

HUMAN RIGHTS TRIBUNAL OF ONTARIO MOCK HEARING ROLE PREPARATION



THIS PACKAGE CONTAINS:	PAGE
Information about the Human Rights Tribunal of Ontario Hearings	1 - 3
Etiquette and Protocol at the Hearing	4
Time Chart	6 - 7
Role Preparation for:	
Witness(es)	8 - 9
Representatives	10 - 12
Tribunal Adjudicator	13 - 16



GENERAL INFORMATION ABOUT HUMAN RIGHTS TRIBUNAL OF ONTARIO HEARINGS

This mock hearing is designed to help you learn more about the Human Rights Tribunal of Ontario (the “Tribunal”) and the steps taken to file a human rights complaint under the *Ontario Human Rights Code* (the “Code”). Many people have some idea of what a criminal trial looks like from television or movies. Administrative hearings, like those that take place at the Tribunal, may resemble a criminal court in some ways, but are not actually part of the traditional court system. Administrative tribunals are set up to resolve disputes. They are less formal, less expensive, and usually faster. Administrative hearings are also different from court trials in that the decision-maker or adjudicator (called a Tribunal Member or Vice-Chair) is someone with specialized knowledge about the topic.

For each OJEN Mock Hearing, there are three packages:

- » **Mock Hearing Scenario**
- » **Role Preparation Package**
- » **Justice Sector Volunteer Package**

Students need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/ teachers/organizers need all three packages.

ONTARIO HUMAN RIGHTS CODE

The *Ontario Human Rights Code* is a law that applies to everyone in the province. It says that everyone is protected from discrimination in the following areas:

- Employment
- Housing
- Goods, Services and Facilities
- Contracts
- Membership in trade and vocational associations (such as unions)

In the five areas above, the *Code* protects people based on the following listed or **enumerated grounds**:

Age	Ancestry, colour, race
Citizenship	Ethnic origin
Place of origin	Creed
Disability	Family status
Marital status (including single status)	Gender identity, gender expression
Receipt of public assistance (in housing only)	Record of offences (in employment only)
Sex (including pregnancy)	Sexual orientation

You can find a copy of the complete Code online at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm

If a party believes they have experienced discrimination or harassment, they can file an **application** with the Human Rights Tribunal of Ontario. An application must be filed within one year.

Once an application has been filed, the Tribunal will first try to get both sides to reach an agreement through mediation. If the parties do not agree to try mediation, or if mediation is unsuccessful, the Tribunal will hold a hearing to decide the case. The Tribunal will send the parties a “Confirmation of Hearing” which sets the date, time and location of their hearing.

At the hearing, the person who made the application (the “Applicant”) will try to show why their application should be granted, and how the party who is affected

by the application (the “Respondent”) violated the *Code*. The Respondent can respond to the Applicant’s submissions. They can try to show that there is no violation of the *Code*, and the application should not be granted. A party may expect to question witnesses and introduce documents as evidence. The parties make arguments on both the facts and the law.

To establish discrimination under the *Code*, the Applicant must show that they have a characteristic protected by the code (e.g., race). They must also show that they experienced adverse treatment because of the characteristic.

The *Code* also states that employers have a **duty to accommodate** human rights-related needs. This means employers must adjust general rules or practices to make sure that someone who would otherwise be excluded can enjoy equal access to the benefit or service. This could involve taking reasonable steps to change policies and practices to allow equal access to everyone. There are situations where the duty to accommodate can be waived if providing accommodation to the person(s) or group(s) seeking accommodation would cause **undue hardship**.

The person in charge of the hearing is called a Tribunal Adjudicator. At the hearing, the adjudicator will apply the *Code* to make a decision on the application based on the evidence presented by the parties. In Tribunal hearings, the Applicant must prove their case on a balance of probabilities. To meet the “balance of probabilities” test, the Adjudicator must think it is more likely than not that the Applicant is entitled to the decision they are asking the Adjudicator to make. This standard is not as high as in criminal trials, where the standard of proof is beyond a reasonable doubt.

If the Adjudicator finds that there was a violation of the *Code*, a financial award and/or future compliance remedies may be ordered.

HIRING A REPRESENTATIVE FOR THE HEARING

Parties can represent themselves at the hearing, or they can have someone else present their case to the Tribunal. A party can ask a friend or family member to represent them at the hearing as long as they do not charge for this service. A party can also hire a licensed lawyer or paralegal. It is also possible to get assistance from a representative from the **Human Rights Legal Support Centre** during mediation or the hearing.

ETIQUETTE AND PROTOCOL AT THE HEARING

The Human Rights Tribunal of Ontario is not as formal as a court, but you must still show respect to the Tribunal Adjudicator and the other people in the room.

At the beginning of the hearing the Tribunal Adjudicator may tell you how they want to be addressed. The appropriate title of the Tribunal Adjudicator depends on the part-time or full-time basis of the Adjudicator’s position at the Tribunal. If you forget, you can call them “Sir” or “Madam”.

TYPES OF TRIBUNAL ADJUDICATOR	TITLE
Part-time Tribunal Adjudicator	“Member (LAST NAME)” <ul style="list-style-type: none"> i.e. “Member Kai”
Full-time Tribunal Adjudicator	“Vice-Chair,” “Mr. or Ms. Vice-Chair,” or “Vice-Chair (LAST NAME)” <ul style="list-style-type: none"> i.e. “Vice- Chair Kai”
Chair	“Chair (LAST NAME)”

When facing the Tribunal Adjudicator, the Respondent usually sits at the table to the left and the Applicant sits at the table to the right.

The Tribunal Adjudicator will tell you whether they want you to speak from your seat or move up to the witness table. Wait until the Tribunal Adjudicator seems ready to proceed. The Tribunal Adjudicator may nod or may say that you can proceed. If you are not sure, ask the Tribunal Adjudicator if you may proceed. Make sure to introduce yourself.



If it is not your turn to address the Tribunal Adjudicator, pay attention to what is happening. Take notes that you can use during your examinations or closing submissions.

During the hearing, if you need to talk with your co-representatives, write a note. Do not talk to each other while a witness is giving evidence, or the Tribunal Adjudicator is speaking.

If the Tribunal Adjudicator asks you a question, take your time to think about it before replying. If you do not hear the question, or are confused by it, ask the Tribunal Adjudicator to repeat or restate the question. If you do not know the answer, say so. Once a question has been answered, start again from where you were before the question.

TIME CHART FOR A HUMAN RIGHTS TRIBUNAL OF ONTARIO MOCK HEARING

ORDER	ACTION	TIME LIMIT
1	Tribunal Adjudicator calls hearing to order	1 min
OPENING		
2	Applicant's opening statement	3 mins
3	Respondent's opening statement	3 mins
4	Preliminary matters <ul style="list-style-type: none"> Adjudicator addresses any preliminary procedural, legal or other issues raised by the parties 	2 mins
APPLICANT'S CASE		
5	Applicant's direct examination of Applicant Witness #1 (or take the stand if self-represented)	6 mins
6	Respondent's cross-examination of Applicant Witness #1	3 mins
7	Applicant's re-direct of Applicant Witness #1 (if necessary)	2 min
8	Applicant's direct examination of Applicant Witness #2	6 mins
9	Respondent's cross-examination of Applicant Witness #2	3 mins
10	Applicant's re-direct of Applicant Witness #2 (if necessary)	2 mins
RESPONDENT'S CASE		
11	Respondent's direct examination of Respondent Witness #1 (or take the stand if self-represented)	6 mins
12	Applicant's cross-examination of Respondent Witness #1	3 mins
13	Respondent's re-direct of Respondent Witness #1 (if necessary)	2 mins
14	Respondent's direct examination of Respondent Witness #2	6 mins
15	Applicant's cross-examination of Respondent Witness #2	3 mins
16	Respondent's re-direct of Respondent Witness #2 (if necessary)	2 mins
NOTE: A member can ask questions of the Applicant, Respondent, or their witnesses at any time during the hearing.		
17	Applicant's closing submissions	3 mins
18	Respondent's closing submissions	3 mins
19	Applicant's reply (if necessary)	1 min

TIME CHART



DECISION AND CLOSING		
20	Tribunal Adjudicator deliberates and makes a decision	2 mins
POST HEARING AND DISCUSSION		
21	Tribunal Adjudicator gives feedback and discusses the hearing process, etc.	10 mins

TIME CHART

ROLE PREPARATION FOR WITNESS(ES)

As a witness, you represent the person who either has personal knowledge of the information relevant to the incident or can provide information about an issue or fact that is important to the dispute between the parties.

For instance, a witness could be a person that was present at the time the alleged discrimination or harassment occurred. Another example of a witness could be someone familiar with how a policy was created, applied in the past and is relevant to the issue in dispute.

Either one or both the Applicant and the Respondent can call on witnesses to help prove their case. However, each party is also responsible for ensuring that each witness attends the scheduled hearing date.

During the hearing, witnesses for both sides are responsible for:

- Attending the hearing
- Providing information about the issues and facts relevant to the case
- Telling the truth and being consistent about what they say throughout the case
- Clearly answering questions posed during direct and cross examinations

The **Applicant** calls their witness(es) first. When both sides have had a chance to examine each witness and they are finished testifying, the **Respondent** calls their witness(es), also to be examined by both sides.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING THE HEARING?

- Learn your facts by heart.
- You will be sworn in during the hearing and need to spell your character's full name.
- Stick to the facts included in the scenario. Don't make up facts because this is unfair to the other students.
- Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.



- If you are asked a question about something that isn't in your package you can say you don't know the answer.
- Speak with the lawyers, paralegals, agents or representatives for your side ahead of time, and get into character when you take the stand.

PREPARATION:
WITNESS

ROLE PREPARATION FOR REPRESENTATIVES

As a **lawyer, representative, agent or paralegal**, you represent either the Applicant or the Respondent during the hearing. During the hearing, representatives for both sides:

- Conduct direct examinations of their own witnesses
- Conduct cross-examinations of the other side's witnesses
- Have the opportunity to follow-up with a re-direct of their own witnesses
- Make closing submissions

The **Applicant's** representative will call their witness(es) first. When they are finished, the **Respondent's** representative goes next and calls their witness(es).

The Applicant's representative gives their closing arguments first. The Respondent's representative goes second.

Note: Applicants and Respondents do not always have representatives and often represent themselves in mediation or at the hearing.

HOW TO PREPARE FOR DIRECT EXAMINATION

- Write down all the things that your side is trying to prove.
- Read the witness' testimony carefully, several times over.
- Make a list of all the facts in the witness' testimony that help your case.
- Put a star beside the most important facts that you must make sure that your witness talks about.

CREATE QUESTIONS TO ASK THE WITNESS THAT WILL HELP THE WITNESS TELL A STORY:

- Start with questions that will let the witness tell the court who they are
 - For example: What is your name? What do you do? How long have you worked in that job?
- Move to the events in question
 - For example: What were you doing on the day in question? Where were you? When did you first hear there was a problem?

- Move to more specific questions
 - For example: What did you see? What did you do after that happened?
- Remember: do not ask leading questions (i.e. a question that suggests a specific or desired answer).
- When your witness is on the stand and you do not get a satisfactory answer after asking them a question, do not be afraid to restate the question using different words.

HOW TO PREPARE FOR CROSS-EXAMINATION

- Make a list of all the facts in the witness' testimony that hurt your case.
- If there are a lot of facts that don't help your case, can you find a way to challenge the witness' credibility? For example, can you show that the witness made a mistake or has a reason for not telling the truth?
- Put a star beside the facts you must make the witness talk about.
- Write short leading questions that move towards the key points you want to make.
- Depending on what the witnesses say, you might need to come up with different questions on the spot during the hearing. It is important to respond to the evidence your witness is giving, instead of just reading off a list of questions.

HOW TO PREPARE FOR RE-DIRECT

After cross-examination, the representative who conducted the direct examination will have the opportunity to ask the witness some further questions about anything **new** which came up during the cross-examination. This is called a "re-direct".

- Pay attention to the questions and answers given when the other side cross-examines your witness.
- Take notes. Write down anything that you would like the witness to clarify once the other side has finished cross-examining.
- **Remember that re-direct is not an opportunity to ask the questions you forgot to ask in your direct examination. You can only use re-direct to clarify issues which were raised during cross-examination.**
- It is not necessary to do re-direct if no new issues were raised.

HOW TO PREPARE CLOSING SUBMISSIONS

- Write down your key arguments and summarize the important facts you want to point out
- When delivering the closing submissions, try to speak in short, clear sentences and be brief.
- Only summarize evidence that was actually given at the hearing. This may mean you have to adjust your closing submissions during the hearing to accurately reflect the evidence that is being given
- Where a witness for the other side admitted something important to your case, point that out.
- For example: "The witness says she identified X as the person who engaged in the offensive behavior in the staff room. However, she admitted that she was outside the door, and it was difficult to hear. These facts raise real doubts about identifying X."

ROLE PREPARATION FOR THE TRIAL ADJUDICATOR

As the Tribunal Adjudicator:

- You are the decision-maker at the Human Rights Tribunal of Ontario hearing.
- You will listen to the parties, and you may ask questions at any time during the hearing.
- You may also ask the witnesses questions at any time during the hearing.
- You are a referee: the Tribunal Adjudicator is in charge of the hearing. If the parties do not behave properly, you can make them leave the hearing room and continue the hearing without them.
- You will make a final decision about the application by announcing the decision at the end of the hearing.

HOW TO OPEN THE HEARING:

When all participants are in their places, you will say:

Greeting

- Good morning/afternoon. My name is _____ and I am a Vice Chair with the Human Rights Tribunal of Ontario. I will be conducting the hearing in this matter. Feel free to call me Mr./Ms. _____ or Mr./Ms. Vice Chair.”
- “This is a hearing pursuant to the Ontario Human Rights Code into the matter of _____ v. _____, Tribunal File No. 20?? HRT0 XXXX. The purposes of this hearing are to decide: if the Applicant’s rights under the Code have **been infringed; if so**, who infringed these rights; and to decide upon an appropriate remedy under s. 45.2 of the *Code*.”

Roll Call

- “Let’s go around the room starting on my right, and I’ll ask each person to state their full name and their status in this proceeding.”
- “While we are doing that, I will pass around the Appearance Information Sheet and ask the parties to fill out the required information.”

- “I ask that you be courteous and respectful when you are appearing before the Tribunal today.”

Hearing Process

- If the parties did try mediation and it was unsuccessful, you can then proceed to say:
- “The parties should be aware that I have reviewed the following material in preparation for this hearing....”
- “On the basis of this material, I will begin by providing an overview of the issues in this matter and what I understand to be each of the parties’ positions on the issues.”
- “Following this, the Applicant will go first and will be followed by the Respondent. I will ask each of the parties or their counsel to:
 - Make an opening statement;
 - Present their evidence and any witnesses); and
 - Provide closing submissions.”

HOW TO SWEAR IN WITNESSES

Before a witness gives their testimony, you will swear them in by saying:

- “Will you please state your name? Please spell your first and last name.”

A witness can either affirm (promise) or swear on a holy book, to tell the truth. The witness is also advised of the crime of perjury, which is willfully lying under oath. Ask the witness:

- “Do you wish to affirm or swear on a Holy book?”
- “Do you understand that the crime of perjury is willfully lying under oath, whether in writing or oral and that is considered illegal by the laws of Ontario?”

NOTE: Usually the Vice-Chair will affirm a witness, unless someone specifically asks to swear on a Holy book.



If the witness chooses to affirm, you ask:

- “Do you solemnly affirm that the evidence you are about to give, shall be the truth, the whole truth and nothing but the truth?”

If the witness chooses to swear on a Holy book, you ask:

- “Do you swear that the evidence you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God?”

HOW TO RENDER A DECISION AND CLOSE THE HEARING

After both the Applicant and the Respondent have made their closing submissions and you are ready to give your decision, explain that you will be giving an oral decision today.

NOTE: usually, in a case like this the Adjudicator would rarely give a decision on the spot; it is more common that they would “reserve” their decision, write it at a later date and then mail it to the parties. However, given the limitations of a mock hearing, it is best to give a short oral decision for the benefit of the participants.

Indicate how the matter came before you.

- “The Applicant, _____, submitted an application to the Human Rights Tribunal of Ontario against the Respondent, _____, regarding allegations of discrimination on the basis of _____ in the grounds of _____ because they says that the Respondent did _____, which is a violation of the Code, under section _____.”
- “This application was heard in _____ on 20**.”
- “At the hearing, _____ raised section _____ issues relating to...”

You can choose from the following issues, depending on whether or not the Applicant raised these issues in the application:

The SPECIFIC AREA under the Code is _____ (e.g., EMPLOYMENT), which is found under section 5(1) of the Code.

The ENUMERATED GROUND(S) that were raised were: _____ (e.g. race, colour, ancestry, place of origin, ethnic origin, creed and sex), which is also found under section 5(1) of the Code.



You should next explain who attended the hearing, the witnesses who were called, and who represented the parties:

"Both _____ attended the hearing. _____ called _____ as a witness and _____ called _____ as a witness."

"The Applicant was represented by _____." (Insert name(s) of Representative(s))

The Respondent was represented by _____." (Insert name(s) of Representative(s)).

You should next briefly summarize the evidence and make factual determinations. A chart is available in the scenario package to help you organize your decision. When you are finished with your summaries and determinations, state your decision, and bring the hearing to a close:

"This hearing is now adjourned. Thank you."