

AODAA RECOMMENDATIONS TO THE HUMAN RIGHTS LEGAL SUPPORT CENTRE	HUMAN RIGHTS LEGAL SUPPORT CENTRE (HRLSC) COMMENTS
<p>1. Make the Human Rights Legal Support Centre more open and accountable for its work bringing human rights cases for discrimination victims; (AODAA, pg. 13, #2)</p>	<p>The Centre is open to ideas on how to make our service more accessible and transparent. Our policies and practices affecting the delivery of legal services are posted on our website. Each annual report has been posted on the web site after public release by the government.</p> <p>To date, we have placed priority on posting information that would be helpful to individuals who are being discriminated against (such as self-help tools and tip sheets). However, the Centre is in the process of revamping its site to include more information about its statistics, outcomes and results.</p>
<p>2. Stop the Human Rights Legal Support Centre's policy or practice (except in the case of unresolvable ethical clash), when it agrees to represent a human rights applicant, of only agreeing at the outset to represent them partway through the Tribunal process, and leaving it to later to decide if the Centre will continue to represent the applicant through to the end of the process; (AODAA, pg. 13, #3)</p>	<p>The staged retainer process allows the Centre to maximize its services. The Centre must retain the discretion to refuse further service in several scenarios: new evidence that the application will certainly be dismissed because of a previous proceeding or agreement; evidence the applicant fabricated the allegations; evidence the Respondent fully complied with their duties under the <i>Code</i>; circumstances where an applicant has refused a settlement offer that exceeds reasonable outcome at hearing; breakdown in the solicitor-client relationship, etc.</p>
<p>3. Correct problems with the way the Human Rights Legal Support Centre decides whether to represent a human rights applicant; (AODAA, pg. 13. #4)</p>	<p>The Centre welcomes feedback on its publically available case selection criteria. As per the message on the web site, feedback can be sent to <a href="mailto:JRamsay@hrlsc.on.ca">JRamsay@hrlsc.on.ca</a>. <a href="http://www.hrlsc.on.ca/en/EligibilityGuidelines.aspx">http://www.hrlsc.on.ca/en/EligibilityGuidelines.aspx</a></p>
<p>4. Ensure that the Human Rights Legal Support Centre has a proper budget to hire expert witnesses; (AODAA, pg 13, # 5)</p>	<p>The Centre has not had any difficulty in securing and paying for expert witnesses. The Centre litigates successfully and effectively and uses expert witnesses as needed. There are no statistical or anecdotal indications that the Centre is not litigating effectively.</p>
<p>5. Strengthen the availability and accountability of public interest remedies in human rights cases; (AODAA, pg. 13 #10)</p>	<p>The Centre recommends public interest remedies in every application. Our Annual Reports include many examples of public interest remedies achieved pre-application, at mediation and at hearing. A more complete listing of all our public interest remedies in settlements and at hearings will be available shortly on the Centre's web site.</p>
<p>6. Create an arms-length non-partisan process for selecting people to serve in key roles at the Human Rights Tribunal, Human Rights Commission and Human Rights Legal Support Centre; (AODAA, pg. 14, # 15)</p>	<p>All the Centre positions are posted publicly and filled through a rigorous competitive process. Members of the Board of Directors are appointed by the provincial Cabinet and are subject to a tri-party review.</p>
<p>7. The Human Rights Legal Support Centre should be required to post on its website monthly reports on the delays or other difficulties of getting through on the phone, including the numbers of persons unable to get through, and the average wait time. (AODAA, pg.30. #2)</p>	<p>With the Centre's new phone system, we will soon be able to post a real-time report of wait times or callers waiting on our web site. The Centre's telephone answer rate for the first three months with the new phone system was 74% and is improving. The average wait time is currently too high at approximately 8 minutes. The Centre will continue to initiate changes, within its resources, to improve the answer rate.</p>
<p>8. The Human Rights Legal Support Centre should in consultation with the disability community investigate why its proportion of disability-related cases on which it provides legal services is so much lower than the proportion of disability-related cases historically launched at the Human Rights Commission before Bill 107, and should develop and make public strategies to correct this, including any barriers to access to its services that it might discover. (AODAA, pg. 30, # 5)</p>	<p>The proportion of disability-related cases handled by the Centre is similar to the proportion of those cases handled by the Commission. However, the actual number of disability-related cases on which the Centre provides legal services is much higher than the average number of complaints on which Commission counsel provided legal services under the previous system. For example, in the first 11 months of the current year, Centre lawyers assisted more than 700 individuals and provided representation in more than 170 applications proceeding before the HRTO. In the past, the Commission lawyers would take carriage of an average of 93 cases referred to the HRTO, of which 30-50% were disability-based. 2003/4 was an exception with 200 autism cases referred to HRTO.</p>

<p>9. The Code should be amended to empower the Human Rights Tribunal to order the Human Rights Legal Support Centre to provide legal representation to an unrepresented applicant. (AODAA, pg. 40, #6)</p>	<p>The HRTO had invited the Centre to intervene in several important applications and we have done so. There are many reasons why it would be inappropriate for the HRTO to be able to order the Centre to provide service. In many cases where the Centre is not providing representation, the decision not to do so is based on a negative assessment of the merits of the application. The Centre is in the best position to determine the best use of its resources in assisting applicants before the HRTO.</p>
<p>10. The Code should be amended to forbid the Human Rights Legal Support Centre from agreeing to represent an applicant only on a limited-retainer basis that would enable the Centre to refuse to continue representing an applicant throughout an application, with the exception of circumstances where there is an insoluble dispute between lawyer and client or other ethical impediment to the Legal Support Centre continuing to represent that applicant. (AODAA, pg. 40, # 7)</p>	<p>See recommendation 2.</p>
<p>11. The Code should be amended to make the position of the executive director of the Human Rights Legal Support Centre a fixed term position, with the appointment subject to the same legislative oversight as applies to the Chief Commissioner of the Ontario Human Rights Commission. (AODAA, pg. 40. #8)</p>	<p>The Centre does not agree with this recommendation. Recruitment of the executive director is the responsibility of the Board of Directors. The Board is committed to filling this position through a rigorous public competition. The Board is in the best position to select an executive director and to decide if the position should be filled on a permanent or contractual basis, and if so, for what term. Public appointments are necessarily part of the political process and are subject to mandatory prescribed terms.</p>
<p>12. The Code should be amended to provide for much more public accountability of the Human Rights Legal Support Centre, including, for example:</p> <ul style="list-style-type: none"> <li>a) requiring that the Human Rights Legal Support Centre's annual report and annual audited financial statements be promptly made public once delivered to the Government;</li> <li>b) requiring the minutes of the board of directors of the Human Rights Legal Support Centre be made public, except for information protected by solicitor client privilege or other privacy legislation;</li> <li>c) expanding the mandatory size of the board of directors of the Human Rights Legal Support Centre, and setting a minimum quorum for the board not to be less than 75% of its members;</li> <li>d) requiring the Human Rights Legal Support Centre to establish procedures to ensure that there is ongoing public input and public monitoring by equality seeking groups of its activities. (AODAA, pg. 40, # 9 a – d)</li> </ul>	<ul style="list-style-type: none"> <li>a) The legislation requires the Centre to submit an annual report to the Minister, and we have done so each year. The Centre can only release its annual reports after the Government has tabled it in the Legislature.</li> <li>b) The Board will consider this recommendation. Should there be specific questions or concerns related to the conduct of the Board of Directors, the Centre would be happy to respond and provide appropriate information.</li> <li>c) The Centre has no comment on this recommendation. Our bylaws establish a majority quorum.</li> <li>d) The Centre solicited input from its stakeholders by conducting a survey in 2010 of over 90 community-based organizations and agencies. We regularly send our newsletter to 561 individuals and organizations, inviting input and feedback. The Centre regularly hears from communities across Ontario and welcomes suggestions for further input.</li> </ul>
<p>13. The Code should be amended to require that the Human Rights Legal Support Centre not use as criteria for eligibility for its services the Centre's view of:</p> <ul style="list-style-type: none"> <li>a) whether the applicant could represent themselves, or</li> <li>b) whether the applicant is disadvantaged, or</li> <li>c) the applicant's income or resources. (AODAA, pg. 43, # 10 a – c )</li> </ul>	<p>The Centre has maximized its resources by using the eligibility criteria.</p>
<p>14. The Code should be amended to require the Human Rights Legal Support Centre to pay for the expert fees of witnesses needed by its clients at the Tribunal, whether at a hearing or in mediations. (AODAA, pg. 44, # 11)</p>	<p>See recommendation 4. The Centre pays for expert witnesses for hearings.</p>

<p>15. The Government should provide appropriate funding for expert witnesses that the Human Rights Legal Support Centre's clients require. (AODAA, pg. 44, # 12)</p>	<p>See recommendation 4.</p>
<p>16. It is vital that this Review obtain from the Tribunal and the Legal Support Centre, and make public, objective data on the extent to which public-interest remedies are being issued now as compared with the extent, rate and quality of public interest remedies before Bill 107 came into effect, whether through Tribunal orders at the end of hearings or through settlement agreements. This in turn would require the Legal Support Centre to make available to the public extensive details on public-interest remedies that are included in settlement agreements, rather than the Centre merely selecting a few to showcase. (AODAA, pg. 67, paragraph 5).</p>	<p>See recommendation 5. The Centre appreciates that the public has an interest in having more information publicly available about settlements achieved at Tribunal mediations. The Centre has recently posted an extensive set of our settlements, anonymized, on our website. This includes settlements achieved without filing an application. We are open to discuss how it would be possible to make more information available about settlements where the Centre was not retained. In the past, the Commission summarized many (not all) settlements achieved at Tribunal mediations and also published annually a one-page chart showing settlements achieved in the Commission process, including quantum (but not public interest remedies, if any) by ground and service area.</p>
<p>17. As part of the Review process, and well before the final Report is issued, this Review should obtain from the Human Rights Tribunal and Human Rights Legal Support Centre comprehensive data on the extent to which public-interest remedies are included in Tribunal orders and settlement agreements, as compared with the situation before Bill 107, to enable the public to make presentations to the Review about them. (AODAA, pg. 68, # 28).</p>	<p>See recommendation 5.</p>
<p>18. This Review should find that it was inappropriate for the Human Rights Legal Support Centre to refuse to provide legal services to those who, during the transition, ended up at the Human Rights Tribunal without the Human Rights Commission having carriage of their case. (AODAA, pg. 86, # 38).</p>	<p>Under the <i>Human Rights Code</i>, the Centre's legislated mandate was to provide legal service only in respect of new applications under the reformed process. The Centre, unlike the Tribunal and the Commission, did not receive any transitional funding to provide services to the over 4000 complaints in the Commission backlog.</p>
<p>19. In any case where the Human Rights Legal Support Centre represents an applicant at the Human Rights Tribunal, the Centre should be required to cover the legal costs of any respondent in the case where the applicant is successful at the Tribunal and the respondent takes the case to Court on judicial review, succeeds in Court, and gets a cost order against the applicant. (AODAA, pg. 91, # 42)</p>	<p>The Centre has agreed to pay costs when we represented an applicant against a respondent's judicial review.</p>
<p>20. Pending implementation of the immediately preceding recommendation, the Human Rights Legal Support Centre should make public a policy on when it will pay the costs order that a court makes against a client of the Centre's. (AODAA, pg. 91, #43)</p>	<p>This could have an unwarranted chilling effect on would-be claimants. Relatively few cases are judicially reviewed by losing respondents. As discussed below, other steps can be taken to protect clients.</p>
<p>21. Until and unless the law governing court costs are changed, the Human Rights Legal Support Centre should warn potential applicants of the risk of facing a legal court costs order, if the applicant wins at the tribunal, but a court later overturns that Tribunal decision. (AODAA, pg. 91 # 44)</p>	<p>We provide advice on costs in any case in which a client wins at the Tribunal and is facing a judicial review application. The client always has the option of not defending on a judicial review and can avoid a costs order if that is the appropriate approach. The Centre has paid legal costs when ordered by the Divisional Court against a client.</p>
<p>22. The Code should be amended to establish an arms-length, non-partisan body with input from all political parties, whose membership is to be selected by the Chief Justice of Ontario, to screen appointments to the Human Rights Tribunal, Human Rights Commission and the board of directors of the Human Rights Legal Support Centre based solely on merit and expertise. (AODAA, pg. 92, #45)</p>	<p>Appointments to the Human Rights Tribunal are specifically governed by provisions in the <i>Code</i> requiring a competitive process with criteria to include human rights knowledge and an aptitude for impartial and alternative dispute resolution.</p>