

Human Rights Tribunal of Ontario

Post-event report: Stakeholder consultation on improving electronic hearing formats

INTRODUCTION

As part of Tribunals Ontario's digital-first approach announced in September 2020, the Human Rights Tribunal of Ontario (HRTO) has begun to conduct videoconference hearings, building upon the tribunal's long history of using teleconferences to provide fair, efficient, and timely access to justice.

With the aim of better serving the people of Ontario who access HRTO services, the HRTO Associate Chair Tamara Kronis hosted a stakeholder engagement session on November 16, 2020. The engagement session was held on Microsoft Teams and was an opportunity to engage in open-ended discussion with members of the public and stakeholders, including human rights organizations, advocates, and self-represented parties, about how to improve electronic hearings. Written feedback was also encouraged and considered.

WHAT WE HEARD

Stakeholder feedback has been reviewed and compiled, and the results have been set out below under several broad themes:

- Access to justice
- Functionality
- Accommodation
- Transparency

Feedback on matters other than improving electronic hearing formats has been carefully noted but is outside the scope of this report.

ACCESS TO JUSTICE

What we heard: Outright or qualified support for digital hearings.

- Increase in overall hearing capacity to conduct hearings (digital hearings create an "unlimited" number of hearing rooms).
- Reduction in travel times and expenses once the COVID-19 pandemic ends.

- Digital-first must not be digital only. HRTO should consider repurposing space in existing hearing centres to facilitate participation in video hearings for those who require accommodations.
- Concern with hybrid hearings: Platform asymmetry can give rise to unconscious bias, particularly to unrepresented and socioeconomically disadvantaged applicants who are less likely to have access to internet/video.
- HRTO should continue to develop options to assist parties, especially unrepresented parties, to understand the rules and successfully participate in digital hearings.
- HRTO should develop data collection capacity to determine whether digital participation advantages some parties.
- For some applicants, particularly those presenting claims of sexual harassment, video hearings may be perceived as levelling the playing field between parties. For example, online hearings remove the need for support persons to travel to observe hearings and provide moral support. The relatively unlimited ability to attend video hearings can engender community solidarity.
- Compared to in-person hearings, it can be difficult to tell if self-represented applicants are fully engaged and able to follow along during electronic hearings.

FUNCTIONALITY

What we heard: Platforms must be easy to use with clear guidelines for use.

- Preference for video over telephone for mediations, mediation-adjudication and hearings (face-to-face interactions that are more natural, allow for documents to be exchanged virtually).
- Preference for Zoom over Teams (breakout rooms, document presentation and screen sharing).
- HRTO should continue to develop the rules and etiquette around digital hearings (parties assisting other parties to present documents during hearings, attire and comportment).
- Document sharing on video impairs parties from observing witnesses. It was suggested that witnesses be made aware of what they can and cannot do while giving evidence and while participating in electronic hearings more broadly.
- Case Management Conference Calls prior to merits hearings were recognized as effective and should continue.
- Concerns were expressed about documents more generally: The tendency to submit excessive documents is exacerbated by the technical challenge of electronic document sharing.
- The HRTO should continue to standardize its processes during hearings to help set expectations for the parties.

ACCOMMODATION

What we heard: Accommodation must be a focus of digital hearing design, not an afterthought.

- No single digital platform is fully accessible to all people: In-person hearings will still be required in some cases to ensure full participation in the hearing process.
- Stakeholders would appreciate greater certainty and consistency as to how accommodations are provided.
- Instructional videos, as well as example recordings of either staged or actual hearings, would be useful resources.
- HRTO has received accounts of several positive experiences with video hearings during which sign language interpreters were present or during which a captioning service was used.
- The HRTO should continue to provide clear instructions on what technical assistance is available in its notices of hearings and elsewhere. It was also recommended that the HRTO consider making virtual hearing links active earlier for parties to join in advance of actual start times.
- Recent changes to the Tribunals Ontario website were flagged: URLs have been broken and it is difficult to navigate directly to tribunal content. A review of forms and other tribunal documents should be conducted to identify inaccuracies.

TRANSPARENCY

What we heard: The HRTO must continue to implement measures to promote the “open courts” principle.

- The HRTO should publish a hearing docket online, consider recording hearings, and broadcasting hearings live using YouTube or a similar free platform.
- The HRTO should consider making digital recordings of hearings available for a limited time after a hearing for the benefit of parties with connectivity issues, members of the public and support persons, and for practical opportunities for the broader community to observe and prepare for proceedings (future applicants, legal professionals in training, media).
- The HRTO should consider ways to reduce the administrative burden of requiring observers to register in advance to attend electronic hearings.
- The HRTO should be aware in considering these issues that it may not be apparent to all participants that someone has lost connectivity, particularly those participating by teleconference if entry and exit chimes have been turned off.
- The HRTO should consider privacy concerns that would not arise during in-person hearings, including a greater and geographically dispersed audience not necessarily under the control of Canadian law, and the difficulty of preventing unauthorized recordings.
- The HRTO should be aware in considering these issues that some members of the public find it intimidating to have to proactively seek to observe a hearing, and many believe they must provide a specific reason for their request. Careful

attention should be given to public communications surrounding an electronic front desk.

WHAT WE ARE WORKING ON

The HRTO is working diligently to address the feedback and comments received, including:

- The HRTO is switching from Teams to Zoom to conduct mediations, mediation-adjudication and hearings, with an expected implementation date of May 1, 2021 and a Teams phase-out by end of summer 2021 except in exceptional cases.
- The Access Terminal Pilot Project running at 15 Grosvenor Street in Toronto will be expanded to HRTO to provide a place where those without digital access in the GTHA can participate in hearings. In addition, a small number of in-person hearings will resume when safe to do so.
- HRTO forms and documents are being streamlined to make them easier to access and complete digitally. A revised Form 1 and associated rule changes to facilitate digital-first adjudication will be the subject of the spring 2021 HRTO stakeholder consultation.
- The HRTO has developed a digital hearing docket with instructions on how to access hearings which will be the subject of the HRTO spring 2021 stakeholder consultation.
- The HRTO is exploring ways to receive feedback from stakeholders on an ongoing basis to inform future stakeholder consultations.
- Tribunals Ontario has implemented a uniform Accommodation Request Form. The HRTO is working on materials that will provide greater certainty and consistency as to how accommodation is provided to ensure effective and equitable participation in HRTO proceedings.
- Tribunals Ontario and the HRTO are exploring production of instructional videos, how-to-guides and tip sheets as well as example recordings of either staged or actual hearings.
- Tribunals Ontario released its [Practice Direction on Hearing Formats](#) on November 30, 2020.

CONCLUSION

The HRTO would like to thank everyone who provided comments and suggestions during our consultation process. As part of Tribunals Ontario's ongoing efforts to ensure access to justice, the HRTO will continue to engage external organizations for assistance in providing private spaces and confidential technical assistance for individuals without phone or computer access. If your organization is willing to help with this, please do not hesitate to contact Associate Chair Tamara Kronis.

STAKEHOLDERS WHO MADE SUBMISSIONS

- **Anthony Anirud**, Human Rights Commissioner, York Region District School Board
- **Hannah Biesterfeld**, Manager, Human Rights, Toronto Transit Commission
- **Jeff Fair**, Senior Manager, Legal, Legislative and Administrative Services, York Region District School Board
- **Janina Fogels**, Legal Manager and Senior Legal Counsel, Human Rights Legal Support Centre
- **Katherine Ford**, Manager of Knowledge Management, Sherrard Kuzz LLP
- **Avneet Grewal**, Legal Counsel, WSIB
- **Sharmaine Hall**, Executive Director, Human Rights Legal Support Centre
- **Olivia (Olga) Humphreys**, Humphreys Paralegal Services
- **Gordon Jermane**, Assistant Vice-President and Assistant Chief Counsel, Manulife
- **Robert Lattanzio**, Executive Director, ARCH Disability Law Centre
- **Roger Love**, Counsel, Ontario Human Rights Commission
- **Susan Mainse**, Risk Manager, Algonquin College
- **Anna Rosenbluth**, Staff Lawyer, Clinic Resource Office, Legal Aid Ontario
- **Dr. Ana Safavi**, #MedicineToo
- **Marie-Josée Smith**, Directrice, Secteur des ressources humaines, Conseil scolaire Viamonde
- **Charlene Theore**, President, Ontario Bar Association
- **HRTO adjudicators and staff**