



Canadian Human Rights
TRIBUNAL

What happens next?

*A guide to the
Tribunal process*

Canada

COORDINATES

Tribunal Registry Officer: _____

Canadian Human Rights Commission
legal representative: _____

Address: _____

Tel.: _____ Fax: _____

E-mail: _____

Complainant or respondent: _____

Legal representative: _____

Address: _____

Address: _____

Tel.: _____

Tel.: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

Interested party: _____

Legal representative: _____

Address: _____

Address: _____

Tel.: _____

Tel.: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

Important deadlines

Deadline for replying to mediation: _____

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*



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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 adjudication 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 provide an overview; part 3 contains 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 based 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's jurisdiction covers organizations that come within the legislative authority of the Parliament of Canada, including federal government departments, agencies and Crown corporations, as well as banks, airlines, broadcasters, inter-provincial transportation companies and other federally regulated employers and providers of goods, services, facilities and accommodation.

A human rights complaint is initially **filed** with the Commission. Where appropriate, the Commission may investigate the complaint and attempt to help the complainant and respondent reach an agreement. Most complaints considered by the Commission are 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. Only a small percentage 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 adjudicating complaints under the Act *and* the specific **member** or members assigned to hear and rule on each case. A presiding member performs 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 appointed by the Governor in Council (the Governor General on the advice of Cabinet) to hear and adjudicate 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**.

The Commission does not always participate at the hearing, but when it does, the arguments it puts forward and the remedies it requests are calculated to serve the public interest rather than the interests of the complainant. Sometimes, the two interests overlap. At other times, they do not. Therefore, if you are a complainant and if the Commission plans to participate in your hearing, it is important that you confer with the Commission's lawyer as soon as possible to determine whether you agree with the Commission's choice of evidence and remedy. If you do not, you may wish to exercise your option to retain your own lawyer or to represent 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 will find it helpful to familiarize yourself with the Tribunal process that is about to unfold by reading 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  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.



Points to remember



Important actions to be taken



Sample documents to be found in Part 5. The number inside the icon indicates which document number it is in Part 5. The name of the document is underlined in the text.

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 a year or more.*

BEFORE THE HEARING

Shortly after receiving a referral from the **Canadian Human Rights Commission**, the Tribunal **Registry** sends a letter to each of the parties:

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

The letter asks you to advise, within 21 days (three weeks), whether you agree to participate in a one-day **mediation** of the complaint by a Tribunal **member**. The letter will include a copy of the Tribunal's mediation procedures to assist you in making this decision. If all parties agree to mediation, the Tribunal **Registry Officer** will contact the parties to determine a date for mediation within the next few weeks.

If the mediation succeeds in resolving the complaint, the Tribunal's file is closed after the **minutes of settlement** have been signed by the parties and approved by the Commission in accordance with the *Canadian Human Rights Act*.

If mediation does not resolve the complaint, or if the parties do not agree to mediation, the Registry Officer will contact the parties to determine their availability to participate in the first of three to four **case management** conference calls with a Tribunal member. This case-planning phase assists the Tribunal in understanding:

- whether the parties will be represented by a lawyer and, if so, the name and address of the lawyer(s)
- how many **witnesses** (including **expert witnesses**) each party plans to call at the hearing
- how many days each party will take to present their side of the story
- whether there are any **preliminary matters** you would like to raise
- what **remedy** you are seeking (complainant and Commission only)
- dates for parties to **file a statement of particulars** surrounding the complaint
- dates for parties to complete **disclosure** of witnesses and documents
- whether it will be possible to jointly submit an **agreed statement of facts**
- when, where and in what language you would like the hearing to take place
- other matters, such as whether you, or your witnesses, require any special services (for example, sign language **interpretation** or a sound system)
- dates when parties can be available for a next case management conference call

If either of the parties wants a particular issue dealt with before the hearing, he or she should raise the matter with the Tribunal at the first case management conference. However, some pre-hearing issues need to be resolved by a more formal process. For example, when a respondent feels that the Tribunal does not have the authority to decide the case, he or she must file a **motion** with the Tribunal requesting a **ruling** on the matter. A motion can be filed at any time before or during the hearing, but should generally be brought as soon as the party becomes aware of the need for a ruling from the Tribunal on an issue.

The Tribunal will outline a process for dealing with the motion. In some cases, the Tribunal will decide the motion right away. In other circumstances, the Tribunal may reserve its decision until a later point in the hearing process.

During the pre-hearing stage, 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, even if they 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.

1/3

Once the hearing is scheduled, you will receive from the Registry Officer an official **Notice of Hearing**, usually well in advance of the hearing date.

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 with them to the hearing.

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 most often 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 the Commission decides not to participate in the hearing), the various witnesses who will be testifying on behalf of the **parties**, the **court reporter**, a Registry Officer 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 (if appearing) 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 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. 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 clarify, 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 should not repeat the case put forward by the Commission's witnesses; however, the complainant can call witnesses to amplify or supplement (or even contradict) the case put forward by the Commission.

The Tribunal then invites the respondent to respond to the allegations (and the evidence called in support of them) by calling his or her own witnesses

and documentary evidence. 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 in regard to new issues raised during cross-examination. Finally, the Commission and the complainant may, if allowed by the Tribunal, be entitled to present **reply evidence** (also subject to cross-examination by the respondent). The members of the Tribunal may ask questions of any reply 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 and will rule on its admissibility.

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 evidence 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 then presents his or her own final 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**.

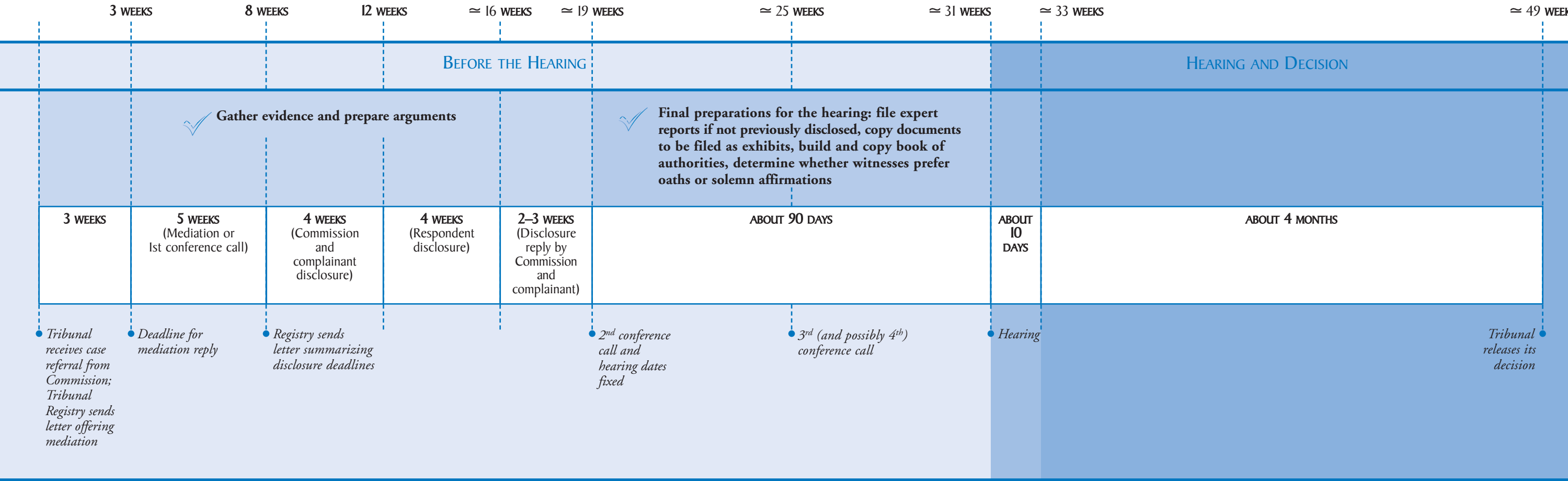
AFTER THE HEARING

When the Tribunal has heard all the arguments, it adjourns the case and reserves its decision. The Tribunal strives to complete its decision 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 an application in the Federal Court within 30 days of the date the Tribunal's decision was first communicated to him or her. 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 before a Tribunal made up of a different member, or members. Finally, it is possible for the Court to simply set aside the Tribunal's decision.

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 ✓ in Part 3.



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

Mediation

Shortly after receiving notification that the **Canadian Human Rights Commission** has referred your complaint for inquiry, you'll receive a letter from the Tribunal **Registry** asking you to advise, within 21 days (three weeks), whether you agree to participate in a one-day **mediation** facilitated by a Tribunal **member**. The letter will include a copy of the Tribunal's mediation procedures.

If all parties agree to mediation, the Tribunal **Registry Officer** will contact you to determine a date for mediation within the next few weeks.

If the mediation succeeds in resolving the complaint, the Tribunal file will be closed once the **minutes of settlement** are signed by the parties and approved by the Commission, in accordance with the **Canadian Human Rights Act**.

Case management

If mediation does not resolve the complaint, or a party declines mediation, the Registry Officer will contact you to determine your availability to participate in the first of three to four **case management** conference calls with a Tribunal member. A letter from the Tribunal Registry will confirm the date and time of the first conference call.

Included with the letter, you will find:

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

The first conference call will occur shortly after mediation has either been declined or was unsuccessful in resolving the complaint.

On the first conference call, the member will ask you to indicate:

- whether the parties will be represented by a lawyer and, if so, the name and address of the lawyer(s)
- how many **witnesses** (including **expert witnesses**) each party plans to call at the hearing
- how many days each party will take to present their side of the story
- whether there are any **preliminary matters** you would like to raise
- what **remedy** you are seeking (complainant and Commission only)
- dates by which the parties can **file a statement of particulars** surrounding the complaint
- dates by which the parties can complete their **disclosure** of witnesses and documents
- whether it will be possible to jointly submit an **agreed statement of facts**
- when, where and in what language you would like the hearing to take place
- other matters, such as whether you, or your witnesses, require any special services (for example, sign language **interpretation** or a sound system)
- dates when parties can be available for a next case management conference call

Following the first conference call, a summary of the discussion that took place and the directions that were given by the member will be confirmed by the Registry Officer in a letter to you. The letter will also confirm the deadlines fixed by the member 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**
 - 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 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
- a statement of particulars
- 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.

All of the items above (except for actual copies of your relevant document disclosure) must also be **filed** with (delivered to) the Tribunal. 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 date of the hearing is not fixed until after the second case management conference call, which normally occurs when disclosure is completed. Disclosure deadlines for the complainant and the respondent may be different, but give all the parties about a month to produce the required documents. The complainant and the Commission are expected to disclose their documents, statement of particulars (including remedies sought), witness lists/will-say statements and expert witness reports to the respondent, and the respondent provides similar information to the complainant and the Commission. The

complainant and the Commission are usually given a further two to three weeks to provide additional disclosure in response to matters arising from the respondent's disclosure. However, depending on the circumstances of each case, the timelines for disclosure may change.



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 (including remedy sought) 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 relevant document as soon as it comes into your possession and any new witness or legal issue as soon as it comes to your attention.

On the second case management conference call, which normally occurs following completion of disclosure, the member will ask you to:

- identify any concerns regarding, for example, an apparent failure to make full disclosure of documents and/or witnesses
- confirm the length of time you will require at the hearing
- confirm your dates of availability for the hearing
- identify your availability for the next case management conference call

Again, following the conference call, a summary of the discussion that took place and the directions that were given by the member will be confirmed by the Registry Officer in a letter to you. The letter will also confirm the dates and place fixed for the hearing. Later, but well in advance of the start of the



hearing, the Registry Officer assigned to your case will send you an official Notice of Hearing.

A third conference call normally occurs halfway between the time of the second conference call and the first day set for the hearing. At this conference, the member will discuss with you any issues that need to be resolved in order for the hearing to proceed on the dates fixed.

A fourth case management conference call may be convened by the member to deal with any problems that you may be having in preparing for the hearing.

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, if you are claiming damages from a discriminatory dismissal, 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**. You can request a subpoena from the Tribunal by writing to the Registry Officer assigned to your case and explaining why that person must be called as a witness. If you require the witness to bring to the hearing any documents or items that he or she has control over and that relate to the complaint, you will need to request a subpoena *duces tecum*. 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 obtained more detailed reports of the testimony of your expert

2

witnesses, you must deliver copies of all these documents to the other side. You must also deliver copies of your statement of particulars. The statement of particulars should list the topics you plan to address, set out the facts you intend to prove and state the conclusions you plan to draw from the evidence (complainants must also set out the remedy sought). File all the above items (except for actual copies of your documentary disclosure) with your Registry Officer.



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
- statement of particulars

Served on the other parties by the disclosure deadline (but not filed with the Tribunal Registry):

- copies of all relevant documents, including affidavits, except privileged documents

Filed with the Tribunal Registry by the disclosure deadline:

- letter to the 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, even with reasonable accommodation. 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 must explain how your evidence supports the conclusion that discrimination occurred. You may wish to use past human rights cases decided by the Tribunal or 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 other 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: the Tribunal Chairperson, two additional Tribunal members (unless the case is being heard by 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.



Assemble all your documentary evidence. Exhibits should be submitted in three-ring binders (maximum width: 2 inches), indexed, divided with tabs and pages numbered. Documents should be placed in the binder in the order in which they will be filed as exhibits. For example, tab 1 will be the first exhibit filed.

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 authorities and insert a tab at the start of each case. Also, find out what type of oath or affirmation 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. The Tribunal, however, may not always rule on the matter at the time the motion is brought.

AT THE HEARING

The objective of the hearing is to allow the Tribunal to hear all the relevant evidence and arguments 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 and what remedy you are entitled to. If you are the respondent, the hearing is your chance to refute the allegations and the claim for remedy.

Unlike in a criminal case, where the Crown must prove the existence of the alleged facts beyond a reasonable doubt, the standard 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 may appear to be discriminatory were not.

Hearing day

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When you arrive at your hearing, the Registry Officer will ask you to complete a **Record of Appearance**. This form requires the name of every witness you plan to call over the course of the hearing (you can be a witness on your own behalf) and the type of **oath** or affirmation 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.

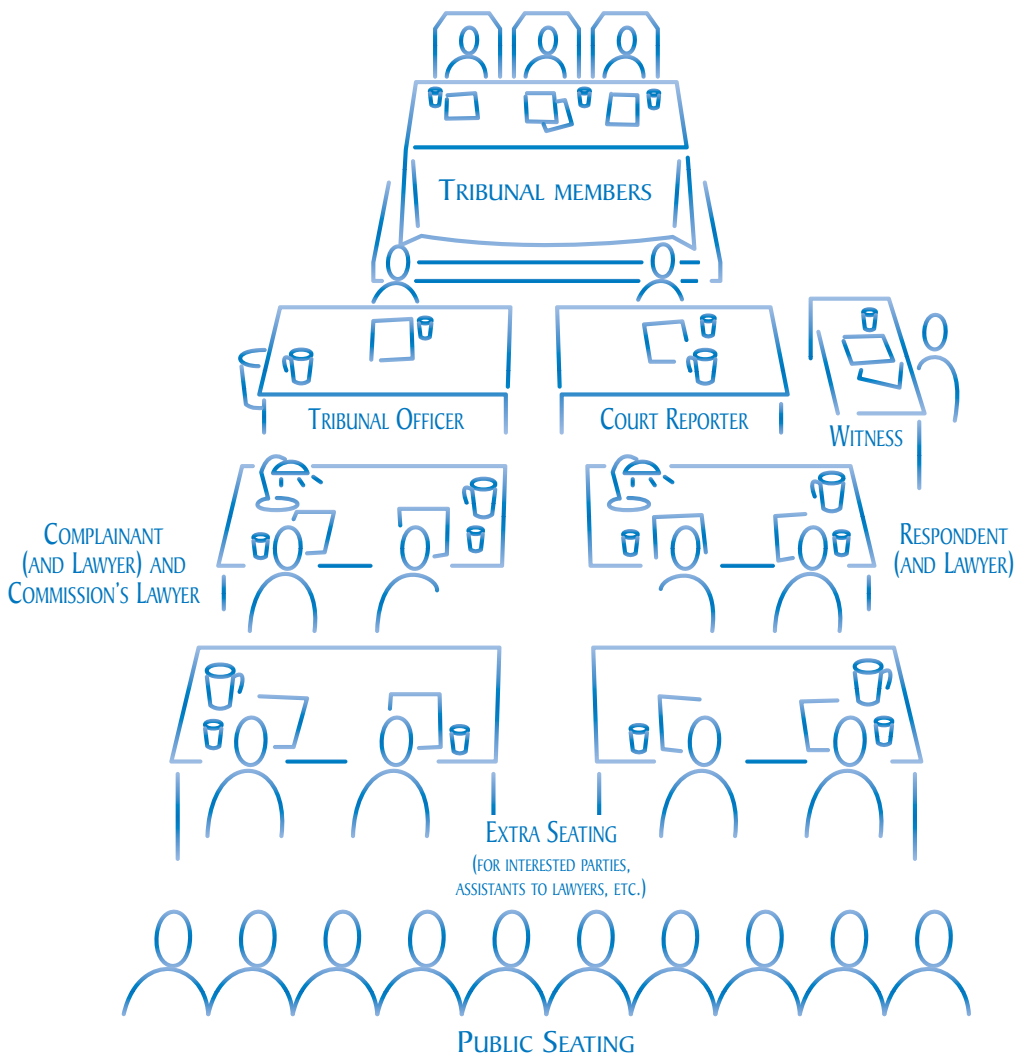
Several people may be present at the hearing. They include the complainant, the respondent, their respective lawyers, the lawyer for the **Canadian Human Rights Commission** (if the Commission decides to participate at the hearing), the witnesses that will be testifying on behalf of the **parties**, 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, unless otherwise ordered by the Tribunal, 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 any other members of the Tribunal — a Tribunal always consists of either one or three members — and can call for appearances of, or on behalf of, the parties. 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 other members of the panel as “Member or Mr./Mrs./Ms. (*Surname*).”

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

A TYPICAL HEARING ROOM



When opening statements are completed, the Tribunal Chair will invite the Commission, if it is a participant, to call its first witness. The Commission will usually call the complainant as its first witness. If the Commission is not participating in the hearing, 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 new issues that arose during cross-examination. No other topics may be introduced at this stage. The Tribunal **member(s)** 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 (or even contradict) 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 to address any new matters arising from the cross-examination. The members of the Tribunal may also ask questions of the respondent's 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 another party 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's testimony or piece of documentary evidence should or shouldn't be admitted. After hearing submissions, the Tribunal will often render a ruling on the objection (dismissing or upholding it), but sometimes it will defer ruling on the matter until later in the hearing process.

After the respondent's witnesses have been examined, cross-examined and re-examined, the Commission and complainant may be given an opportunity to reply to new facts or issues introduced by the respondent that were not covered during the complainant's or Commission's **direct evidence**. **Reply evidence** can relate only to new matters arising out of the respondent's evidence.

When all of the evidence has been presented, the Commission and the complainant are each given the opportunity to explain in narrative form how the evidence supports their factual assertions regarding what the respondent did to the complainant and why, based on the **case law**, the respondent's 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 why the evidence presented by the parties, 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 in his or her favour 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 testimony, determine how much weight to give to the evidence presented by each side in the case, and assess the arguments presented by each party.

AFTER THE HEARING

When the Tribunal has heard all the arguments, it usually adjourns the case and reserves its **decision**, rather than rendering its decision immediately at the conclusion of the hearing. The Tribunal strives to render its decision within four months of the close of the hearing. A copy of the decision will be sent to you 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 within 30 days of the date the Tribunal's decision was first communicated to you.

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 are often 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. In such circumstances, the other side may **cross-examine** the person who made the affidavit, or present its own affidavit that describes an opposing version of events. Although affidavits may be admitted into evidence, they have been used infrequently in Tribunal hearings. Generally, evidence presented through testimony is of greater weight, largely because it is subject to cross-examination.

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 your **disclosure**.

How does one prepare an affidavit?

Normally, you or your lawyer will prepare the affidavit (generally after interviewing the witness) and have it signed by the witness. When signing the affidavit, the witness must swear under **oath** that the statement contained in it is true. A lawyer, justice of the peace, notary public or other person authorized to receive 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?

At the first **case management** conference with the Tribunal, 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 factual assertions they will agree to accept.

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

The agreed statement of facts 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. If so, the fact may be viewed as having been established.

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 an argument, he or she is attempting to convince the Tribunal that there is, based on his or her interpretation of the facts and law, a particular conclusion that should be reached.

When will I present arguments to the Tribunal?

There are two distinct occasions over the course of the proceedings when you will be invited to present arguments. The first is whenever there is a matter, other than the merits of the complaint, that needs to be decided. For example, one party may ask the Tribunal to rule before the hearing begins on a jurisdictional issue (such as whether the Tribunal has the authority to decide the case) or, once the hearing has begun, on a procedural matter (such as whether a particular document should be admitted into evidence). Before the Tribunal makes its ruling on such matters, it always hears from all parties.

The other category of argument is called **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 persuasive 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 supports or favours their version of the facts. Final argument also gives each party an opportunity to explain why, based on the **case law**, the facts established in evidence 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 passages 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 passages that support 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 party's **book of authorities**. Only the passages that support the party's 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 all matters within federal jurisdiction such as federal government departments and agencies, federal Crown corporations, chartered banks, airlines, telecommunications and broadcasting organizations, and shipping and inter-provincial 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)

¹ Harassment applies to all prohibited grounds, not just sex.

- 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, beyond the Commission's jurisdiction or untimely, and are dismissed by the Commission. Others are referred to more appropriate avenues of recourse. But when the Commission believes that further inquiry is warranted and an agreement between the **parties** cannot be reached through conciliation or mediation, it refers the case to the Tribunal. The Commission then takes on a role similar to that of a Crown attorney. The Commission usually participates in the pre-hearing process before the Tribunal, but not always at the hearing itself. 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 to be 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.

Case Management

To assist the **parties** in meeting their pre-hearing obligations (such as disclosure of documents and witnesses, and identification of undisputed facts), and to deal with other issues that may arise in preparation for the hearing of the complaint, the parties are required to participate in three to four case management conference calls with a **member** of the Tribunal. The **Registry Officer** assigned to the file attends the conference calls. A **court reporter** may also be in attendance at some case management conference calls.

Case management conference calls normally result in directions being given by the member requiring the parties to complete their various pre-hearing obligations by specific dates. This case management process helps the parties focus on completing the pre-hearing phase in a timely manner and sometimes helps reduce the time required for the hearing itself.

After each case management conference call, a summary of the discussion that took place and the directions given by the member are confirmed by the Registry Officer in writing to the parties.

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 verbatim transcript of what was said during each day of the hearing. A diskette containing an electronic copy of the transcript will be sent to each party.

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 (for example, on **preliminary matters**) are called **rulings**.

When and how is the decision issued?

The Tribunal strives 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 being sent to you 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 legal issues raised by the parties. 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?

The **Canadian Human Rights Commission**, whether or not it participated at the hearing, may on occasion examine whether the Tribunal's decision was 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 first communicated to you by the Tribunal to file an application with the Federal Court to have the decision reviewed.

N.B. Past rulings and decisions issued by the Tribunal are posted on the Tribunal's 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 each party knows the evidence and arguments that will be put forward by the other parties. 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 **statement of particulars** (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 disclosure) must also be **filed** with the Tribunal.

When do I disclose these things?

Deadlines for disclosure are set by the Tribunal during the first case management conference call with the parties, which will occur shortly after mediation has either been declined by one or more of the parties or has failed to resolve the complaint.

The Tribunal encourages the parties to complete their disclosure in the shortest possible time, which can sometimes mean within a month. The deadline for disclosure by the complainant and the Commission is sooner than that required for the respondent. This gives the respondent an opportunity to prepare a response to the material provided in support of the complaint. The complainant and the Commission are then given a short time to reply if they intend to raise additional facts or issues to refute the case disclosed by the respondent.

After the disclosure deadline, any new documents 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, raise legal issues or seek a remedy 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 (for example, the author, the addressee).

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.

How many opportunities do I have to present evidence?

Each **party** presents all of its evidence in turn. This is called evidence-in-chief. Once you've finished presenting this evidence and closed your case, you generally can't put forward any additional evidence. However, there are certain exceptions. First, you have the right to **cross-examine** any witness called by the other side during their case. Furthermore, if one party is permitted by

the Tribunal to put forward evidence that wasn't disclosed, the other will often be given the opportunity to present additional evidence in response. Finally, after the closing of the **respondent's** case, the **Canadian Human Rights Commission** and the **complainant** may present **reply evidence** to address any new facts and issues raised by the respondent (that could not have been anticipated).

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 allow your witnesses to provide the Tribunal with evidence of the facts within their knowledge 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 stand.) 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. Also, during direct examination, it is important not to ask leading questions that contain the answer you are trying to elicit from the witness. Rather, use open-ended questions. For example, instead of asking: "Did you enter the room at nine o'clock?," ask "At what time did you enter the room?"

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. Leading questions are permitted in cross-examination.

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 a witness.

Expert Witnesses See **Witnesses**.

Filing

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

Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
Ottawa, Ontario K1A 1J4
Fax: (613) 995-3484
registrar@chrt-tcdp.gc.ca

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 evidence presented constitutes, or does not 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 explains why the requested remedy is inappropriate, again taking into account the evidence. A party's final argument highlights facts that he or she would like the Tribunal to take note of and suggests why, based on the law, those facts do, or do not, support the conclusion that discrimination occurred.

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 and the applicable legal principles, 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 legal conclusion to be drawn from them. Final argument gives each party an opportunity to refer to earlier decisions dealing with allegations of discrimination where 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.

The Tribunal's choice of **venue** is usually decided at the time of the first **case management** conference call.

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

Generally speaking, the complainant is responsible for his or her own costs, as well as the costs of his or her witnesses. In some instances, however, the Commission may choose to cover the expenses of the complainant. It is best to speak to the lawyer for the Commission about what expenses it may cover. The Commission is responsible for the expenses of those witnesses it is calling (witnesses who may be helpful to the complainant's case).

If the Commission is not participating in the hearing, the complainant is responsible for his or her own costs, as well as the costs of his or her witnesses.

Complainants may be able to recover their travel and lodging costs as part of the **remedy**, if their complaint is found to be substantiated, 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 participating), 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 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 other 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 proposed interested 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 as early as possible, or at the time of the first **case management** conference call with the Tribunal. 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 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.

Mediation

Mediation is a structured negotiation in which the **parties** and their representatives meet and, with the help of a Tribunal **member**, work at negotiating a **settlement** of the complaint.

Although the parties may have already participated in some form of process designed to negotiate a resolution of the complaint before it was referred to the Tribunal, the Tribunal nevertheless offers to the parties an opportunity to participate in further mediation. Mediation before the Tribunal is voluntary and therefore requires the agreement of all parties.

Open discussion of issues surrounding the complaint are important factors for helping resolve the complaint. All information exchanged during mediation is therefore treated as strictly confidential by the parties and their representatives unless **disclosure** is otherwise required by law. With the exception of communications between the parties and/or their legal counsel or representatives, no

reference can be made to information exchanged, statements made or actions taken during mediation. Oral or written statements made within the scope of the mediation process are made without prejudice; they cannot be received into **evidence** before the Tribunal pursuant to s. 50(4) of the *Canadian Human Rights Act*, nor can they be used as evidence in any other judicial or administrative proceeding. Undertakings of confidentiality and agreement to the mediation process are usually signed by the parties at the outset of the mediation.

How long is the mediation process and when and where would it occur?

The mediation process is normally limited to one day. To avoid delay of the hearing of the complaint, mediation usually occurs within an eight-week period from the Tribunal's initial contact with the parties. The location of the mediation is determined by the Tribunal based on information contained in the complaint form; however, agreement of the parties to a different location may also be considered.

What if mediation resolves the complaint?

If the negotiation results in the parties signing **minutes of settlement**, the Tribunal will close its file after the **settlement** has been approved by the **Canadian Human Rights Commission**, in accordance with the *Canadian Human Rights Act*. If the parties agree to a settlement that will be signed on resolution of certain minor issues or undertakings, the Tribunal process will be adjourned for a short period (two to four weeks) pending confirmation that minutes of settlement have been signed.

What if mediation does not resolve the complaint?

Should mediation not result in a resolution of the complaint, the **Registry Officer** will contact the parties to arrange for a **case management** conference call with a Tribunal member within the following two weeks.

Members

The Tribunal is composed of a full-time Chairperson and Vice-Chairperson (who may be appointed to terms of up to seven years), and up to 13 other 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 member or a panel of 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 the other members are available on the Tribunal's Web site (www.chrt-tcdp.gc.ca), as are the oath of office and code of conduct.

Minutes of Settlement

For proceedings before the Canadian Human Rights Tribunal, minutes of settlement is the same as settlement agreement (see [settlement](#)).

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 **servicing** 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 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. Rulings on motions filed before the hearing may be issued before the hearing takes place or they may be deferred to the end of the hearing. 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 an application in the Federal Court asking it 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. Making an intentionally false statement under oath (or solemn affirmation) has serious legal consequences.

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, if it is appearing at the hearing, followed by the **complainant** and then the **respondent**. Any of the parties can decide not to give an opening statement. Alternatively, the respondent (and the complainant, in cases where the Commission is participating) can decide to give their opening statements later, when it is their turn to present their evidence.

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. Ultimately, the order in which interested parties present their case is up to the Tribunal.

Parties

Parties are those participants in a case who have the right to lead **evidence** and **argument** before the Tribunal. They include the **complainant** (the person who filed the complaint), the **respondent** (the person against whom the complaint was made) and the **Canadian Human Rights Commission**.

Also see **Interested Parties**.

Preliminary Matters

A **party** may feel that certain matters need to be resolved before the Tribunal can decide on the validity of the complaint. These matters are therefore often raised on a “preliminary” basis, that is, before the commencement of the **hearing**. While parties are encouraged to raise matters of concern promptly, the Tribunal reserves the right to deal with them at such time as it deems appropriate.

Also see **Motions and Rulings**.

Prima Facie Case

In a **hearing** before the Tribunal, the burden is on the **complainant** (and the **Canadian Human Rights Commission**, if it is a participant at the hearing) to present evidence covering the allegations in the complaint. If the evidence is believed to be sufficient to justify a decision in his or her favour, and there is no sufficient answer from the respondent, a *prima facie* case is established.

Once a *prima facie* case is established, the burden of proof shifts to the respondent, who must prove that either 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 is considered privileged in law. Privileged information includes communications between lawyers and their clients for the purposes of seeking or receiving legal advice. Unless the privilege is waived, conversations and/or documents of this nature generally do not have to be disclosed. Documents prepared and communications occurring in anticipation of litigation before the Tribunal may also be privileged. Finally, written or oral communications occurring within the context of **settlement** discussions (including the Tribunal’s **mediation** process) are regarded as privileged and not subject to **disclosure** (nor can they be presented as **evidence**).

3

Record of Appearance

All parties must fill out a Record of Appearance prior to the commencement 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. The Record of Appearance is then returned to the Registry Officer.

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, e-mail address 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 employment policies, or a monetary award to compensate for lost income, hurt feelings, reckless acts 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. Sections 54 and 54.1 impose certain limitations on the Tribunal's remedial powers. When it participates, the Commission usually also seeks a remedy, which sometimes may be different from the complainant's.

Reply Argument

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

Reply Evidence

After the **respondent** has completed the presentation of his or her **evidence**, the **complainant** (and the **Canadian Human Rights Commission**, if participating) has a limited opportunity to present additional evidence. This new evidence, known as reply evidence, must pertain to new facts or issues that were raised by the respondent's evidence and that the complainant or Commission could not have reasonably anticipated.

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** prior to the occurrence of the first **case management** conference call. They can also be viewed online at www.chrt-tcdp.gc.ca/about/tribunalrules_e.asp

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** of the Tribunal. Note, however, filing **disclosure** documents with the Registry means notifying the Registry that the documents have been delivered to the parties.

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 e-mail

- by ordinary or registered mail, or by courier
- in person
- by bailiff or process server (This is usually done only when someone refuses to be served in one of the other ways, or appears to be avoiding service.)

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, in which you state that you served the document
- 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 with 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 registered with the Federal Court for the purposes of enforcement (see **Decision**).

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

See also **Minutes of Settlement**.

Statement of Particulars

A statement of particulars is a description of the material facts that the **party** seeks to prove in support of his or her case, the party's position on the legal issues being raised and the remedy being sought (in the case of the **respondent**, the relief sought is generally the dismissal of the complaint). The statement of particulars should also include a list of relevant documents in the party's possession and summaries of the anticipated testimony of the party's **witnesses**.

Is there a deadline for submitting a statement of particulars?

Dates for the **filing** of particulars, if required, are established and fixed by the Tribunal following discussions between the **member** and the parties at the first **case management** conference call, which occurs shortly after the complaint is referred to the Tribunal or after **mediation** has either been declined by the parties or did not resolve the complaint.

Submission See **Argument**.

2

Subpoena

A **subpoena** is a legal document that orders a person to appear at the **hearing** as a **witness**. A subpoena *duces tecum* 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 need a subpoena only 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 obtain a subpoena from the Tribunal **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 are obliged to pay the witness certain fees to allow him or her to attend the hearing (such as the costs of traveling 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. The covering letter sent to you with the subpoena explains your obligations regarding the payment of witness fees, or you may speak to the Registry Officer prior to serving the subpoena.

Testimony

Statements made by a **witness** under **oath** (or solemn affirmation) during a **hearing**.

Venue

The location where the **hearing** takes place. The venue is determined based on information contained in the complaint form and is decided by the Tribunal at the time of the first **case management** conference call with the parties. 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 and events that will be discussed 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 their testimony will reflect the spirit of the document. The main purpose of **disclosure** (including will-say statements) is to eliminate surprise at the hearing.

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.

For each expert witness, you must **serve** on the other **parties** and **file** with the **Registry** a detailed 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, 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 the relevant field. The expert's evidence must also appear to be necessary for 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 about the issues identified.

What if someone refuses to be a witness?

2

You can ask the **Registry** to give you a **subpoena**, which will order that person to attend the hearing. Note, however, that you generally cannot use a subpoena to force a person to provide **expert** opinion evidence.

Who covers the costs of witnesses?

When you call a witness by way of a subpoena, 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 traveling 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 participating in the case, the Commission may choose to cover these expenses for certain witnesses. It is important to inquire about this with the Commission's counsel beforehand.

Note also that the party calling an expert witness is responsible for all costs relating to the production of the expert's report and time spent in giving testimony.

Part 5

Sample documents

I. Notice of Hearing

File No.: 1000-0000

THE CANADIAN HUMAN RIGHTS ACT
R.S.C., 1985, c. H-6 (as amended)

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

NAME:	Complainant
- and -	
CANADIAN HUMAN RIGHTS COMMISSION	Commission
- and -	
NAME:	Respondent

NOTICE OF HEARING

TAKE NOTICE that an inquiry has been initiated pursuant to subsection 49(2) of the Canadian Human Rights Act to inquire into the complaint of [name of complainant], dated [date the complaint was filed], pursuant to section [section number of the act] of the Canadian Human Rights Act, against [name of respondent] commencing at 9:30 a.m. local time, in [city], [province], as follows:

- dates of hearing
(The exact location will be advised.)

AND TAKE NOTICE that the parties have confirmed that the proceedings will be conducted in English/French/both official languages. Any party requiring simultaneous interpretation services is required to advise the Registry upon receipt of this notice. (Last sentence to be

2. Subpoena

CANADIAN HUMAN RIGHTS ACT
LOI CANADIENNE SUR LES DROITS DE LA PERSONNE

CANADIAN HUMAN RIGHTS TRIBUNAL
TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

Between
Entre

— and —
— et —

**=====
SUBPOENA TO A WITNESS
CITATION À COMPARAÎTRE
=====**

THE CANADIAN HUMAN RIGHTS ACT
LA LOI CANADIENNE SUR LES DROITS DE LA PERSONNE

SUMMONS TO A WITNESS TO APPEAR BEFORE A CANADIAN HUMAN RIGHTS TRIBUNAL
NOTIFICATION DE COMPARAÎTRE DEVANT UN TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

in the name of
dans le nom de

TO
À

You are hereby summoned and requested to attend before the Canadian Human Rights Tribunal pursuant to the summons to appear to compare (Article 53 of the Act) and/or under the provisions of section 53 of the Canadian Human Rights Act at a hearing to be held at:

en vertu de la Loi canadienne sur les droits de la personne, et/ou en vertu de l'article 53 de la Loi canadienne sur les droits de la personne, et/ou en vertu de l'article 53 de la Loi canadienne sur les droits de la personne.

on the day of the presence of
au jour de la présence de

on the day of the hour of
au jour de l'heure de

if, for any reason, you are unable to attend on the date of the summons, you are requested to give a written notice of such failure to attend to the Tribunal at least 10 days before the date of the hearing, and to bring with you and produce at such time and place the written notice of such failure to attend, as well as any other documents or evidence that you wish to rely on in the proceedings.

Si, pour toute raison, vous ne pouvez pas comparaître à la date indiquée dans la notification de comparaitre, vous êtes prié de donner un avis écrit de votre absence au Tribunal au moins dix jours avant la date de l'audience, et de vous présenter à l'audience avec cet avis écrit et toute autre documentation ou preuve que vous souhaitez présenter au Tribunal.

if you do not
si vous ne pouvez pas

BY THE
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Élodie Gosselin, Tribunal
Ce Tribunal canadien des droits de la personne

3. Record of Appearance

**Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne**

RECORD OF APPEARANCE / FICHE DE COMPARUTION

Please complete and return to the Tribunal Office prior to filing. Veuillez remplir et retourner à l'agent du Tribunal avant l'audience.

PLEASE PRINT NAME / LETTRES MONTÉES

Name / Nom: _____ Date / Date: _____

Appearing for / Comparissant pour: _____ Working Address / Adresse postale (Street / Rue): _____

Assisted By / Assisté par: _____ City / Ville: _____ Province / Province: _____

Title / Titre: _____ Postal Code / Code postal: _____

EXPECT TO CALL THE FOLLOWING WITNESSES / TÉMOINS QUE VOUS DEVEZ APPELER

NAME / NOM	TITLE / TITRE	ORGANIZATION / ORGANISATION	DATE / DATE OF AFFIRMATION / APPEL À TÉMOIGNER
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FOR OFFICIAL USE ONLY / POUR USAGE DE SEULEMENT OFFICIEL

Date / Date: _____ File Number / Numéro de dossier: _____ Case / Cause: _____

Deponent / Déclarant: _____ Title and Office / Titre et poste: _____
Agent du Tribunal

FILE THE 20-9-06

1 - Official Copy / Copie officielle