

Canadian Human Rights Tribunal

***What happens next?
A guide to the Tribunal process***

Coordinates

Tribunal Registry Officer:

Canadian Human Rights Commission legal representative:

Address:

Tel.:

Fax:

Complainant or respondent:

Legal representative:

Address:

Tel.:

Fax:

Address:

Tel.:

Fax:

Interested party:

Legal representative:

Address:

Tel.:

Fax:

Address:

Tel.:

Fax:

Important deadlines

Deadline for submitting questionnaire:

Deadline for disclosure:

The hearing

Where to go:

Hearing begins:

Scheduled dates of hearing:

What to bring to the hearing

- ✍ copies of your book of authorities
- ✍ witness list (including whether each witness prefers to swear an oath or make a solemn affirmation)
- ✍ copies of documents you plan to file as exhibits

This publication is available in Braille on request.

(c) Minister of Public Works and Government Services Canada Cat. No. HR64-1/2002E ISBN 0-662-32098-0

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Part 1: Introduction

About this guide

This guide explains what happens once a complaint is referred to the Canadian Human Rights Tribunal. The guide is intended to help the participants in a human rights case — the **complainant** and the **respondent** — understand the human rights enforcement process and become familiar with the steps along the way and the documents that will be required.

Caution

This guide does not contain legal advice, and nothing in this document should be taken as legal advice. This guide is a general overview of the process. Procedures may vary to meet the needs of individual cases.

Who should read this guide?

This guide will be of greatest benefit to complainants or respondents who do not have independent legal representation and who will therefore be presenting their own cases before the Tribunal. Parts 1 and 2 present the big picture; part 3 zeroes in on the details; and parts 4 and 5 offer supporting information. (See "How to read this guide," page 5.)

What is the Canadian Human Rights Tribunal?

The Canadian Human Rights Tribunal is much like a court. It hears complaints referred to it by the **Canadian Human Rights Commission** and decides whether what is alleged to have occurred is a discriminatory practice on one of the grounds prohibited by the **Canadian Human Rights Act**. If the Tribunal finds that discrimination occurred, it also determines the appropriate **remedy**. The Tribunal is the only body that is legally entitled to decide whether a person has engaged in a discriminatory practice under the Act. The Tribunal's jurisdiction covers matters that come within the legislative authority of the Parliament of Canada, including federal government departments and agencies and Crown corporations, as well as banks, airlines and other federally regulated employers and providers of goods, services, facilities and accommodation.

A human rights complaint is initially investigated by the Commission. Where appropriate, the Commission may attempt to help the complainant and respondent reach an agreement. Most complaints considered by the Commission are either dismissed or are resolved to the satisfaction of the parties through dispute resolution mechanisms such as conciliation or mediation. However, if the complaint cannot be resolved, and the Commission determines that further inquiry is warranted, it refers the complaint to the Tribunal. About six percent of complaints received by the Commission are referred to the Tribunal for resolution.

The Canadian Human Rights Tribunal is the name for *both* the organization responsible for enforcing the Act *and* the specific **member** or members assigned to hear and rule on each case. Members who sit in judgement during a **hearing** perform essentially the same role as a judge in a courtroom.

Up to 15 Tribunal members — a full-time Chairperson and Vice-Chairperson and 13 full- or part-time members from across Canada — are assigned to hear and adjudicate all cases that come before the Tribunal. The Chairperson assigns either one or three members to hear each case.

In addition to the members, the Tribunal has a secretariat, called the **Registry**, which offers administrative support to members and acts as a liaison between the parties and the member or members

hearing the case.

Do I need a lawyer?

Once your case, or a complaint against you, has been referred to the Tribunal, the first decision you need to make is whether to hire a lawyer. Both complainants and respondents have the right to have a lawyer represent them at the hearing. For complainants, depending on the circumstances, the Tribunal may order the respondent to pay for your legal costs if your complaint is substantiated.

In most instances, the Commission is also a participant in cases referred to the Tribunal. Although the Commission will assign a lawyer to represent it before the Tribunal, the Commission's lawyer is not acting on behalf of the complainant, but in the public interest, in the same way that a Crown attorney prosecutes criminals on behalf of the people of Canada rather than acting on behalf of individual victims.

If you are a complainant, it is important that you confer with the Commission's lawyer as soon as possible to determine whether you agree with the evidence that the Commission plans to present at the hearing and with the remedy it is proposing. If you do not, you have the option of having your own lawyer or representing yourself.

If you are a respondent, you will be given an opportunity during the hearing to respond to the complaint against you. Although you are not obliged to have your own lawyer, it may be prudent for you to seek independent legal advice about your case.

Whether you are a complainant or a respondent, this guide will help you to understand the chain of events involved in the process and what you'll be expected to do if you decide to represent yourself. Again, nothing in this document should be construed to be legal advice.

Overview

This booklet consists of five parts.

- ? Part 1 describes the roles of the Canadian Human Rights Commission and the Canadian Human Rights Tribunal and explains who should use the guide and why.
- ? Part 2 explains how a typical case unfolds once it has been referred to the Tribunal.
- ? Part 3 sets out the steps that parties must take once a case has been referred to the Tribunal.
- ? Part 4 explains the terms and concepts that appear in Parts 1, 2 and 3.
- ? Part 5 consists of samples of some of the documents you are likely to encounter.

How to read this guide

If you are involved in a case that has been referred to the Tribunal, you may wish to familiarize yourself with the process that is about to unfold by reading some or all of this guide. Part 2 gives you a general, overall view of the process and time lines. Part 3 describes the steps you will follow as the process unfolds. (If a lawyer will be acting on your behalf, most of the steps described in Part 3 will be conducted by your lawyer.) Throughout the guide, specialized terms appear in **bold blue type**. Terms identified in this manner are explained in alphabetical order in Part 4. Sample documents [document 1 icon] can be found in Part 5.

A word about icons

The icons below are used in the margins to help you navigate through the guide.

[magnifying glass icon] Points to remember

[checkmark icon] Important actions to be taken

[document icon] Sample documents to be found in Part 5. The number inside the icon indicates which document number it is in Part 5.

Who is my point of contact with the Tribunal?

When a case is referred to the Tribunal, a **Registry Officer** is assigned to look after the administrative details of the case. The first letter you receive from the Tribunal will contain the name and telephone number of the officer assigned to be your point of contact with the Tribunal. You should address any questions you have, including requests for assistance, to that person when you are in doubt about the Tribunal's procedures.

Part 2: From referral to decision: the big picture

*This part (and the timeline that follows it) describes the chain of events that unfolds from the moment a case is referred to the Tribunal until the Tribunal issues its **decision**. The entire process can take up to one year.*

Before the hearing

Within days of receiving a referral from the **Canadian Human Rights Commission**, the Tribunal **Registry** sends an information package and case-planning **questionnaire** to each of the **parties** :

- ? the **complainant(s)**
- ? the **respondent(s)**
- ? the Commission

The questionnaire gathers key pieces of information the Registry needs to schedule **hearing** dates and other aspects of the case. The questionnaire asks:

- ? whether you will be represented by a lawyer and, if you will be, the name and address of your lawyer
- ? how many **witnesses** (including **expert witnesses**) you plan to call at the hearing
- ? how many days you'll take to present your side of the story
- ? when, where and in what language you would like the hearing to take place
- ? whether there are any **preliminary matters** you would like to raise
- ? whether it will be possible to submit an **agreed statement of facts** (if there are facts in the case that are not in dispute)
- ? whether you require any special services (for example, sign language interpretation or a sound system)
- ? what **remedy** you're seeking (complainant and Commission only)

Within three weeks of receiving the information package, each party must send a copy of the completed questionnaire to each of the others as well as to the Tribunal. If either of the parties wants a matter dealt with before the hearing, he or she must file a **motion** with the Tribunal requesting a **ruling**. For example, the respondent may feel that the Tribunal does not have the authority to rule in this case. A motion can be filed at any time before or during the hearing; it can ask the Tribunal to consider any matter. The Tribunal will outline a process for deciding how to deal with that matter.

Within four weeks of receiving the completed questionnaires, the Registry sends a letter to all the parties summarizing the contents of the questionnaires and letting the parties know when and where the hearing will take place. If any issues need to be resolved before the hearing, the Tribunal provides instructions about how it plans to resolve them. The Tribunal also establishes deadlines for the exchange of key information among the parties. If the hearing date has already been scheduled, the letter will also include an **official notice of the hearing** [document icon]. Otherwise, official notice of the hearing date will be sent to the parties in a separate letter well in advance of the hearing. (The Tribunal generally tries to schedule hearings within four months of receiving the referral from the Commission.)

Over the course of the next month or two, the parties will gather all the documents they intend to put forward as **evidence** at the hearing, including summaries of the testimony that their witnesses will give and the written reports of expert witnesses. The complainant will also decide what remedy to ask for. These documents, as well as all other documents that are relevant to the case but will not be relied on at the hearing, are then copied and exchanged among the parties in a process called **disclosure**. The parties also exchange lists of documents that are relevant to the case but that they don't plan to disclose because

they consider these documents **privileged**. In preparing for the hearing, the parties will also develop their **arguments**. This involves developing a line of argument to explain why the Tribunal should reach a particular conclusion in this case and may include reference to earlier decisions of human rights tribunals or the courts. Finally, it means being prepared to explain why the arguments put forward by the other side are not applicable to the facts of your case.

Approximately one month before the hearing, the Tribunal sends a letter to all parties telling them how many copies of each document they'll need to bring.

Note:

At any point in the process, the parties may reach a settlement instead of seeking a decision from the Tribunal.

At the hearing

Hearings are generally conducted in the town or city where the alleged discrimination took place. The location is often a hotel or conference centre. In larger cities, it is not uncommon for hearings to be held in a federal courthouse.

On average, a hearing lasts 10 days. Present at the hearing are the complainant, the respondent, their respective lawyers, the lawyer for the Canadian Human Rights Commission (unless, as sometimes happens, the Commission decides not to participate in the hearing), the various witnesses who will be testifying on behalf of the parties, the **court reporter**, the **Registry Officer** responsible for the case and the **member** or members of the Tribunal who will be hearing the case. The media, members of the general public and **interested parties** may also attend the hearing.

As the hearing begins, each party is asked to introduce herself or himself. The Tribunal then invites the Commission and complainant to make an **opening statement**, which summarizes what they intend to prove during the hearing. The respondent may then deliver an opening statement or choose to do so when presenting his or her case.

Then the Commission and the complainant present the evidence intended to demonstrate that discrimination occurred. The evidence generally consists of documents and testimony from witnesses. (The process of questioning one's own witness to elicit testimony is called **direct examination**.) In addition to proving that the respondent's actions constituted discrimination, the Commission and the complainant may also attempt to prove that the complainant sustained damages as a result of the respondent's actions. (In some cases, the Commission may attempt to prove an even wider point — that the respondent's actions were also harmful to society as a whole.) The respondent is entitled to question the witnesses who testify on behalf of the Commission and the complainant. This **cross-examination** may be intended to cast doubt on the version of the facts put forward by the witnesses. Once the respondent has had a chance to cross-examine the witnesses, the Commission and the complainant may **re-examine** their witnesses to further clarify statements made during cross-examination or to elaborate on new issues raised during cross-examination. The members of the Tribunal may also ask questions of the witnesses to more fully understand their evidence.

It is not uncommon for a witness to spend a few hours giving testimony. If the Commission is a party to the case, the witnesses called by the complainant will not duplicate the case put forward by the Commission's witnesses; however, the complainant can call witnesses to amplify or supplement the case put forward by the Commission.

The Tribunal then invites the respondent to respond to the allegations by calling his or her witnesses. During this portion of the hearing, the respondent may present evidence that is intended to contradict, or cast doubt on, the case presented by the Commission and the complainant. Both the Commission and the complainant are entitled to cross-examine the respondent's witnesses. The respondent can re-examine his or her witnesses after cross-examination, and the Commission and the complainant may, if allowed by the Tribunal, be entitled to reply. The members of the Tribunal may also ask questions of these witnesses.

When either side wishes the Tribunal to admit into evidence a witness statement without calling the witness to testify, that testimony may be admitted into evidence, with the Tribunal's permission, through the use of a sworn document called an **affidavit**. This statement then becomes part of the official public record as if the witness had testified at the hearing.

On the other hand, one of the parties may wish to have a document or a witness statement admitted into evidence, but the other party may disagree. The Tribunal will then hear arguments about why a particular piece of evidence should or shouldn't be admitted.

The Tribunal considers the documents and the statements of all the witnesses and decides how credible they are and how much weight to give to the evidence presented by each side in the case.

After the witnesses have finished being examined, the Commission and the complainant are each given the opportunity to link all the facts together into a narrative that summarizes what the respondent did to the complainant and why those actions should be considered discrimination within the meaning of the *Canadian Human Rights Act*. This segment of the proceedings is called the **final argument**. At this point, the Commission and the complainant explain why the evidence proves that discrimination occurred within the meaning of the Act. The respondent attempts to counter this argument with reasons why the evidence does not support the conclusion that discrimination occurred or, if the respondent acknowledges that his or her actions were discriminatory, why the discrimination was justified. The Commission and the complainant are then given the opportunity to respond to new points raised by the respondent. This is called **reply argument**.

After the hearing

When the Tribunal has heard all the arguments, it adjourns the case and reserves its decision. That decision will usually be made public within four months of the close of the hearing.

If a party is dissatisfied with the decision, he or she may seek judicial review of the Tribunal's decision by filing a motion in the Federal Court Trial Division within 30 days of the release of the Tribunal's decision. If the court disagrees with the Tribunal's ruling, the case is generally referred back to the original one- or three-member Tribunal, which will reconsider certain aspects of the inquiry based on the directions of the Court. However, in certain circumstances, the Federal Court may direct that the entire process begin anew with the creation of a new Tribunal.

From Referral to Decision: The Big Picture

This timeline gives you an idea of how the case may proceed. The times given here are estimates only, and often vary from case to case. You'll find more details about each action [checkmark icon] in Part 3.

Before the Hearing							The Hearing	After the Hearing	
		[checkmark icon] Gather evidence and prepare arguments			[checkmark icon] Final preparations for the hearing: build and copy book of authorities, copy documents to be filed as exhibits, determine whether witnesses prefer oaths or solemn affirmations				
	a few days	3 weeks	4 weeks	about 30 days	about 30 days	about 30 days	about 10 hearing days	about 4 Last day of the hearing months	
Tribunal receives case referral from Commission	Tribunal Registry sends letter and questionnaire to all parties	[checkmark icon] File and serve the completed questionnaire	Registry sends letter that summarizes questionnaires, sets hearing dates and location, sets deadlines for disclosure, and details how preliminary matters will be dealt with	[checkmark icon] Commission/ complainant: meet deadline for disclosure	[checkmark icon] Respondent: meet deadline for disclosure Tribunal sends letter outlining its procedures on the filing of exhibits and case law	First day of the hearing	Last day of the hearing	Tribunal releases its decision	

Part 3: What you'll need to do

As a **complainant** or a **respondent** in a case before the Tribunal, you will be given the chance to present your side of the story. This part details what you'll need to do to prepare for and participate in your **hearing**. If you are represented by counsel, your lawyer will normally do this for you.

Before the hearing

The case-planning questionnaire

As soon as your case or the complaint against you is referred to the Tribunal, you'll receive a letter from the Tribunal Registrar advising that the Tribunal will be conducting an inquiry into the complaint. The letter will ask you to provide the **Registry Officer** assigned to the case with the name and address of your lawyer.

Included with the letter, you will find:

- ? a **questionnaire**
- ? a copy of this guide
- ? a copy of the Tribunal's **Rules of Procedure**
- ? a copy of the **Canadian Human Rights Act**

The letter asks you to complete the questionnaire and to send a copy to the Tribunal **Registry** and to the other **parties** in the case. You will have about three weeks to complete and submit the questionnaire. If you plan to hire a lawyer, he or she will likely complete the questionnaire on your behalf.

The questionnaire asks you to:

- ? indicate whether you will be represented by a lawyer and, if so, to provide your lawyer's name and address
- ? identify and describe any **preliminary matters**, including questions of law, jurisdiction or procedure, that you wish to have dealt with at the beginning of the hearing
- ? estimate how many **witnesses**, including **expert witnesses**, you plan to call at the hearing
- ? estimate how many days you'll take to present your side of the story
- ? provide a list of dates during which you will be available to attend the hearing
- ? describe any **remedies** you will be seeking (complainant and Commission only)
- ? indicate whether it will be possible to submit an **agreed statement of facts** (an agreed statement of facts helps speed up the process by reducing the need for witness testimony or other documentation otherwise required to substantiate all the facts)
- ? indicate whether you wish the hearing to be conducted in English or French (the Tribunal will provide simultaneous interpretation — see **interpreters** — as required)
- ? confirm whether you agree with the Tribunal's suggested **venue** or propose another one (the questionnaire names a location for the hearing)
- ? advise the Tribunal whether you or any of your witnesses require special accommodation (for example, a sign language interpreter or a sound system)

The Tribunal will use the information collected in the questionnaire to schedule hearing dates and plan other aspects of the case.

[checkmark icon] **Complete the questionnaire and send it by fax, by courier or deliver in person to the Tribunal and the other party or parties.**

Confirmation of hearing dates and notification of deadlines for disclosure

About four weeks after the Tribunal receives your completed questionnaire, the Registry Officer assigned to your case will send you a letter telling you when and where the hearing will be held and in what language it will be conducted. An official notice of the hearing [document 1 icon] will follow within approximately two weeks. (The Tribunal generally tries to schedule hearings within four months of receiving the referral from the Commission, and official notice is generally sent to the parties about 90 days before the start of the hearing.)

If preliminary matters were raised in any of the questionnaires submitted by the parties, the Registry Officer's letter will provide instructions on how these issues are to be resolved. For example, the Tribunal may have scheduled a date to hear **arguments** on your **motion** or a motion filed by the other party; if so, the letter will include an official notice of this **pre-hearing**. Or the letter may direct that the matter be dealt with in writing.

The Registry Officer's letter will also announce deadlines for the exchange of certain kinds of information among the parties, a process called **disclosure**. Specifically, disclosure involves **servicing** the other parties with:

- ? a list of all documents in your possession that are relevant to the case, whether or not you intend to rely on them during the hearing, *including* documents you don't plan to disclose because you consider them **privileged**
 - o with this list, include copies of all documents in your possession that are relevant to the case, whether or not you intend to rely on them during the hearing, *excluding* the documents you consider privileged
- ? a list of the witnesses you plan to call and a summary of the **testimony** they will give (see **will-say statement**)
- ? written reports prepared by expert witnesses
- ? a brief written summary of the topics you plan to address during the hearing, the facts you intend to prove and the arguments you plan to present. The complainant and the Commission must also explain the remedy they're seeking.

All of the items above (except for actual copies of your documentary evidence) must also be **filed** with (delivered to) the Tribunal, along with a letter confirming that you have met the deadline for disclosure. There are rules about how a document can be served or filed, and about the proof you'll need that a document was served. See the glossary (under serving and filing) for more information.

The complainant and the Commission are usually required to disclose their **evidence**, arguments, remedy sought and expert witness reports at least 60 days before the start of the hearing to give the respondent an opportunity to prepare a response to the complaint. In contrast, the respondent usually has until about 30 days before the start of the hearing to provide most of the required information to the complainant and the Commission. However, depending on the circumstances of each case, the time lines for disclosure may change.

[magnifying glass icon] **If you fail to disclose a document, you may not be allowed to introduce it into evidence at the hearing. Similarly, you may not be permitted to examine witnesses or raise legal issues that you have failed to identify in advance. The Tribunal will allow a party to rely on evidence not disclosed before the hearing only in exceptional circumstances. You also have an ongoing duty to disclose any new document as soon as it comes into your possession and any new witness or legal issue as soon as it comes to your attention.**

Preparing for the hearing

The information you provide to the other side outlines the evidence and arguments you plan to present at the hearing. Before you can forward this information, you must figure out the best way to tell

your side of the story. If you are the complainant, you must prove what you say the respondent did and show why the actions constitute discrimination under the *Canadian Human Rights Act*. If you are seeking a specific remedy, you need to present evidence of the damage you suffered as a result of the respondent's actions. If you are the respondent, you should decide what evidence you can use to challenge the allegations against you.

Whether you are the complainant or the respondent, your presentation to the Tribunal will be made up of evidence and legal submissions or arguments. Evidence generally consists of documents and witness testimony that attest to the truth of what you are presenting as the facts of the case. For example, you might use an income tax return to prove that you had reduced earnings that year or a personnel file to prove that you were about to be promoted before you lost your job.

In preparing your case, you may plan to use witnesses, including expert witnesses. It is possible that a witness you plan to examine at the hearing does not wish to appear before the Tribunal. If you feel that your presentation will be less effective in the absence of the witness, you can compel a witness to attend the hearing by serving her or him with a [subpoena](#) [document 2 icon]. You can request a subpoena from the Tribunal by contacting the Registry Officer assigned to your case. If the Tribunal grants your request to subpoena a witness, the Registry will provide you with a signed subpoena, which you must then arrange to have served on the witness.

Once you have gathered and copied every document you intend to file as evidence in the case, compiled a list of all relevant documents, prepared a list of the witnesses you plan to call at the hearing and summarized what they will say, and gathered more detailed reports of the testimony of your expert witnesses, you must deliver copies of all these documents to the other side. You must also deliver copies of a brief written summary of the presentation you plan to make at the hearing. The summary should list the topics you plan to address, briefly describe the evidence you plan to present and outline the conclusions you plan to draw from the evidence. File all the above items (except for actual copies of your documentary evidence) with your Registry Officer as well, along with a letter confirming that you have met the deadline for disclosure.

[checkmark icon] **Disclosure Checklist**

Served on the other parties and filed with the Tribunal Registry by the disclosure deadline:

- ✍ document list
- ✍ witness list
- ✍ will-say statements for every witness
- ✍ expert witness reports
- ✍ brief written summary of your presentation
- ✍ Served on the other parties by the disclosure deadline:
- ✍ copies of all relevant documents, including affidavits, except privileged documents
- ✍ Filed with the Tribunal Registry by the disclosure deadline:
- ✍ letter to Tribunal Registry confirming that you have met the disclosure deadline

Developing your presentation

If you are the complainant, proving that you were discriminated against may require more than simply proving what was done to you. If you are the respondent, countering the complaint may require more than simply refuting the facts alleged by the complainant. It is not uncommon for the complainant and the respondent to agree about the facts but disagree about whether they actually add up to discrimination within the meaning of the *Canadian Human Rights Act*. For example, a respondent may admit that the reason that an individual was not hired was because of a disability. However, the respondent may also believe that the individual, because of his or her disability, is not capable of performing the essential duties of the job. The Tribunal, based on the evidence, will decide whether

there is a justifiable reason for not hiring the individual.

If you are the complainant, you should explain how your evidence supports the conclusion that discrimination occurred. You may wish to use past human rights cases decided by the courts.

If you are the respondent, you can counter the complainant's argument by:

- ? explaining why the case law relied on by the complainant is not applicable to the facts in your case
- ? citing case law that dismissed a complaint made in a similar situation

Final preparations for the hearing

About four weeks before the hearing, you will receive a letter from the Tribunal Registry explaining the Tribunal's procedures on the filing of **exhibits** and case law. The letter will ask that you prepare a set number of copies of all the documents and exhibits you plan to file with the Tribunal, as well as the case law that you plan to rely on during the hearing (see **book of authorities**).

You will be expected to prepare a copy of each document for use by the Tribunal chairperson, two additional Tribunal members (unless the Tribunal is made up of only one **member**), the official record, the **court reporter**, witnesses and all other parties to the case.

Since many of the cases you may be relying on at the hearing will already be familiar to the Tribunal, you need not copy all these cases in their entirety. Your Registry Officer will send you an alphabetical index of human rights decisions most often cited. If a case you plan to refer to is listed in this **book of jurisprudence**, you need only copy the pages of the case that you plan to refer to during the hearing.

[check mark icon] **Assemble all your documentary evidence. Make copies (as instructed by your Registry Officer) to file with the Tribunal. Select the legal cases that you plan to rely on during your final argument. Photocopy in their entirety the cases that are not contained in the Tribunal's book of jurisprudence and the relevant excerpts of those that are. Assemble all the cases and excerpts in alphabetical order. Prepare an index. Make the required number of copies. Bind the booklets and insert a tab at the start of each case. Also, find out what type of oath each of your witnesses will wish to take when they are sworn in. This information will be requested by your Registry Officer at the hearing.**

Note:

Either party can file a motion at any time before or during the hearing, asking the Tribunal to rule on a particular matter.

At the hearing

The objective of the hearing is to allow the Tribunal to hear all the relevant merits of the case so it can decide whether discrimination occurred. If you are the complainant, the hearing is your chance to explain how you were discriminated against. If you are the respondent, the hearing is your chance to refute the allegations.

Unlike in a criminal case, where the Crown must prove the truth of the facts beyond a reasonable doubt, the burden of proof in a human rights case is less stringent. The threshold for substantiating a complaint is that, based on the facts, it is more likely than not that discrimination occurred. In other words, the complainant needs to tip the scales of probability by only a small margin. If the complainant succeeds in establishing a **prima facie case**, then the respondent must justify his or her actions, explaining why acts that appear discriminatory on their face were not.

Hearing day

When you arrive at your hearing, the Registry Officer will ask you to complete a [record of appearance](#) [document 3 icon]. This form requests the name of every witness you plan to call over the course of the hearing and the type of **oath** that each of your witnesses wishes to take when they are sworn in. You should come to your hearing with this information. The Registry Officer will have a bible available. You and your witnesses may also bring your own holy books.

Several people may be present at the hearing. They include the complainant, the respondent, their respective lawyers, the lawyer for the **Canadian Human Rights Commission** (if the Commission is a party), the witnesses that will be testifying on behalf of the parties, the Registry Officer responsible for the case, the court reporter, and the member or members of the Tribunal who will hear the case. **Interested parties**, journalists and members of the public may also be present in the hearing room. The hearing is a public proceeding, and anything said in the hearing room usually becomes part of the public record.

Once all the parties have filled in and returned their record of appearance forms, the Registry Officer will call the hearing to order, introduce the Chair and the other members of the Tribunal — a Tribunal always consists of either one or three members — and ask the parties to introduce themselves. The normal order for introductions is: the Commission, the complainant, the respondent and any interested parties. The parties and their lawyers each take turns standing up and introducing themselves.

During the hearing, the custom is to address the Chairperson as "Mr./Madam Chairperson" and the members of the panel as "Member or Mr./Mrs./Ms. Smith."

The Tribunal Chair will then invite each party to make an opening statement. When you are invited to make your **opening statement**, you should briefly summarize the main points that you plan to prove to the Tribunal during your presentation.

A Typical Hearing Room

Tribunal members		
Tribunal Officer	Court Reporter	Witness
Complainant (and Lawyer) and Commission's Lawyer	Respondent (and Lawyer)	
Extra Seating (for interested parties, assistants to lawyers, etc.)		
Public Seating		

When opening statements are completed, the Tribunal Chair will invite the Commission, if it is a party to the case, to call its first witness. The Commission will usually call the complainant as its first witness. If the Commission is not a party to the case, the complainant will be asked to call the first witness. (As the complainant, you may wish to take the stand and state the facts as you understand them.) The complainant and the Commission call their witnesses before the respondent is invited to call his or her witnesses. When the Commission or the complainant is finished questioning each witness (also called **direct examination** of a witness), the respondent is invited to **cross-examine** that witness.

After the respondent has cross-examined a witness, the Commission or the complainant is offered the opportunity to **re-examine** the witness. The purpose of this re-examination is to clarify or explain issues that arose during cross-examination. No new facts or topics may be introduced at this stage. The Tribunal may also ask questions of the witnesses.

It is not uncommon for a witness to spend a few hours giving testimony. If the Commission is a party to the case, the witnesses called by the complainant should not duplicate the case put forward by the Commission's witnesses. However, the complainant can call witnesses to amplify or supplement the case put forward by the Commission.

Once all of the witnesses appearing on behalf of the Commission and the complainant have given their evidence, the Tribunal will invite the respondent to call his or her witnesses. (Respondents may also take the stand and testify on their own behalf.) During this portion of the hearing, the respondent calls and examines witnesses with a view to presenting evidence that supports his or her case. Both the Commission and the complainant are entitled to cross-examine the respondent's witnesses. After the Commission or the complainant cross-examines each of the witnesses, the respondent may re-examine them. The members of the Tribunal may also ask questions of the witnesses.

When any party wants to present as evidence the statement of a witness who is unable to appear at the hearing, this statement can be admitted into evidence at the hearing in the form of an **affidavit**, an agreed statement of facts or an unsworn statement. Any of these documents, if accepted by the Tribunal, becomes part of the official public record as if the witness had testified at the hearing.

During the portion of the hearing dedicated to the presentation of evidence, it is important that you stick to the facts. You'll have an opportunity later in the hearing to draw conclusions from those facts.

An exception to this rule arises if there is a matter, other than the merits of the complaint, that needs to be decided in the course of the hearing. For example, perhaps one party objects to calling a particular witness or filing a particular document into evidence. In that case, the Tribunal will invite both parties to make a **submission** about why a particular witness statement or piece of evidence should or shouldn't be admitted.

After the witnesses have been examined, cross-examined and re-examined, the Commission and complainant may be given an opportunity to reply to new evidence introduced by the respondent that was not covered during the complainant's or Commission's **direct evidence**. No new evidence may be introduced at this time.

When all of the evidence has been presented, the Commission and the complainant are each given the opportunity to revisit the principal facts and weave them into a narrative that summarizes what the respondent did to the complainant and why, based on the **case law**, those actions should be considered discrimination within the meaning of the *Canadian Human Rights Act*. This segment of the proceedings is called the **final argument**. The respondent will then be given the opportunity to present his or her final argument. As the respondent, your argument should demonstrate how the evidence you presented, together with the case law, does not support a finding of discrimination or, if it does, why your actions were justified in the circumstances. This portion of the hearing allows each party to draw together all the threads of evidence he or she has presented and to link them to the conclusions he or she would like the Tribunal to reach.

The Tribunal's job is ultimately to consider all the documents and witness statements, determine how much weight to give to the evidence presented by each side in the case and assess the quality of the arguments presented by each party.

After the hearing

When the Tribunal has heard all the arguments, it adjourns the case and reserves its **decision**. The Tribunal's decision is usually made public within four months of the close of the hearing. You will receive a copy of the decision by courier and e-mail (if possible) the same day it is released.

If you are dissatisfied with the Tribunal's decision and wish to have that decision reviewed by a higher court, you must file an application for judicial review in the Federal Court Trial Division within 30 days of the release of the Tribunal's decision.

Part 4: Glossary

Affidavit

An affidavit is a written, sworn statement that is submitted into **evidence** at a hearing in place of a witness's **testimony**. Affidavits usually are used to present facts that are not in dispute — for example, during presentation of motions — but may contain statements that the other side does not agree with. Although affidavits may be admitted into evidence they have been used very rarely in Tribunal hearings. Generally, evidence presented through testimony is of greater weight.

If you are planning to submit an affidavit in lieu of witness testimony, you must inform the other **parties** and the Tribunal as soon as possible, and give the other parties a copy of the affidavit as part of **disclosure**.

How does one prepare an affidavit?

Normally, you or your lawyer will prepare the affidavit and have it signed by the witness making the statement. When signing the affidavit, the witness must swear under **oath** that the statement is true. A lawyer, justice of the peace, notary public or other person authorized to hear oaths must witness the signing and also sign the affidavit to affirm the authenticity and veracity of the document.

Are affidavits automatically accepted by the Tribunal?

No. The Tribunal will determine whether the affidavit will be admitted, and how much weight to give it when compared with other sworn testimony. If another party objects to the affidavit being admitted as evidence, the Tribunal will hear **arguments** about why the affidavit should or shouldn't be admitted. Even if no other parties object, the final decision rests with the Tribunal.

Agreed Statement of Facts

An agreed statement of facts is a list of facts about the case that all **parties** agree on. For example, the parties may agree that the complainant was fired on a particular date, or would have been earning a certain amount of money if he or she had been promoted. Documents that are not in dispute (for example, a copy of an employment application form) may also be submitted with the agreed statement of facts, which is signed by all parties.

An agreed statement of facts saves time during the hearing because the parties don't have to present **evidence** to support these facts. However, an agreed statement is not mandatory.

How is an agreed statement of facts put together?

In the **questionnaire**, the parties are asked to indicate whether it will be possible to submit an agreed statement of facts. To determine whether there are any facts that are not in dispute, you'll need to summarize the facts as you understand them and contact the other party or parties to determine which, if any, of these facts they will agree to accept.

Is there a deadline for submitting an agreed statement of facts?

The agreed statement can be submitted at any time up to and including the start of the hearing. Also, during the **hearing**, a party may tell the Tribunal that a certain fact is agreed to by all of the

parties. The Tribunal will simply ask the other parties if they do indeed agree, and if so the fact will become part of the official record.

Argument

Also called a legal argument or legal submission, an argument is a statement that attempts to persuade the Tribunal to reach a particular conclusion. When a party presents

The other category of argument is called the **final argument**. This is the last part of the hearing. A hearing is usually divided into two parts. During the first part, the parties present their **evidence** to prove a set of facts. When the Tribunal listens to a presentation of evidence, it assesses whether the **witnesses** are credible, whether the documents are authentic and how much weight to give to any piece of evidence.

During the second and last part of the hearing, the parties present their final arguments. In **final argument**, the parties explain why, in their opinion, the evidence that has been presented favours their position. Final argument gives each party an opportunity to explain why, based on the **case law**, the facts they have presented do or do not constitute discrimination within the meaning of the **Canadian Human Rights Act**.

Also see **Reply Argument**.

Book of Authorities

A book of authorities contains copies of the case law and legislation a party will use to argue a case before the Tribunal. It is usually submitted when a party makes its **final argument**. The sections that support the party's argument are usually highlighted. A book of authorities must be bound, indexed and divided with tabs. A case that is in the Tribunal's **book of jurisprudence** does not have to be included in full in a party's book of authorities: only the section that supports the party's argument need be included.

Book of Jurisprudence

The Tribunal's book of jurisprudence contains the cases most often referred to in hearings before the Tribunal. The Tribunal sends a list of these cases to the parties before the **hearing**. A case that is in the Tribunal's book of jurisprudence does not have to be included in full in a **book of authorities**: only the section that supports the argument need be included.

Canadian Human Rights Act

The purpose of the *Canadian Human Rights Act* is to protect individuals from discrimination and to promote equality of opportunity. The Act applies to federal government departments and agencies, federal Crown corporations, chartered banks, airlines, telecommunications and broadcasting organizations, and shipping and interprovincial transportation companies. Complaints may relate to discrimination in employment or in the provision of goods, services, facilities and accommodation that are customarily available to the public. The Act also prohibits hate messages transmitted by telephone, computer or the Internet.

The Act prohibits discrimination on the following grounds:

- ? race
- ? national or ethnic origin
- ? colour
- ? religion
- ? age
- ? sex (includes pay equity, harassment, ^[1] pregnancy and childbirth)

- ? marital status
- ? family status
- ? sexual orientation
- ? disability (can be mental/physical, includes disfigurement, past or present, alcohol or drug dependence)
- ? conviction for which a pardon has been granted

Canadian Human Rights Commission

Whereas the Tribunal's role is similar to that of a court, the Canadian Human Rights Commission has a role similar to that of the police. Like the police, it investigates complaints — in this instance, complaints of discrimination on one of the grounds prohibited by the *Canadian Human Rights Act*.

Some complaints turn out to be unfounded and are dismissed by the Commission. But when the Commission believes that further inquiry is warranted and an agreement between the **parties** cannot be reached through conciliation, it refers the case to the Tribunal. The Commission then takes on a role similar to that of a Crown attorney. When the Commission appears before the Tribunal, although it may support the complainant's position, it is not acting as the complainant's lawyer. It argues the case before the Tribunal on behalf of what it considers the public interest.

Case Law

Case law is a generic term that encompasses all earlier decisions of courts and administrative tribunals, including the Canadian Human Rights Tribunal.

Complainant

The person (or group) alleging that she or he has been discriminated against on one of the grounds prohibited by the *Canadian Human Rights Act*.

Court Reporter

A court reporter will record everything that is said at the hearing and produce a transcript of what was said after each day of the hearing. You can either purchase a copy from the reporter or review all or part of these transcripts at the **Registry**.

Cross-examination See **Examination**.

Decision

Several months after the hearing, the Tribunal will issue its written decision as to whether the alleged discrimination on grounds prohibited by the *Canadian Human Rights Act* occurred. If the Tribunal decides that discrimination did occur, it will also decide what the **remedy** should be.

Decisions from the Tribunal on anything other than the merits of the complaint (e.g., on **preliminary matters**) are called **rulings**.

When and how is the decision issued?

The Tribunal aims to issue a decision within four months after a hearing, but more complex cases may take longer to decide. There is no mandatory deadline for a decision to be issued.

About 24 hours before the decision will be released to the public, the **Registry Officer** assigned to your case will call to tell you that the decision is on its way to your home by courier and e-mail (if possible). The **Registry** tries to time the delivery of the decision so that all parties receive it at about the same time. The decision is normally made available to the public on the Tribunal's Web site two to three hours later.

What are the main parts of a decision?

Does it contain orders? The decision contains the Tribunal's analysis of the evidence presented during the hearing and the law governing human rights. If the Tribunal decides that discrimination did occur, its decision will also include an order to the respondent setting out the remedy.

How is the decision enforced?

It is usually the duty of the Canadian Human Rights Commission to see that the Tribunal's decision is complied with. If the respondent doesn't comply with a Tribunal order, proceedings in the Federal Court may be necessary.

What if I don't agree with the decision?

If you don't agree with the decision, you have 30 days from the time the decision was released by the Tribunal to file an application with the Trial Division of the Federal Court of Canada to have the decision reviewed.

N.B. Past rulings and **decisions** issued by the Tribunal are posted on its Web site (www.chrt-tcdp.gc.ca).

Direct Evidence See **Evidence**.

Direct Examination See **Examination**.

Disclosure

Before the hearing, all parties exchange certain kinds of information in a process called disclosure. Disclosure prevents surprises at the hearing by ensuring that all parties know the evidence and arguments that will be put forward. It allows for a fairer hearing process and prevents delays caused by a party needing extra time to review evidence he or she was not expecting to be presented.

Specifically, disclosure involves **servicing** the other parties with:

- ? a list of documents in your possession that are relevant to the case, whether or not you intend to rely on them during the hearing, and *including* documents you don't plan to disclose because you consider them **privileged**
 - with this list, include copies of all documents in your possession that are relevant to the case, whether or not you intend to rely on them during the hearing, *excluding* the documents you consider privileged
- ? a list of the witnesses you plan to call and a summary of the **testimony** they will give (see **will-say statement**)
- ? written reports prepared by **expert witnesses**
- ? a brief written summary of the topics you plan to address during the hearing, the facts you intend to prove and the **arguments** you plan to present. The **complainant** and the **Canadian Human Rights Commission** must also explain what **remedy** they're seeking.


All documents above (except for actual copies of your documentary evidence) must also be **filed** with the Tribunal along with a letter confirming that you have met the deadline for disclosure.

When do I disclose these things?

The Tribunal sets the deadlines for disclosure. These dates will be in the letter you receive from the **Registry Officer** assigned to your case about four weeks after you send the Tribunal your completed **questionnaire**.

The deadline for disclosure by the complainant is sooner than that required for the respondent. Usually, the complainant and the Commission are required to disclose their evidence at least 60 days before the start of the hearing, and the **respondent** has until about 30 days before the hearing to provide the required information. This gives the respondent an opportunity to prepare a response to the material provided in support of the complaint.

After the disclosure deadline, any new **evidence**, **witnesses** or changes to any of the information you've disclosed must be served on the other parties as soon as possible. The Tribunal will not necessarily permit changes or additions to be made after the deadline, depending on the effect these would have on the fairness of the hearing.

 **If you fail to disclose a document, you may not be able to introduce it into evidence at the hearing. Similarly, you may not be permitted to examine witnesses or raise legal issues that you have failed to disclose. The Tribunal will allow disclosure after the stated deadlines only in exceptional circumstances.**

Evidence

Evidence consists of the documents and witness **testimony** you present to support the statements you put forward as facts. Evidence could be an income tax return (to prove lost earnings), a doctor's testimony (to prove a medical condition) or a personnel file (to prove that employment ended on a certain date). All evidence that you present at the hearing must already have been given to (or summarized for) the other parties during **disclosure**.

How do I present evidence at the hearing?

You present evidence by asking **witnesses** questions (this is called **examination**) and by putting forward documents. Typically, the Tribunal will accept documents as evidence only if they have been identified by a witness (ideally the author).

Do I have to translate the documents I will present as evidence?

If you want to submit as evidence documents written in a language other than English or French, you must have them translated into either official language, and attach to each document an **affidavit** from the translator attesting to the accuracy of the translation.

What is direct evidence?

Each party presents all of its evidence in turn. This is called direct evidence. Once you've finished presenting this evidence and closed your case, you usually can't put forward any additional evidence. However, if one **party** is permitted by the Tribunal to put forward evidence that wasn't disclosed, the other will be given the opportunity to present evidence in response.

Examination

Examination is simply a party (or his or her lawyer) asking questions of a witness under oath at the **hearing**. Examination of a witness can vary from 10 minutes to hours or even days, but usually takes a few hours. The Tribunal may also ask questions of the witness during examination.

There are three different kinds of examination: direct examination, cross-examination and re-examination.

Direct examination is asking questions of a **witness** you called at the hearing. The purpose of direct examination is to provide the Tribunal with evidence of the facts that make up your case. Direct examination is also the time to put forward documents, which must be identified by witnesses before they will be accepted into **evidence** by the Tribunal (with the exception of **affidavits**). Direct examination is also called examination-in-chief. (If you don't have a lawyer, you can testify without having someone ask you questions. In these circumstances, you simply present your testimony from the witness box.) You are required to put all the evidence you have before the Tribunal at this stage. It is improper to hold back known evidence and attempt to introduce it later in the hearing.

Cross-examination is asking questions of a witness who was called by an opposing party, after that party has directly examined that witness. There are two purposes for cross-examination: to cast doubt on the truth or accuracy of what the witness has said and to flush out additional information that will support your side of the story.

Re-examination is asking additional questions of the witness you called, after the other parties have cross-examined that witness. Re-examination is usually allowed only to clarify or explain new issues that came up during cross-examination.

Exhibit

An exhibit is any document, picture or object (for example, a pair of glasses or a tool from a workplace) put forward as evidence at the hearing. All exhibits, with the exception of **affidavits**, must be identified by witnesses.

Expert Witnesses See **Witnesses**.

Filing

Filing a document with the Tribunal means delivering (in person or by courier), mailing or faxing it to the **Registry** at the following address or fax number:

Canadian Human Rights Tribunal
Suite 900 - 473 Albert Street
Ottawa, Ontario K1A 1J4
Fax: (613) 995-3484

Final Argument

Final argument refers to the statements made by each **party** at the end of the **hearing** after all the **evidence** has been presented. Final argument gives each party an opportunity to explain why the facts they have presented constitute discrimination within the meaning of the *Canadian Human Rights Act*.

The final arguments of the **Canadian Human Rights Commission** and the **complainant** also include a description of the **remedy** they seek, together with a recap of the evidence that supports this request. The **respondent's** final argument summarizes his or her answer to the complaint. It revisits facts that he or she would like the Tribunal to remember and explains why those facts do not support the conclusion that discrimination occurred or that the requested remedy is appropriate.

The respondent may have acknowledged in some part that his or her actions appear on their face to be discriminatory. If so, the respondent's final argument may include an explanation and justification of why, based on the evidence presented, these actions do not constitute discrimination within the meaning of the Act, or why his or her actions were justified.

It is not unusual for the complainant and the respondent to agree about the facts of the case yet disagree about the conclusion to be drawn from them. Final argument gives each party an opportunity to refer to human rights cases in which another tribunal or a higher court assessed facts similar to those in the case at hand and reached the conclusion that he or she would like the Tribunal to reach.

Also see [Argument](#).

Hearing

The hearing gives the parties an opportunity to present their [evidence](#) and [argument](#) to the Tribunal. The objective of the hearing is to allow the Tribunal to hear the merits of the case so it can decide whether discrimination occurred. If you are the [complainant](#), the hearing is your chance to explain why you believe you were discriminated against. If you are the [respondent](#), the hearing is your chance to dispute the complaint.

How long will the hearing be?

The length of the hearing depends on the complexity of the case. The average length of a hearing before the Tribunal is 10 days. Usually, the hearing is held from 9:30 a.m. to 5:00 p.m. with a break in the morning, a break for lunch and a break in the afternoon.

Where will the hearing be held?

The Tribunal usually holds hearings in the town or city where the alleged discrimination took place. The location is often a public building such as a hotel or conference centre. In larger cities, it is not uncommon for hearings to be held in a federal courthouse.

In the questionnaire, the Tribunal names a place where the hearing will be held and asks the parties whether they agree with the Tribunal's choice of [venue](#).

The hearing isn't being held where I live. Do I have to pay the costs of travelling and staying in a hotel?

The Commission may cover the expenses of the complainant and those of the witnesses it is calling. It is best to speak to the lawyer for the Commission about what expenses it may cover. If the Commission is not participating in the hearing, the complainant is responsible for his or her own costs, as well as those of his or her witnesses. Complainants may be able to recover their travel and lodging costs as part of the [remedy](#), but the decision to reimburse them rests with the Tribunal on a case by case basis. Respondents must always cover their own expenses and those of their witnesses.

Who will be at the hearing?

Present at the hearing are the complainant, the respondent, their respective lawyers, the lawyer for the [Canadian Human Rights Commission](#) (if the Commission is a party), the various [witnesses](#) who will be testifying on behalf of the [parties](#), the [Registry Officer](#) responsible for the case, the [court reporter](#), interpreters as necessary, and the [member](#) or members of the Tribunal who will be hearing the case. Other people who may be present at the hearing include [interested parties](#), the media and members of the public.

Interested Parties

Sometimes a person or group who is not a party in the case (in other words, not a **complainant**, **respondent** or the **Canadian Human Rights Commission**) may be affected by the Tribunal's decision, have a very direct interest in the case or be able to provide the Tribunal with evidence that would otherwise not be available. This person or group may be allowed to participate in the hearing as an interested party.

Examples of interested parties include:

- ? a group that promotes the rights of people with disabilities, if the complaint is of discrimination on the basis of a disability
- ? a union, if the complainant is a member and has filed a complaint against his or her employer

How does a person or group become an interested party?

A group or individual that wishes to become an interested party must file a **motion** with the Tribunal. The motion must also be **served** on the other parties. The motion must explain why the individual or group wants to participate in the **hearing** and to what extent. **Submissions** from the current parties will be requested and reviewed by the Tribunal. The Tribunal will consider the request in the same manner that it deals with motions, and will issue a **ruling** on whether the party may participate and to what extent.

Interpreters

The Tribunal will arrange for any interpreters, including sign language interpreters, needed at the hearing. You are entitled to use either English or French at the hearing and should indicate your preference on the **questionnaire**. The Tribunal will provide simultaneous interpretation in English, French or sign language provided that it has at least 45 days' notice.

You should also tell the Tribunal as soon as possible (in the questionnaire, if possible) if you will be calling a **witness** who will testify in a language other than English or French, or who requires a sign language interpreter, so that the Tribunal can arrange for an interpreter to be present at the hearing.

Members

The Tribunal is composed of a full-time Chairperson and Vice-Chairperson, and up to 13 full- or part-time members who are appointed for terms up to five years. When a case is referred to the Tribunal, the Chairperson assigns either one or three members to hear the case. All members take an oath of office prior to being assigned to their first case. They must also adhere to the principles established by the *Code of Conduct for Members of the Canadian Human Rights Tribunal*.

Short biographies of the Chairperson, Vice-Chairperson and members are available on the Tribunal's Web site (www.chrt-tcdp.gc.ca), as are the oath of office and code of conduct.

Motions and Rulings

Before or during the hearing, you may want the Tribunal to rule on an issue that is separate from the merits of the complaint. For example, you may want the Tribunal to rule on whether a **party** has to disclose a piece of evidence. You do this by **filing** a written request with the **Registry** and **serving** a copy of it on all of the other parties. This request is called a motion. Any party can file a motion at any time up to the **hearing**, and can also make oral motions to the Tribunal at the hearing. However, you

should not delay filing a motion. Any unreasonable delay may cause the Tribunal to dismiss the motion.

What happens after I've filed a motion?

The Tribunal will issue instructions, usually by letter, as to how it will deal with the motion, whether by requesting written submissions, proposing a telephone conference call or holding a hearing. Usually, whoever filed the motion will put forward his or her **arguments** first, followed by the other parties. After all parties have put forward their arguments, the Tribunal will issue a written ruling. If a motion is made during the hearing, the Tribunal may, depending on the nature of the motion, issue an oral ruling.

Is there a deadline for ruling on a motion? The Tribunal has no deadline for issuing rulings, but rulings on motions filed before the hearing will usually be issued before the hearing takes place. For motions made at the hearing, the Tribunal may issue a ruling immediately after the parties have presented their arguments, or it may wait until the end of the hearing.

What if I don't agree with the ruling?

Depending on the nature of the ruling, you may be able to file a motion in the Trial Division of the Federal Court of Canada asking the court to review the Tribunal's ruling. (For more information on Federal Court procedure, it is best to contact the Court or seek independent legal advice.)

Oath

An oath is a solemn appeal to God or a revered person or object such as a holy book in witness of a promise to speak the truth. **Witnesses** before the Tribunal may swear an oath or make a solemn affirmation. A solemn affirmation is the equivalent to an oath for those witnesses who do not have religious beliefs, or do not wish to refer to them.

Opening Statement

At the beginning of the **hearing** all **parties** are asked if they would like to make opening statements, which are summaries of what they intend to prove during the hearing. In an opening statement, you will describe the facts you intend to prove and the **evidence** you will present to prove these facts. Opening statements may also briefly refer to the main legal principles that a party feels are relevant to the case.

The **Canadian Human Rights Commission** usually goes first, followed by the **complainant** and then the **respondent**. Any of the parties can decide not to give an opening statement. Or the complainant and respondent can decide to give their opening statements later, when it is their turn to present their cases. Again, the Commission usually presents its case first, followed by the complainant and then the respondent.

Interested parties generally make their opening statements and present their cases after the **parties** whose interests are most closely aligned with their own. For example, an interested party who generally supports the complaint would present its case after the Commission and the complainant, but before the respondent. Interested parties with no demonstrable allegiance may simply present last; ultimately, when interested parties present is up to the Tribunal.

Parties

Parties are the main participants in a case. They include the **complainant**, the **respondent** and the **Canadian Human Rights Commission**.

Also see **Interested Parties**.

Pre-hearing

Any **party** may ask the Tribunal to rule on an issue other than the merits of the complaint (see **Motions and Rulings**). The Tribunal may decide that the best way to deal with the issue is to allow both sides to present **evidence** and **arguments** to the Tribunal during what is called a pre-hearing. A pre-hearing follows the same procedure as the **hearing**, but instead of considering the merits of the complaint, it leads to a ruling on the motion only.

Preliminary Matters See **Questionnaire** and **Motions and Rulings**.

Prima Facie Case

In a **hearing** before the Tribunal, the **respondent** is always considered to be "innocent until proven guilty." The burden is on the **complainant** (and the **Canadian Human Rights Commission**, if it is a party to the case) to present credible evidence showing that discrimination has occurred. This is called establishing a *prima facie* case.

Once a *prima facie* case is established, the burden of proof shifts to the respondent, who must prove either that the facts presented by the opposing side are wrong, that the respondent has a reasonable explanation or that the respondent's behaviour was justified.

Privilege

A **party** may be allowed to withhold information relevant to the case if the information was revealed in the context of privileged or special relationships, such as conversations between lawyers and their clients. Unless this privilege is waived, conversations and/or documents generated from a privileged relationship may not have to be disclosed. Documents prepared and communications occurring in anticipation of litigation before the Tribunal may also be privileged.

Questionnaire

A case-planning questionnaire is included, along with this guide, in the first package sent to you by the Tribunal, shortly after the **Canadian Human Rights Commission** refers your case to the Tribunal. The Tribunal will use the information collected in the questionnaire to schedule **hearing** dates and plan other aspects of the case. If you hire a lawyer, he or she will likely complete the questionnaire on your behalf.

What does the questionnaire ask for?

The questionnaire asks you to:

- indicate whether you will be represented by a lawyer and if so, to provide your lawyer's name and address
- describe any preliminary matters (see also **Motions and Rulings**), including questions of law, jurisdiction or procedure that you wish to have dealt with at the beginning of the hearing
- estimate how many **witnesses**, including **expert witnesses**, you plan to call at the hearing
- estimate how many days you'll take to present your side of the story
- provide a list of dates during which you will be available to attend the hearing
- describe the **remedy** you will be seeking (**complainant** and Commission only)
- indicate whether it will be possible to submit an **agreed statement of facts**

- indicate whether you wish the hearing to be conducted in English or French (The Tribunal will provide simultaneous interpretation — see [Interpreters](#) — if required, provided it has 45 days' notice.)
- indicate whether you or any of your witnesses require special accommodation (for example, a sign language interpreter or a sound system)

The questionnaire also indicates where the hearing is expected to take place and asks whether you agree with the Tribunal's choice of [venue](#).

When and how do I submit the completed questionnaire?

The deadline for submitting the completed questionnaire will be indicated in the letter included with the questionnaire in the first package sent to you by the Tribunal. You will usually have about three weeks to complete and submit the questionnaire. You [file](#) a copy of the questionnaire with the [Registry](#) and [serve](#) a copy of the questionnaire on the other parties.

Record of Appearance

[document 3 icon] All parties must fill out a [record of appearance](#) at the beginning of the hearing. (If you have a lawyer, he or she will fill out this form on your behalf.) The [Registry Officer](#) will bring the form to you. On the form, you must state your name and address, the [witnesses](#) you will call and what kind of [oath](#) or affirmation each witness prefers to take.

Re-examination See [Examination](#).

Registry

The Tribunal Registry offers administrative support to the Tribunal and provides liaison between the [parties](#) and the [member](#), or panel of members, hearing a case. When the Commission refers a case to the Tribunal, a [Registry Officer](#) is assigned to look after the administrative details of the case.

Registry Officer

Registry Officers are the point of contact between [parties](#) to a case and the Tribunal. A Registry Officer is assigned to each case that comes before the Tribunal; the name and phone number of this Registry Officer is in the first package sent to the parties. He or she is the person to whom you should address any questions, including requests for assistance when you are in doubt about the Tribunal's procedures. Registry Officers do not, however, give legal advice.

Remedy

The remedy is what the [complainant](#) asks the Tribunal to order the [respondent](#) to do. For example, if the complainant was denied employment as a result of discrimination by the respondent, the complainant may ask the Tribunal to order the respondent to hire him or her. The remedy could also entail a change in policies, or a monetary award to compensate for lost income or expenses incurred as a result of the discrimination. Section 53 of the [Canadian Human Rights Act](#) lists the remedies that complainants are allowed to ask for. The Commission usually also seeks a remedy, sometimes a different one from the complainant.

Reply Argument

The **party** who presents his or her **argument** first will generally be permitted to respond to anything new raised by any of the other parties during their arguments.

Respondent

The person or group against whom the complaint of discrimination was made.

Rules of Procedure

The Tribunal has set out rules that govern its proceedings. These rules are provided to the **parties** in the initial package sent to them by the Tribunal.

Rulings See **Motions and Rulings**.

Serve, Serving (Service)

Serving a document simply means delivering it to someone. Every time you send a document to someone, you need to send copies to all of the other parties as well and **file** the document with the **Registry**.

In a case before the Tribunal, documents may be served in one of the following ways:

- ? by fax if the document is 20 pages or less;
- ? by ordinary or registered mail, or by courier;
- ? in person; or
- ? by bailiff or process server. (This is usually done only when someone refuses to be served in one of the other ways.)

In the event that a dispute arises as to whether a **party** received service of a document, you will need to have proof that the document was served. This proof could be:

- ? a letter from the person who served the document confirming that the document was delivered
- ? your sworn testimony before the Tribunal
- ? an **affidavit** of service (in Quebec, a certificate of service)
- ? a solicitor's certificate
- ? a fax printout
- ? a registered mail receipt
- ? an admission or acknowledgment from the party who was served the document

Settlement

At any point in the process, the **parties** to a case may decide to settle the dispute among themselves instead of seeking a decision from the Tribunal.

The **Canadian Human Rights Act** requires that if all the parties agree on a settlement before a hearing begins, the agreement must be referred to the **Canadian Human Rights Commission** for approval. The settlement may be made a Court Order for the purposes of enforcement (see **Decision**).

Entering into settlement discussions is not sufficient to halt the process. The Tribunal will usually only adjourn a scheduled hearing once all of the parties have signed the settlement agreement. If either the **complainant** or Commission settles with the respondent, the remaining party may wish to continue the case against the **respondent**.

Submission See [Argument](#).

Subpoena


A [subpoena](#) is a legal document that orders a person to appear at the [hearing](#) as a [witness](#). It also requires that person to bring to the hearing any documents or items that he or she owns or has control over that relate to the complaint.

You don't need a subpoena for all of your witnesses. You only need a subpoena if someone is not willing to be a witness at your hearing, or if a witness needs a legal document to justify his or her absence from work.

How do I get a subpoena, and what do I do with it?

You get a subpoena from the [Registry](#) by [filing](#) a written request. This request must include the name of the person you want to call as a witness and the reasons why you want to call this person as a witness.

The Tribunal will not automatically give you a subpoena, but will consider your request and determine whether a subpoena is warranted. If the Tribunal decides that a subpoena is warranted, it will send you a signed subpoena. You are responsible for filling it out and [serving](#) it on the person you want to call as a witness. Please note that anyone you serve with a subpoena should have been listed on your witness list.

 **When serving the subpoena, you may have to pay the witness certain fees to allow him or her to attend at the hearing (such as the costs of travelling and staying in a hotel). Witnesses appearing before the Tribunal are entitled to the same fees and allowances as witnesses summoned before the Federal Court. You can speak to the Registry Officer about your obligations for the payment of witness fees.**

Testimony

Statements made by a [witness](#) under [oath](#) during a [hearing](#).

Venue

The location where the [hearing](#) takes place. The venue is tentatively chosen by the Tribunal Registrar based on information contained in the complaint form. The [parties](#) are informed of the proposed venue in the case-planning [questionnaire](#) and asked whether they agree. If there is a dispute among the parties, the Tribunal rules on the issue after hearing the [arguments](#) of the parties.

Will-Say Statement

A will-say statement is exactly what it sounds like: a brief written summary of what a [witness](#) will say at the [hearing](#). You (or your lawyer, if you have one) will write the will-say statements based on interviews with the witnesses. Will-say statements are exchanged between the parties as part of [disclosure](#). A will-say statement is typically no more than a page long and identifies the people, events and principal documents that will be introduced through the witness's [testimony](#). Witnesses are not required to strictly adhere to the content outlined in the will-say statement, but it is expected that they will adhere to the spirit.

What is the difference between a will-say statement and an expert witness report?

For **expert witnesses** (see **witnesses**), it is not enough to merely provide a will-say statement. Instead, for each expert witness, you must also provide an expert witness report, detailing what the expert witness will say. In addition to substantiating the credentials of the expert witness, the report must lay out the assumptions that are being relied upon as fact and offer a detailed rationale for the opinion or conclusion put forward. An expert witness report is a quasi-scholarly work that is apt to cite scientific or other literature in its reasoning. The Tribunal expects expert witness testimony to closely mirror the content of the written report.

Witnesses

A large part of the **evidence** you will need to support your case will be the **testimony** of witnesses — people who can attest to the truth of the statements you are putting forward as facts.

You also need witnesses to identify the documents you plan to present as evidence at the **hearing**. The Tribunal will not generally accept a document as evidence unless a witness has identified it first (**affidavits** are an exception).

All witnesses must take an **oath** or make a solemn affirmation at the hearing.

What is an expert witness?

A witness who gives evidence in his or her area of expertise is considered an expert witness. For example, an expert witness could be a doctor who testifies about a medical condition or an accountant who gives evidence as to lost revenue. An expert witness does not need to have personal knowledge of the facts of the case before the Tribunal. Expert witnesses give opinions on facts that have already been directly proven.

In addition to a **will-say statement**, for each expert witness, you must **serve** on the other parties and **file** with the **Registry** a longer report that:

- ? sets out the expert's name, address and credentials
- ? sets out the substance of the expert's proposed testimony
- ? is signed by the expert

This document, called an expert witness report, offers a detailed rationale for the opinion or conclusion that the witness is being called upon to provide. It lays out the assumptions that are being relied upon as fact and includes a detailed rationale for the conclusions reached. An expert witness report is a quasi-scholarly work that is apt to cite scientific papers or other scholarly literature in its reasoning.

Before an expert is permitted to testify at a hearing, the Tribunal must decide whether the witness is indeed an expert in a given field. The expert's evidence must also appear to be helpful to the Tribunal in the determination of the issues. Once the expert has been approved by the Tribunal, he or she is said to be "qualified" to testify as an expert in the given field.

What if someone refuses to be a witness?

You can ask the **Registry** to give you a **subpoena**, which will order that person to attend the hearing.

Who covers the costs of witnesses?

When you call a witness, you have to pay him or her a certain amount of money to cover the costs of

coming to the hearing (such as the costs of travelling and staying in a hotel). Witnesses who appear before the Tribunal are entitled to the same fees and allowances as witnesses summoned before the Federal Court.

Don't forget to ask about these costs and to pay them before the witness testifies. If you don't, the witness does not have to appear at the hearing. If you are a **complainant** and the **Canadian Human Rights Commission** is a **party** to the case, the Commission may cover these expenses. Complainants may also ask the Tribunal to include these expenses as part of the **remedy**, but it is up to the Tribunal whether to award them or not.

Part 5: Sample documents

1. Notice of hearing

2. Subpoena

3. Record of appearance

[\[1\]](#) Harassment applies to all prohibited grounds, not just sex.