

An Insider's View to Ontario Human Rights Litigation

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Agenda

- 1. What's happening now at the Human Rights Tribunal of Ontario?**
- 2. Normal steps in Human Rights Litigation in Ontario**
- 3. What should employers do when served with a Human Rights Application?**

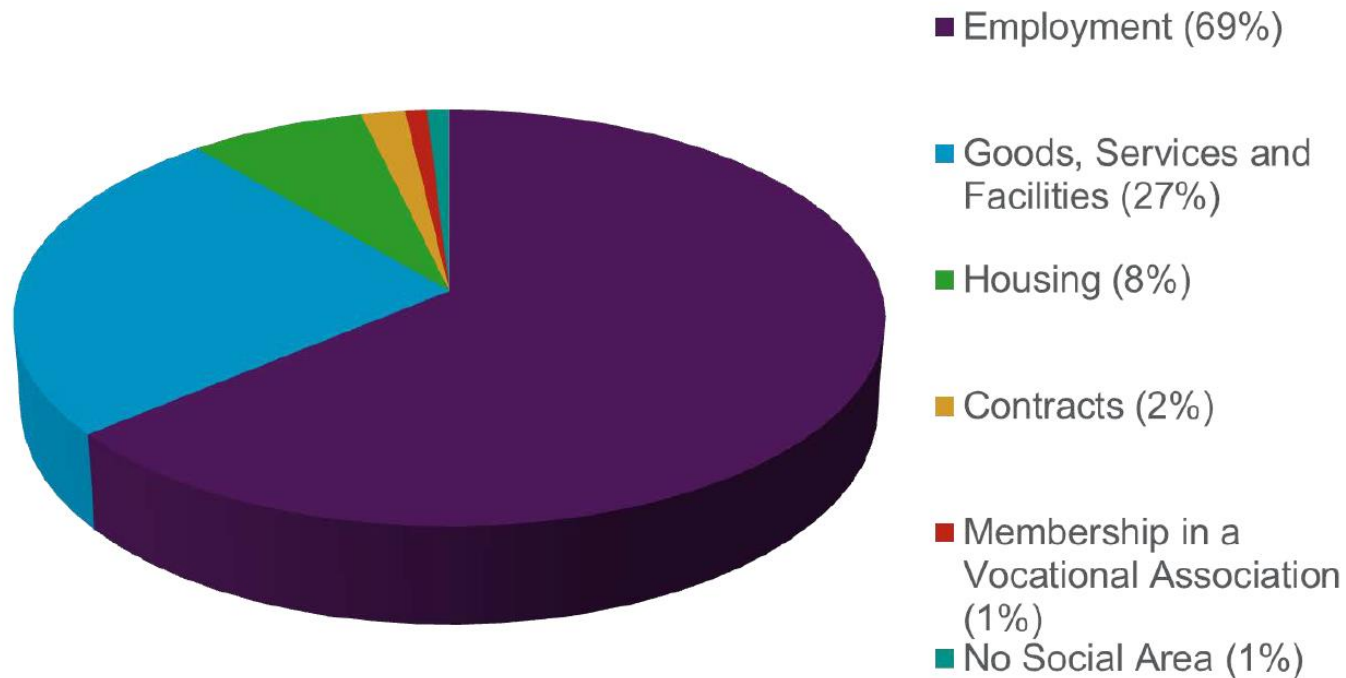
The HRTO – A statistical snapshot

	2017-2018	2016-2017	2015-2016
Applications Received	4,500	3,585	3,357
Cases Reactivated	--	22	18
Cases Closed	--	2,880	3,234
Active Cases at Year-End	--	4,696	3,242
Case Processing Time (days)	--	333	326

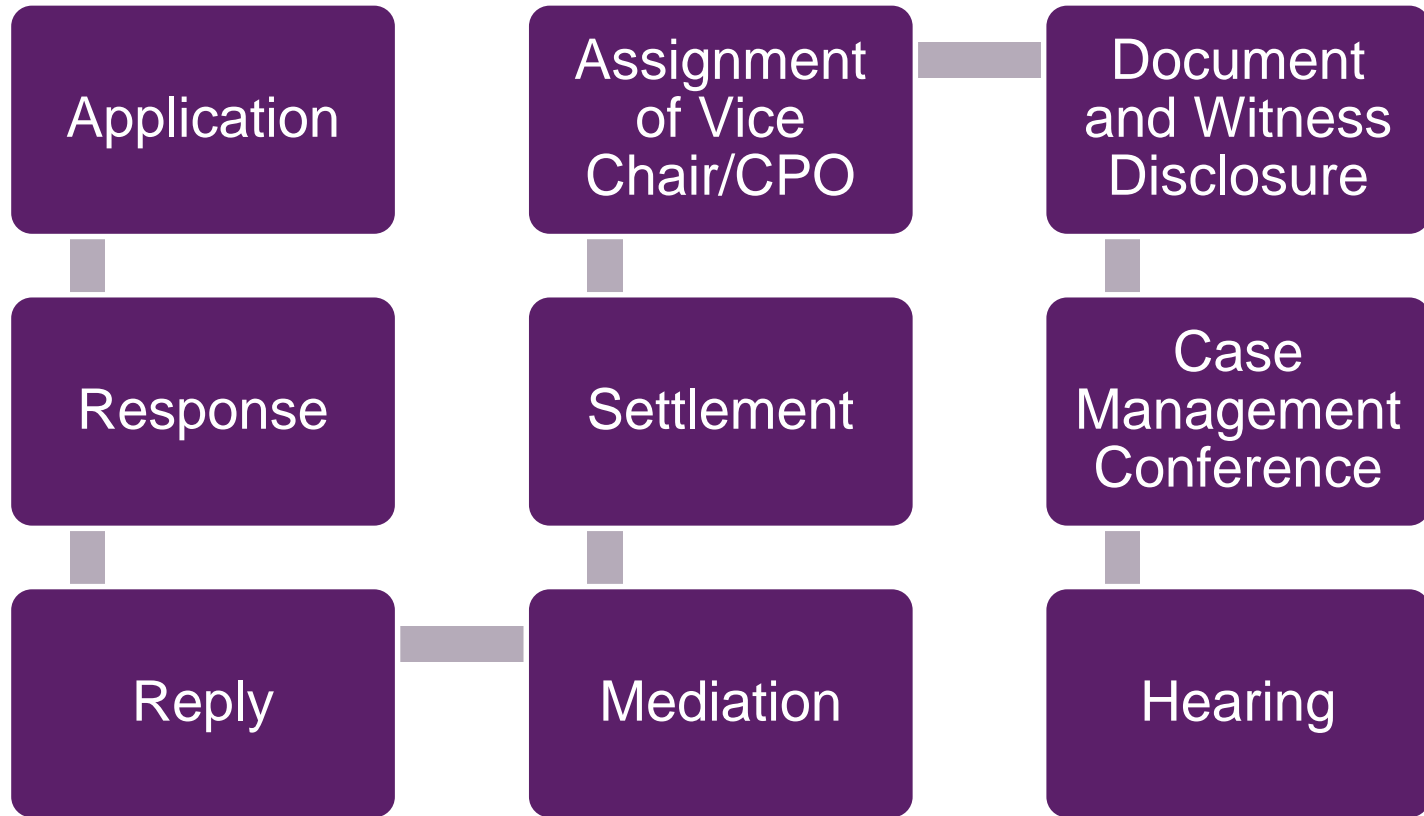
Source: Social Justice Tribunals Ontario, 2016-2017 Annual Report

The HRTO – A statistical snapshot

- Percentage of applications by ground under the *Human Rights Code*



Normal Steps in Human Rights Litigation in Ontario



Normal Steps in Human Rights Litigation in Ontario: Application, Response, and Reply

- Once an Application is received from an employee, the Respondent has 35 days to file a Response.
- The Respondent can seek an extension of time to file a Response.
- An Applicant has 21 days to deliver a Reply if he/she intends to prove facts different from those set out in a Response.

Note that human rights claims may also be commenced in court (section 46.1(1) of the Ontario *Human Rights Code*)

Normal Steps in Human Rights Litigation in Ontario: Applications, Response, and Reply Cont'd

- Applications (Form 1) include:
 - Name and contact information of the Applicant and his/her representative, if applicable;
 - The ground(s) of discrimination or harassment claimed;
 - The area of discrimination (for example: employment, housing, contracts, etc.);
 - Facts that support the Application (who was involved, what happened, when, where, etc.);
 - Documents that support the Application;
 - Confidential list of witnesses (not provided to Respondent at this stage);
 - The effect of the alleged discrimination or harassment on the Applicant (for example: financial, social, emotional, or mental health effects); and
 - The relief sought.

Normal Steps in Human Rights Litigation in Ontario: Application, Response, and Reply Cont'd

- Responses (Form 2) include:
 - Name and contact information of the Respondent and his/her representative, if applicable;
 - Facts and defences that support the Response;
 - Knowledge of the events (whether the Respondent knew of the events, how the Respondent responded to the events, and what the outcome was);
 - Questions about internal human rights policies (for example: is there a policy related to the type of alleged discrimination, is there a complaint process, etc.);
 - Documents that support the Response; and
 - Confidential list of witnesses (not provided to Applicant at this stage).
- When preparing a Response, Respondents must consider any possible arguments for an early dismissal or deferral of the Application.
 - For example, a Tribunal may dismiss an Application if:
 - there is another proceeding ongoing (including a grievance or court proceeding);
 - a full and final release is signed by the Applicant; or
 - the matter is within the federal jurisdiction.

Normal Steps in Human Rights Litigation in Ontario: Application, Response, and Reply Cont'd

- A Reply should only be filed if new matters were raised by the Respondent in the Response.
- Applicant's Reply to a Response (Form 3) include:
 - Identification of the new matter raised in the Response; and
 - The Applicant's reply to this new matter (for example: setting out facts that differ from those facts set out in the Response, which were not included in the Application).

Normal Steps in Human Rights Litigation in Ontario: Assignment of Vice Chair/Case Processing Officer

- Applications filed on and after March 1, 2018 are processed using a new case processing system.
- Under this new system, a Vice Chair/CPO is assigned to each application and will deal with all adjudicative matters from the time the application is filed until the file is closed.
- The Vice Chairs will now be raising issues for submissions where appropriate, even before mediation.
 - For example, if there is a question of whether an Application should be dismissed (in whole or in part) on the basis that there is no reasonable prospect of success, the Vice Chair may request submissions on the issue.
 - The issue may also proceed to a summary hearing.
 - The HRTO may hold a summary hearing at its own request or at the request of a party to determine whether the Application should be dismissed.
- The system improves HRTO's ability to track file progress and required actions, and improves efficiency.

Normal Steps in Human Rights Litigation in Ontario: Mediation and Structuring Settlements

- The Mediation Process
 - At any time after an Application is filed, the HRTO or the parties may request a mediation.
 - The purpose of mediation is for the parties to reach a resolution in an effort to avoid further litigation, time, and expense.
 - All matters disclosed during mediation are confidential and may not be raised before the HRTO at a hearing.
- Role of the Human Rights Legal Support Centre (HRLSC):
 - The HRLSC offers legal services to self-represented Applicants at the time of mediation.

Normal Steps in Human Rights Litigation in Ontario: Mediation and Structuring Settlements Cont'd

- Structuring Settlements

- If the matter settles at mediation, settlements may generally be structured with the following heads of damages:
 - General damages to compensate for injury to dignity, feelings, and self-respect.
 - Other special damages to compensate for money that has been lost or incurred as a result of the discrimination (ex. lost wages, lost benefits, out-of-pocket expenses, relocation expenses, etc.)
 - Non-Financial Remedies include reinstatement of the employee's job, the removal of a harasser from the workplace, letters of assurance of future compliance, letters of reference, human rights training in the workplace, etc.

Normal Steps in Human Rights Litigation in Ontario: Document Disclosure

- If a settlement is not reached at mediation, parties must prepare and deliver:
 1. a list of all relevant documents in their possession; and
 2. a copy of each document contained on the list.
- Parties must deliver the list of documents and the copies of the documents to every other party within 21 days of the HRTO sending a Confirmation of Hearing (and absolutely no later than 45 days before the first day of the hearing).
- If a party fails to include a document on the document list and fails to produce a copy of the document, the party will be precluded from relying on that document at the hearing.

Normal Steps in Human Rights Litigation in Ontario: Witness Disclosure

- Parties must also prepare and deliver:
 1. a list of witnesses the party intends to rely on at the time of the hearing; and
 2. a brief summary of the expected evidence to be heard from each witness.
- Parties must deliver the witness list and a summary of the expected evidence no later than 45 days before the first day of the hearing.
- If a party fails to list a witness and fails to provide a summary statement of the anticipated evidence, the party will be precluded from relying on that witness at the hearing.

Normal Steps in Human Rights Litigation in Ontario: The Case Management Conference

- In the new system, a Case Management Conference will be held by phone approximately 30 days before the hearing.
- The Case Management Conference will be held for one hour.
- At the Case Management Conference, parties can expect:
 - To address any remaining preliminary or procedural issues;
 - Parties are to identify any remaining issues at least 7 days before the CMC (in writing or by email)
 - Parties must be prepared to make submissions on these issues.
 - The Vice Chair will make a ruling on the issues.
 - Describe how the hearing will proceed;
 - Discuss the potential for mediation before the hearing.
- The Vice Chair will follow up after the case conference with an email confirming any directions made during the call.

Normal Steps in Human Rights Litigation in Ontario: The Hearing

- The Application will proceed to a hearing if a settlement is not reached.
- At the time the Notice of the Hearing is received, parties would have already exchanged document briefs and witness summaries.
- The HRTO adjudicator presiding over the hearing will play an active role in the hearing process.
- After the hearing, the HRTO adjudicator will consider all of the evidence and submissions and render a decision.
- Decisions are publicly available.
- Request for Reconsideration of HRTO Decision:
 - Any party may request reconsideration of a final HRTO decision within 30 days from the date of the decision.
 - Parties must include the reasons for the request, submissions, and the relief sought.

What should employers do when served with a Human Rights Application?

- Familiarize yourself with the Application.
- Review and gather facts and evidence relevant to the Application.
- Review and gather any relevant policies and handbooks.
- Place litigation holds on documents.
- Begin preparing the Response (Form 2) as soon as possible.
- Assist with the preparation of the matter at each stage of the litigation.
- Consider early settlement options and mediation.
- Review if the case can be deferred or dismissed early (if there is another proceeding, a signed full and final release, etc.)

Thank you and Questions

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