal record for which a pardon has been granted. These are known as the “prohibited grounds” of discrimination under the *Code*.

Protecting human rights is everyone's responsibility. We all have an obligation to respect each other's human rights and to speak out against discrimination and harassment for ourselves and for others.

What is discrimination?

- To treat someone unfairly, deny a benefit, exclude, impose obligations, disadvantage, etc. because of a characteristic or perceived characteristic under the *Code*. Intent is not necessary to prove discrimination.
- You have the right to be free from discrimination and harassment in your job, facilities and services (shops, restaurants, transit, hospitals, schools and other public places), housing, contracts, and membership in unions or vocational associations.

What is harassment?

- Harassment is a form of discrimination. It includes offensive behaviour, comments or insults based on one or more of the prohibited grounds of discrimination in the *Code*. Harassment also occurs when people say something that they know will make you feel uncomfortable.
- Examples of racial harassment include racial slurs or jokes and insults because of to your racial identity. Examples of sexual harassment include displaying sexually offensive pictures and staring or making unwelcome comments about your body.

What is “indirect discrimination” and “constructive discrimination”?

- Indirect discrimination takes place when the discrimination is carried through another person. For example, a landlord has indirectly discriminated if he tells the superintendent not to take tenants with children or people with a disability.
- Constructive discrimination refers to policies or practices which may not be intentionally or obviously discriminatory but which have a discriminatory *effect* on a group or groups which are protected under the *Code*. For example, if an employer has a policy that nobody is allowed to wear head coverings, the employer has constructively discriminated against persons whose religion requires them to wear head coverings.

What is “accommodation” and “undue hardship”?

- The “duty to accommodate” requires every employer, landlord or service provider (such as a hospital) to take reasonable steps to change rules or practices by making alternative arrangements that allow you to have equal access. Accommodation will vary according to each person's needs. Some examples of accommodation include: building a wheelchair access ramp, increased flexibility in work hours or break times; providing sign language interpreters for persons who are deaf so they can participate in meetings; and job restructuring, retraining or assignment to an alternative position.

- Accommodation must take place unless it causes “undue hardship”. Three factors are looked at to determine if there is undue hardship: cost; whether other sources of funding are available; and health and safety requirements. The employer or service provider cannot claim “undue hardship” for example, just because building an accessible washroom would be expensive. They would have to prove that the cost was so extreme it would actually interfere with running the business.

Is mental illness a disability?

- Yes, mental illness is a disability under the *Code*. You cannot be discriminated against or harassed because you are a patient in a hospital or because of any illness that you may have.

What else does the Code protect me from?

- If you are treated differently because you asserted your rights under the *Code*, that is considered “reprisal.” The *Code* protects you from reprisal or threats of reprisal. You are also protected from reprisal where you have refused to discriminate against someone else, or where you have rejected a sexual solicitation.

What can you do about discrimination or harassment?

- If you have been discriminated against or harassed:
 - a) Tell the person who has acted offensively that the behaviour is unacceptable, and ask the person to stop. If this is difficult to do alone, ask a friend to join you.
 - b) Keep a written record of:
 - what happened
 - when it happened
 - where it happened
 - what was said or done and who said or did it
 - who saw what happened
 - what you did at the time
 - c) If the discrimination or harassment happens at work, and you have a union, talk to your union representative. If you are in a mental health facility, check with ward staff or your Patient Advocate to see what complaints procedure specifically addresses discrimination and harassment.
- If you feel that the issue has not been taken seriously or is continuing, you may choose to file a human rights application to the Tribunal.

How do I file a human rights application with the Tribunal?

- You have the right to submit an application to the Ontario Human Rights Tribunal if you have been discriminated against or harassed because of your disability or race or any other prohibited ground in the *Code*.
- The Tribunal hears and resolves human rights applications. The process is designed to be faster and less formal than a normal court process.
- Once your application is filed, it can take about a year for it to be resolved. However, parties have the opportunity to try and settle the application through mediation if they both agree to do so..
- The **Human Rights Legal Support Centre** may be able to help you with your application. The Centre's 22 lawyers and staff are human rights specialists who offer free legal advice and services. They are independent of the Tribunal and arm's-length from the government. They may be able to: give you advice about your case, help you complete your application, communicate on your behalf with the person(s) or organization(s) you filed against and with the Tribunal, and possibly represent you in mediation or a hearing.

The application

- You must file your application within **one year** of the date on which the discrimination occurred. If there was a series of discriminatory events, you must file within one year of the last event. The Tribunal may extend this time if you have a good reason for filing late, such as being in the hospital or jail, or not knowing about the discrimination until more than a year had passed.
- Tribunal staff will ask for your name, address, telephone number and whether you prefer to receive documents via mail, e-mail, or fax. They will send you an information package including the application form and a guide. You may also download forms from the Tribunal website, or file your application through their website directly using their "smart form."
- The application form requires you to describe what happened (who, when, what and where); how the events affected you; and what compensation or remedy you are seeking. It will also ask you to clearly identify the name of the person(s), company, service organization, or government Ministry you are filing about (also referred to as the "Respondent"), any documents that may support your claim, and if there are any witnesses to the events. The witness list is confidential and will not be sent to the Respondent.

- The Tribunal also has a privacy policy. In some cases, they may ensure that your name does not appear in any public documents. You should inform the Tribunal of your privacy concerns. You may also file your application through an agent, such as a lawyer or an unpaid friend or family member. This ensures that your personal contact information is not sent to the Respondent.

What happens once I've filed the application?

- After they have received your completed form, the Tribunal makes sure it is complete and is covered under the *Code*. You will have the opportunity to fix any problems in your application.
- Once your application is accepted, the Tribunal will send a copy of your application to the Respondent(s). The Tribunal will remove the list of witnesses and your personal contact information (if you have asked them to and given them an alternative contact address). They will ask the Respondent to complete a Response form.
- You will have the opportunity to respond to any new information the Respondent provides in a Reply.
- Both parties to the application may agree to hold a mediation. This process is hosted by a Tribunal adjudicator. It is a confidential attempt to resolve the issue between you and the Respondent before going to a Tribunal hearing.
- If mediation is unsuccessful, the Tribunal will then hold a hearing to make a decision about your application.

Where can I get help with my application?

- If you need help with your application, contact the Human Rights Legal Support Centre.
- You may also hire a private lawyer, or choose to have an unpaid friend or family member act as your agent. If you want to hire a private lawyer and are low-income you may qualify for a legal aid certificate.
- The Tribunal will provide you with language interpretation or sign language interpretation services so that you may fully participate in your hearing or mediation. Requests for language interpretation or sign language interpretation services must be made to the Registrar at the Tribunal as early in the process as possible.

What can the Tribunal order?

- If the Tribunal finds that you were discriminated against or harassed, they can order the Respondent:
 - to pay you “general damages” for the loss of dignity, feelings and self-respect;
 - to pay you for “special damages” for money you lost, such as from unfairly increased rent or lost wages.
- The Tribunal can also order the Respondent to do something that will put you in the position you would have been in if the discrimination had not happened. For example, if you lost your job because of the discrimination, the Tribunal could order that you get your job back.
- The Tribunal can also issue public interest remedies, such as requiring employers or government to change their procedures or implement human rights policies, or requiring the Respondent to get human rights training. You may ask for such remedies in your application.

Can the Human Rights Tribunal refuse to accept my application?

- The Tribunal can only hear human rights applications arising from situations that fall under the laws of the Province of Ontario. Such matters generally include employment, contract, public transit, housing, health, education, and services like shops and restaurants.
- The Tribunal may refuse or dismiss your application where:
 - the discriminatory event occurred outside of Ontario (though there are exceptions to this rule).
 - your matter is not covered by the laws of Ontario, such as where it is a matter of federal law. Activities regulated by federal law include airline travel, chartered banks, television and radio stations, telephone companies, federal government departments and agencies, and Crown corporations. Complaints about these services are heard by the Canadian Human Rights Tribunal acting under the *Canadian Human Rights Act*. For assistance, contact the Canadian Human Rights Commission online at <http://www.chrc-ccdp.ca/> or by telephone at 1-888-214-1090.

- you have already filed a claim through another means, such as civil court, a union grievance, or the Landlord and Tenant Board. In some cases, the Tribunal may allow your application but defer or postpone it until the other proceeding is complete. You will have a chance to explain why the other proceeding does not deal appropriately with the substance of your application.
- The Tribunal may also refuse or dismiss your application if you already filed a complaint about the same incident with the “old” Human Rights Commission before June 30th, 2008.

Do I have any other legal options if I have filed an application with the Human Rights Tribunal?

- There may be other legal routes available to you instead of, or in addition to a human rights application. However, an application may have an impact on other options. You should speak to your lawyer about the best process

What if I already filed a human rights complaint with the Commission?

- If you filed a human rights complaint with the Commission before June 30th, 2008, and that process has not been completed, your file is considered a “transition file.” It is up to you to decide how your file will be dealt with. Here are your options:
 - You can choose to let the Commission continue to investigate your complaint. The Commission will do so until December 31st, 2008.
 - You may choose to transfer your existing complaint to the Tribunal under their special rules. You must make this transfer before December 31st, 2008. This process includes a mandatory mediation session. However, it is not the best option for complex cases where the parties do not agree about what happened, or where there are expert witnesses involved.
 - After December 31st, 2008, the Tribunal has indicated that existing complaints may be transferred and reviewed under rules for a faster resolution until June 30th, 2009. These cases will offer mediation.
 - By June 30th, 2009, you must transfer your complaint from the Commission to the Tribunal or it will be discontinued. It is your responsibility to make sure the complaint is transferred.
- To assist with your transfer, you should contact that Tribunal Transfer Registrar at (416) 314-8419. For more information on your options, you can also visit: <http://www.ohrc.on.ca/en/commission/mission/options/>.

Helpful Contacts

- You can call the Tribunal from Monday to Friday during office hours at (416) 326-1519 (in Toronto) or toll-free 1-866-598-0322. People with a hearing disability may call their TTY (416) 326-2027 (in Toronto) or toll-free 1-866-607-1240. Further information is available on the Tribunal website at: <http://www.hrto.ca>.

Submit a new application to the Tribunal:

- Richard Hennessy, Registrar
Human Rights Tribunal of Ontario
655 Bay Street 14th Floor
Toronto, ON M7A 1X8
- Or you can send your application by email at HRTO.Registrar@ontario.ca or by fax at (416) 326-2199 or (Toll Free): 1-866-355-6099.

Help filing an application

- Human Rights Legal Support Centre
400 University Avenue, 7th Floor, Toronto, ON, M7A 1X8
Tel (Toronto): 416-314-6266
Toll Free: 1-866-625-5179
TTY (Toronto): 416-314-6651
TTY Toll Free: 1-866-612-8627
Website: www.hrlsc.on.ca

For Transitional applications and Commission Referred Complaints, contact

Patricia M. Grenier, Registrar – Transition
Human Rights Tribunal of Ontario
655 Bay Street, 14th floor
Toronto, ON M7A 2A3

Tel (Toronto): (416) 314-8419
Tel (Toll Free): 1-866-598-0322
TTY: (416) 314-2379
TTY (Toll Free): 1-800-424-1168
Fax: (416) 314-8743
Email: HRTO.Registrar-Transition@ontario.ca

Questions about your rights as a psychiatric patient?

If you have questions, contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.