

# **PROCEDURAL MANUAL FOR TRIBUNAL HEARINGS**

**ALBERTA HUMAN RIGHTS COMMISSION**

**September 2011**

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## PREFACE

The *Procedural Manual for Tribunal Hearings* was developed by members of the Alberta Human Rights Commission primarily for their use as members of human rights tribunals. The *Manual* will also provide people appearing before human rights tribunals with useful insights into what to expect.

Members of the Commission are appointed by the Lieutenant Governor through an Order in Council. The members of the Commission are selected through a publicly advertised open process, and serve for the number of years specified in the Order. They are chosen based mainly on their adjudicative skills and knowledge in the area of human rights.

The Chief of the Commission and Tribunals appoints these members of the Commission to serve on human rights tribunals and they are then referred to as **tribunal members** or **tribunal chairs**. The tribunals hear and decide human rights cases that have not been resolved through the Commission's complaint process or by Tribunal Dispute Resolution.

To ensure fair and impartial hearings, the human rights tribunal process is separate and distinct from the Commission's complaint resolution process, which is overseen by the director of the Commission. Tribunal members have no prior knowledge of or involvement with the individual complaints they hear.

For more information about the tribunal hearing process contact the Registrar at 780-427-2951 in Edmonton. For more information about the Commission's complaint resolution process contact the regional offices at 780-427-7661 in Edmonton or 403-297-6571 in Calgary. Albertans can reach any of these numbers toll free by first dialing 310-0000. Information is also available on the Commission's website at [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca).

## **SECTION 1 – THE TRIBUNAL AND ITS POWERS**

### **A. THE TRIBUNAL**

- I. Appointment of the Tribunal
- II. Composition of the Tribunal
- III. Names of Tribunal Members

### **B. POWERS**

- I. Dismissal of Complaint
- II. Finding of Merit
- III. Costs
- IV. Question of Law
- V. Public Inquiries Act
- VI. Notice to Attend



## SECTION I - THE TRIBUNAL AND ITS POWERS

### A. THE TRIBUNAL

A human rights tribunal consists of one to three members of the Commission who are appointed by the Chief of the Commission and Tribunals. The circumstances under which a tribunal is appointed and the tribunal composition is legislated in the *Alberta Human Rights Act* (the Act).

#### I. Appointment of the Tribunal

Section 27(1) of the Act provides that *the Chief of the Commission and Tribunals shall appoint a human rights tribunal to deal with a complaint in the following circumstances:*

- a) *where the Chief of the Commission and Tribunals receives a report from the director that the parties are unable to settle the complaint,*
- b) *where the Chief of the Commission and Tribunals or another member of the Commission decides under Section 26 (3) that the complaint should not have been dismissed or that the proposed settlement was not fair and reasonable.*

#### II. Composition of the Tribunal

- The Act provides that *a human rights tribunal shall consist of one or more members of the Commission, one of whom may be the Chief of the Commission and Tribunals.*
- *Where the Chief of the Commission and Tribunals or another member of the Commission has conducted a review under Section 26(3), in respect of a complaint, the Chief of the Commission and Tribunals or the other member, as the case may be, is not eligible to sit on a human rights tribunal dealing with that complaint.*<sup>1</sup>
- In practice the Chief of the Commission and Tribunals does not sit as a tribunal member to ensure that there is no apprehension of bias.

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<sup>1</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 27(2) and (3)

- *The Chief of the Commission and Tribunals may appoint one member of the tribunal to chair the tribunal.*<sup>2</sup>

### **III. Names of Tribunal Members**

The names of tribunal members will be released prior to the pre-hearing teleconference.

## **B. POWERS**

The powers of human rights tribunals are legislated in the following sections from both the Act and the *Public Inquiries Act*.<sup>4</sup>

### **I. Dismissal of Complaint**

*The Act provides that a human rights tribunal shall, if it finds that a complaint is without merit, order that the complaint be dismissed.*

### **II. Finding of Merit**

*The human rights tribunal may, if it finds a complaint has merit in whole or in part, order the person against whom the finding was made to do any or all of the following:*

- (i) to cease the contravention complained of;*
- (ii) to refrain in the future from committing the same or any similar contravention;*
- (iii) to make available to the person dealt with contrary to this Act the rights, opportunities or privileges that that person was denied contrary to this Act;*
- (iv) to compensate the person dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act;*

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<sup>2</sup> *Alberta Human Rights Commission Bylaws*, September 2009, Section 12(2)

<sup>4</sup> *Public Inquiries Act* R.S.A. 2000 Chapter P-39

(v) to take any other action the tribunal considers proper to place the person dealt with contrary to this Act in the position the person would have been in but for the contravention of this Act.

### **III. Costs**

The Act provides that *a human rights tribunal may make any order as to costs that it considers appropriate.*<sup>5</sup>

### **IV. Question of Law**

The Act provides that *a human rights tribunal may, at any stage of the proceedings before it, state in the form of a special case for the opinion of the Court of Queen's Bench any question of law arising in the course of the proceedings, and may adjourn the proceedings for the purpose.*<sup>6</sup>

- (a) A stated case shall be drafted by the Tribunal and filed with the Court of Queen's Bench of Alberta with a request for a hearing.
- (b) A request may be made to the court for the purpose of determining whether or not it would be appropriate for interveners to take part in the proceedings.
- (c) Should interveners be directed by the Justice in question, a notice to the interveners will be drafted by the Tribunal with input from the Justice hearing the matter.
- (d) The process of the hearing will be set by the Justice of the Court of Queen's Bench as directed to the tribunal chair, and upon completion, the decision of the Court of Queen's Bench, unless appealed, will form part of the exhibits for the hearing.

### **V. Powers Under the *Public Inquiries Act***

The Act provides that *a human rights tribunal and each member of the tribunal have all the powers of a commissioner under the Public Inquiries Act.*<sup>7</sup>

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<sup>5</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 32(2)

<sup>6</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 31

<sup>7</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 27(4)

Under section 3(1) of the *Public Inquiries Act*, the commissioner or commissioners may engage the services of

- (a) *counsel, clerks, reporters and assistants, and*
- (b) *experts, persons having special technical knowledge or other knowledge or any other qualified person to assist them in the inquiry.*

Under sections 3(2), 3(3) and 3(4) of the *Public Inquiries Act*:

(2) *The commissioner or commissioners may authorize a person referred to in subsection (1)(b) to inquire into any matter within the scope of the inquiry.*

(3) *A person authorized under subsection (2) has the same powers, privileges and immunities that the commissioner or commissioners have under this Act.*

(4) *A person authorized under subsection (2) shall report the evidence and the person's findings, if any, to the commissioner or commissioners.*

Under section 4 of the *Public Inquiries Act*, the commissioner or commissioners have the power of summoning any persons as witnesses and of requiring them to give evidence on oath, orally or in writing, and to produce any documents, papers and things that the commissioner or commissioners consider to be required for the full investigation of the matters into which the commissioner or commissioners are appointed to inquire.

Under section 5 of the *Public Inquiries Act*, the commissioner or commissioners have the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and to produce documents and things as is vested in a court of record in civil cases, and the same privileges and immunities as a judge of the Court of Queen's Bench.

## **VI. Notice to Attend**

Where a party is having difficulty ensuring that a witness will attend, either party to the proceedings may make an application to the tribunal chair to obtain a Notice to Attend as a witness signed by the tribunal chair. This power of the tribunal is keeping with sections 4 and 5 discussed of the *Public Inquiries Act* both of which are discussed in the previous section.



## SECTION 2 - PRINCIPLES OF NATURAL JUSTICE

- A. THE RIGHT TO BE HEARD
- B. BIAS



## **SECTION 2 – PRINCIPLES OF NATURAL JUSTICE**

The principles of natural justice include the right to be heard and the rule against bias.

### **A. THE RIGHT TO BE HEARD**

Procedurally the right to be heard may include many things. The fundamental question is always, however; has the affected individual or party been given an adequate opportunity to present their case and to meet the case against them? The right to be heard includes notice, a fair hearing, the right of cross-examination, the right to counsel, the right to disclosure of evidence, the right to witnesses, the admission of evidence, the right of adjournment, reasons for decision and the right to appeal.

### **B. BIAS**

The rule against bias provides that the person concerned is entitled to have an independent or impartial decision-maker decide the case. The right to a fair hearing requires that the decision-maker not have pre-conceived notions about how a case will be decided and not have a personal interest in the outcome of the case.

The following circumstances have been held to give rise to a reasonable apprehension of bias on the part of the decision-maker:

- (i) family relationship or close personal friendship with a party or a witness;
- (ii) business relationship with a party or a witness;
- (iii) history of animosity toward a party or the party's family;
- (iv) making statements during proceedings indicating unreasonable hostility towards a party, counsel or the case;
- (v) a pecuniary interest in the outcome of the case; (direct or indirect)
- (vi) expression of views reflecting a predisposition to decide a case a certain way;
- (vii) a previous professional connection with the case.

## **SECTION 3 – THE NATURE AND CONDUCT OF A HUMAN RIGHTS HEARING**

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- B. THE HEARING
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## **SECTION 3 – THE NATURE AND CONDUCT OF A HUMAN RIGHTS HEARING**

### **A. PRE-HEARING CONFERENCE**

Prior to the hearing, the tribunal or the parties may request a pre-hearing telephone conference. Participants may include the tribunal chair, all parties to the proceeding and/or their counsel. The purpose of the pre-hearing conference is to deal with all matters related to the hearing in order to insure a full and proper hearing and to dispose of the hearing expeditiously. Specifically, participants at the pre-hearing conference may:

1. identify the issues
2. establish the time frames for the hearing
3. exchange documents
4. receive any applications for the hearing to be held in camera
5. identify complex legal issues and preliminary matters
6. deal with any preliminary witness lists
7. identify the need for an interpreter
8. attempt to agree on facts which should be presented to the tribunal chair in writing and confirmed by all parties at the hearing
9. deal with any other matters advanced by the tribunal chair or the parties.

In the event there are complex motions to be heard at the pre-hearing telephone conference, the tribunal chair may decide to have the conference in person and encourage all parties to provide written submissions in advance.

### **B. THE HEARING**

In a human rights hearing all parties have an opportunity to present their case and their evidence and cross examine witnesses. The hearing however, is not a trial, and the technical rules of evidence do not apply. Human rights tribunals attempt to create an atmosphere in the hearing room that is respectful of the often personal and sensitive nature of the testimony.

The burden of proof rests with the complainant to show a *prima facie* case of discrimination. Once this is established the burden of proof shifts to the respondent. The burden of proof for a human rights tribunal is a civil standard which requires the party bearing the burden of proof to establish a case “on a balance of probabilities.”

## **I. Parties**

The parties pursuant to Section 28 of the Act are:

- a) *the director,*
- b) *the person named in the complaint as the complainant;*
- c) *any person named in the complaint who is alleged to have been dealt with contrary to this Act.*
- d) *any person named in the complaint who is alleged to have contravened this Act.*
- e) *any other person specified by the tribunal, on any notice that the tribunal determines, and after that person has been given an opportunity to be heard against being made a party.*

## **II. Carriage**

Under Section 29 of the Act, *the director has carriage of a proceeding before a human rights tribunal except where the Chief of the Commission and Tribunals or a member of the Commission has made a decision under Section 26(3) that the complaint should not have been dismissed or that the proposed settlement was not fair and reasonable, and in that case the complainant has carriage of the proceeding.*

## **III. Representation At Hearing**

The Act provides that *the parties to a proceeding before a human rights tribunal are entitled to appear and be represented by counsel at a hearing held by the tribunal.*<sup>8</sup>

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<sup>8</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 30(1)

The Bylaws provide that *in addition to being represented by counsel, the parties to a proceeding are entitled to appear in person or by an authorized agent.*<sup>9</sup>

#### **IV. Attendance**

The Act provides that *a human rights tribunal, on proof of service of notice of a hearing in accordance with this Act on the person against whom a complaint was made, may proceed with the hearing in the absence of that person and decide on the matter being heard in the same way as though that person were in attendance.*<sup>10</sup>

#### **V. Public Access**

The Act provides that *a hearing before a human rights tribunal shall be open to the public unless, on the application of any party, the human rights tribunal decides that it would be advisable to hold the hearing in private*

- a) *because of the confidential nature of the matter to be heard, or*
- b) *because of the potential adverse effect on any of the parties, other than the person against whom the complaint was made.*<sup>11</sup>

#### **VI. Media Protocol**

Media are entitled to attend the tribunal hearings and to sit in the public seating area. No questions, filming, taping or photographs will be allowed in the hearing room unless there is prior approval from the tribunal chair. All cell phones and personal digital assistants are to be turned off. Interviewing of the parties shall not be done in the hearing room.

#### **VII. Witnesses**

The Bylaws provide that *witnesses before a tribunal may*

- a) *be excluded from the hearing room by the chair of the tribunal until called upon to give evidence,*

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<sup>9</sup> *Alberta Human Rights Commission Bylaws, September 2009, Section 16*

<sup>10</sup> *Alberta Human Rights Act R.S.A. 2000, Chapter A-25.5, Section 30(3)*

<sup>11</sup> *Alberta Human Rights Act R.S.A. 2000, Chapter A-25.5, Section 30(4)*

b) *be questioned and cross examined by the parties to the proceeding, and*

c) *be asked questions by members of the tribunal.*

*The Commission may provide a witness with conduct money.<sup>12</sup>*

*Any witness who believes their interests may be adversely affected and any person who satisfies a commissioner or commissioners that any evidence given before a commissioner or commissioners may adversely affect their interests shall be given an opportunity during the inquiry to give evidence on the matter, and at the discretion of a commissioner or commissioners, to call and examine or cross-examine witnesses personally or by that person's counsel in respect of the matter.<sup>13</sup>*

## **VIII. Change Of Venue**

Any party to a hearing may request a change of venue. This should be made at a pre-hearing telephone conference prior to the hearing date.

Any decision for a change of venue should consider the locale most convenient for all parties. Where there is no agreement regarding a proper venue, the tribunal chair will decide. The city in which the complaint was filed or the event took place may be considered.

## **IX. Interpreter**

The tribunal shall provide, on request, an interpreter to any party or any witnesses if they do not understand or speak the language in which the hearing is conducted or are deaf.

Requests for an interpreter shall be made prior to the hearing. The cost of the interpreter should be borne by the tribunal office.

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<sup>12</sup> *Alberta Human Rights Commission Bylaws*, September 2009, Section 15(1) and (2)

<sup>13</sup> *Public Inquiries Act* R.S.A. 2000 Chapter P-39, Section 12

The tribunal may require the interpreter to take an oath or make a solemn affirmation to interpret accurately any statement made during the hearing and to translate accurately any relevant documents.

#### **X. Technical Defects**

The Act provides that *no proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.*<sup>14</sup>

#### **XI. Misconduct**

The *Public Inquiries Act* provides that *no report of a commissioner or commissioners that alleges misconduct by any person shall be made until reasonable notice of the allegation has been given to that person and the person has had an opportunity to give evidence and, at the discretion of the commissioner or commissioners, to call and examine witnesses personally or by that person's counsel in respect of the matter, notwithstanding that the person may have already given evidence or may have already called and examined witnesses personally or by that person's counsel.*<sup>15</sup>

#### **C. HEARING FORMAT**

Hearings normally follow a certain format. The tribunal chair may:

- 1) introduce the tribunal and identify all persons present
- 2) deal with the right to counsel
- 3) deal with public access and observers
- 4) designate representatives for minor or incompetent persons, if applicable
- 5) describe the hearing process which includes:
  - the informal approach
  - recording of the proceedings and transcripts
  - anticipated length of hearing

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<sup>14</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 40(2)

<sup>15</sup> *Public Inquiries Act* R.S.A. 2000 Chapter P-39, Section 13

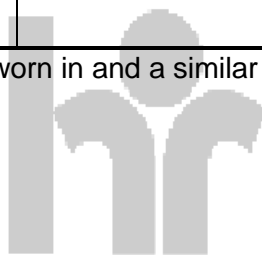
- recesses and breaks
  - legislative authority
  - the decision
  - appeal processes
- 6) deal with any preliminary matters

The order in which evidence is presented by the parties will vary depending upon many factors including whether or not the parties have legal counsel and who has carriage of the complaint, the director or the complainant. Sometimes only the complainant and the respondent give evidence at a tribunal hearing. In other cases the complainant, the respondent and witnesses for one or both of these parties give evidence. Sometimes the complainant and/or the respondent rely on expert witnesses to give evidence and do not testify themselves, although they attend the hearing. Occasionally an agreed statement of facts is presented by the parties and they proceed directly to making their arguments. Other variations are also possible. Examples of how two different situations would be handled are provided in the chart that follows.



<p style="text-align: center;"><b>Director has Carriage. Director, Complainant and Respondent all have legal counsel. No witnesses.</b></p>	<p style="text-align: center;"><b>Complainant has Carriage. Complainant and Respondent do not have legal counsel. No witnesses. Director is not participating.</b></p>
<p><b>1. Opening Statement</b></p> <ul style="list-style-type: none"> <li>- Counsel for director</li> <li>- Counsel for the complainant</li> <li>- Counsel for the respondent</li> </ul> <p><b>2. Complainant's Evidence*</b></p> <ul style="list-style-type: none"> <li>- Director's counsel examines complainant</li> <li>- Complainant's counsel examines complainant</li> <li>- Respondent's counsel cross examines complainant</li> <li>- Tribunal members ask questions</li> <li>- Director's counsel and/or complainant's counsel may re-examine complainant</li> </ul> <p><b>3. Respondent's Evidence*</b></p> <ul style="list-style-type: none"> <li>- Respondent's counsel examines respondent</li> <li>- Director's counsel cross examines respondent</li> <li>- Complainant's counsel cross examines respondent</li> <li>- Tribunal members ask questions</li> <li>- Respondent's counsel may re-examine respondent</li> </ul> <p><b>4. Submission/Argument/Final Statement</b></p> <ul style="list-style-type: none"> <li>- Director's counsel gives argument</li> <li>- Complainant's counsel gives argument</li> <li>- Respondent's counsel gives argument</li> <li>- Director's counsel and/or complainant's counsel may reply</li> </ul>	<p><b>1. Opening Statement</b></p> <ul style="list-style-type: none"> <li>- Complainant</li> <li>- Respondent</li> </ul> <p><b>2. Complainant's Evidence*</b></p> <ul style="list-style-type: none"> <li>- Complainant testifies</li> <li>- Respondent cross examines complainant</li> <li>- Tribunal members ask questions</li> <li>- Complainant may address issues raised in questioning by the respondent or the tribunal members</li> </ul> <p><b>3. Respondent's Evidence*</b></p> <ul style="list-style-type: none"> <li>- Respondent testifies</li> <li>- Complainant cross examines respondent</li> <li>- Tribunal members ask questions</li> <li>- Respondent may address issues raised in questioning by the complainant or the tribunal members</li> </ul> <p><b>4. Submission/Argument/Final Statement</b></p> <ul style="list-style-type: none"> <li>- Complainant gives argument</li> <li>- Respondent gives argument</li> <li>- Complainant may reply</li> </ul>

\* If witnesses are called, they are sworn in and a similar format is followed.



## **D. EVIDENCE**

### **I. Authority**

Section 30(2) of the Act states that *evidence may be given before a human rights tribunal in any manner the tribunal considers appropriate, and the tribunal is not bound by the rules of law respecting evidence in judicial proceedings.*

### **II. Definition**

Evidence includes all means of proving or disproving any matter, e.g. oral testimony, written records, demonstrations, etc. The term “evidence” does not include arguments on behalf of the parties (sometimes called “submissions” and “representations”) which are made to persuade the decision-maker to take a certain view of the evidence.

### **III. Admissibility**

The human rights tribunal like most administrative tribunals may accept all kinds of evidence. The tribunal is not required to accept and reject evidence based on the formal rules of evidence applicable to a civil or criminal trial.

The admissibility of evidence must be distinguished from the “weight” or “probative value” assigned to the evidence. Generally all relevant evidence may be accepted for consideration.

The probative value or weight of the evidence refers to how important it is in coming to a conclusion in the case. The only harm suffered when “weak” evidence is accepted is a loss of time in proceeding with the case. However, it is often difficult to gauge the relevance and reliability of a particular piece of evidence until all the evidence is heard.

The *Public Inquiries Act* provides that *every person has the same privileges in relation to the disclosure of information and the production of*

*documents, papers and things under this Act as witnesses have in any court.*<sup>16</sup>

Privileged communications are not admissible in evidence. Privileged communications consist of communications between a lawyer and his/her client only. There are no other privileged communications in law.

#### **IV. Expert/Opinion Evidence**

When an expert is called as a witness by one of the parties, it is within the sole discretion of the tribunal to determine whether or not the witness should be qualified as an expert.

Before an expert witness is allowed to testify, it must be demonstrated that the witness is qualified to testify by having special knowledge of the subject matter of the testimony. There are no special restrictions as to any particular class of persons who may qualify as experts. Expertise may be gained through training or experience. The suitability of the expert will depend upon the topic in issue.

The declaring of an expert witness should be made very carefully and his/her areas of expertise should be carefully stated by the tribunal for the record. Opinion evidence given by an expert should be given on hypothetical questions where the expert is qualified as an expert in a particular field and hypothetical or opinion evidence should be limited to that area of expertise.

The opinion of the expert witness and his/her qualifications should be provided to the opposing party at least 45 days prior to the hearing date or as determined by the tribunal chair.

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<sup>16</sup> *Public Inquiries Act* R.S.A. 2000 Chapter P-39, Section 9(1)

## **V. Affidavit Evidence**

Under section 10(1) and 10(2) of the *Public Inquiries Act*:

*(1) if the commissioner or commissioners consider it advisable because of the distance a person resides from where the person's attendance is required or for any other reason, the commissioner or commissioners may appoint a person to take evidence of that person and to report it to the commissioner or commissioners.*

*(2) A person appointed to take evidence under subsection (1) must, before doing so, be sworn before a justice of the peace to faithfully execute that duty.*

## **VI. Oath**

The Bylaws provide that *persons giving evidence before a tribunal shall give the evidence under oath or by affirmation.*<sup>17</sup>

## **VII. Investigation Report**

The tribunal hearing is a hearing *de novo*. This term is Latin and means “anew” or “starting again.” Only the complaint form, the response to the complaint and materials related to the appointment of the tribunal will be on file with the tribunal. The investigator's report will not be placed before the tribunal.

If an investigator's report is tendered as an exhibit by one of the parties, the tribunal chair will inform the parties that it has not been reviewed by the tribunal and will not form part of the record.

## **VIII. Submission**

The parties are requested to provide written submissions prior to the hearing. The Bylaws provide that *a submission shall state the nature of the order which is sought from the tribunal and may in addition, include:*

a) *an acknowledgement of any agreed upon facts,*

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<sup>17</sup> *Alberta Human Rights Commission Bylaws, September 2009, Section 17*

- b) *written arguments covering legal points and authorities,*
- c) *affidavit evidence,*
- d) *any document or exhibits,*
- e) *the names of the witnesses the party intends to call,*
- f) *the estimated time that the party needs before the tribunal, and*
- g) *any preliminary matters that the party intends to raise, including any questions of jurisdiction.*<sup>18</sup>

## **IX. Disclosure**

All parties should be encouraged to disclose documents within a reasonable time period prior to the hearing.

## **X. Exhibits**

All materials that are tendered at the hearing should be entered as exhibits and afforded an exhibit number. An exhibit list prepared prior to the beginning of the hearing and distributed to all the parties may aid in the expeditious review of the exhibits. The tribunal chair may inquire if any party objects to an exhibit being entered and the basis of any objection. The tribunal chair rules on the appropriateness and relevance of all exhibits and determines those that should not form part of the record.

## **XI. Protection From Giving Evidence**

The Act provides that *no member of the Commission, nor the director of the Commission or any other employee mentioned in Section 18, shall be required by any court to give evidence relative to information obtained for the purposes of this Act.*<sup>19</sup>

## **XII. Definition Of Terms**

See the Appendix for definition of terms.

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<sup>18</sup> *Alberta Human Rights Commission Bylaws, September 2009, Section 11(3)*

## **E. RECONSIDERATION**

The Act provides that *if there is new evidence available that was not available or that for good reason was not presented before the human rights tribunal in the first instance, the tribunal may, on the application of any of the parties or on its own motion, reconsider any matter considered by it and for that purpose has the same power and authority and is subject to the same duties as it had and was subject to in the first instance.*

*A human rights tribunal may not reconsider a matter under subsection (1) more than 30 days after the date of the decision on the matter in the first instance.*<sup>20</sup>

## **F. PROCEEDINGS AGAINST TRADE UNIONS**

Under sections 39 (1) and (2) of the Act:

*(1) Any proceedings under this Act may be instituted against a trade union or employers' organization or occupational association in its name.*

*(2) Any act or thing done or omitted by an officer, official, or agent of a trade union or employers' organization or occupational association within the scope of that person's authority to act on its behalf shall be deemed to be an act or thing done or omitted by the trade union or employers' organization or occupational association, as the case may be.*



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<sup>19</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 40(1)

<sup>20</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 33(1) and (2)

## **SECTION 4 – ADJOURNMENTS**

- A. COMPELLING REASONS
- B. NON-COMPELLING REASONS
- C. FACTORS TO BE CONSIDERED
- D. CONDITIONS
- E. PROCEDURE



## **SECTION 4 – ADJOURNMENTS**

The tribunal shall not adjourn a hearing unless there are compelling reasons or to deny an adjournment would amount to a denial of natural justice.

In exercising its discretion with respect to requests for adjournments the tribunal must balance, the rights of the complainant or respondent to a fair hearing against the public expectation of efficiency in processing claims.

### **A. COMPELLING REASONS**

Compelling reasons for granting an adjournment may include unavailability of the complainant or respondent or their counsel due to:

- 1) A recent death in the immediate family
- 2) Serious incapacity or illness
- 3) Court attendance required on a peremptory basis on another matter
- 4) Unexpected or unavoidable transportation problems e.g. bad weather
- 5) Complainant or respondent's counsel retained after the setting of the hearing date and the counsel is not available
- 6) Unexpected delays in the receipt of relevant documents
- 7) Unavailability of material witnesses due to:
  - a) A recent death in the immediate family
  - b) Serious incapacity or illness

### **B. NON-COMPELLING REASONS**

Non-compelling reasons for granting an adjournment include:

- 1) Absence from the city of any of the parties and/or their witnesses
- 2) Scheduling conflicts that have arisen after setting the hearing date
- 3) Insufficient time to prepare
- 4) Unavailability of easily obtainable documents

### **C. FACTORS TO BE CONSIDERED**

- 1) Previous requests for postponements/adjournments
- 2) When the hearing was scheduled (e.g. two months prior to the date)
- 3) The number and seriousness of the issues to be decided
- 4) The co-operativeness of the complainant/respondent and their counsel
- 5) The number of witnesses to be called
- 6) The timeliness of the application

### **D. CONDITIONS**

An adjournment may be granted with the following conditions:

- 1) A hearing may be scheduled peremptory on any party
- 2) Costs may be awarded

In all cases, the first request for an adjournment may be granted, if justified.

Subsequent requests should not be granted unless there are exceptional circumstances or compelling reasons.

### **E. PROCEDURE**

Requests for adjournment must be made in writing before the commencement or continuation of the hearing. The tribunal will issue its decision in writing if a request for an adjournment is made prior to the hearing date. If the request for adjournment is made prior to the hearing date and prior to a tribunal being appointed, the request shall be forwarded to the Chief of the Commission and Tribunals for decision. If the request for adjournment is made at the hearing, it should be determined by the tribunal as a preliminary matter.



## SECTION 5 – SERVICE AND FILING

- A. SERVICE OF DOCUMENTS
- B. CARRIAGE BY THE COMPLAINANT
- C. NOTICE OF HEARING



## SECTION 5 – SERVICE AND FILING

Sections of the Act and Bylaws dealing with service and filing are designed to protect the rights of the parties by requiring that proper notice be given to them and to help ensure that the Commission operates efficiently.

### A. SERVICE OF DOCUMENTS

The Act provides that *a notice or other document required by this Act or the Bylaws to be filed with the Commission is deemed to be properly filed if it is*

- a) *left in person with the Commission at one of its offices, or*
- b) *sent to any office of the Commission by registered or certified mail.*<sup>21</sup>

*A notice or other document required by this Act or the bylaws to be served on any person is deemed to be properly served if it is*

- a) *served personally on that person, or*
- b) *sent by registered or certified mail to the last address for that person known to the Commission.*<sup>22</sup>

*Where it is necessary to prove filing or service of any notice or document,*

- a) *if filing or service is effected personally, the actual date on which it is filed or served is the date of filing or service, and*
- b) *if filing or service is effected by registered or certified mail, filing or service shall be conclusively presumed to have been effected on the date of receipt or 7 days after the date of mailing, whichever occurs first.*<sup>23</sup>

### B. CARRIAGE BY THE COMPLAINANT

The Bylaws provide that *where the Chief of the Commission and Tribunals or another member of the Commission decides under section 26 of the Act that the complaint should not have been dismissed or the proposed settlement was not fair and reasonable, the complainant shall, within 30 days of being served with the decision of the Chief of the Commission and Tribunals or the decision of*

<sup>21</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 43(1)(a)(b)

<sup>22</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 43(2)(a)(b)

<sup>23</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 43(3)(a)(b)

*another member of the Commission, file with the Commission a written notice stating*

- a) the intention of taking carriage of the complaint before the tribunal,*
- b) the order or remedy requested,*
- c) a request for a tribunal hearing date and time and*
- d) the estimated time the complainant needs before the tribunal.<sup>24</sup>*

*(2) Failure to produce the notice referred to in subsection (1) shall be taken as a notice of withdrawal of the complaint.<sup>25</sup>*

*(3) The Commission shall serve a copy of the notice referred to in subsection (1) on the other parties to the complaint.<sup>26</sup>*

### **C. NOTICE OF HEARING**

The Bylaws provide that *the Chief of the Commission and Tribunals shall, not later than 10 days before the date of a tribunal hearing, serve on the parties to a proceeding a notice confirming the date, time and place of the hearing, and the proposed allotted time to be given to each party to speak before the tribunal.<sup>27</sup>*



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<sup>24</sup> *Alberta Human Rights Commission Bylaws, September 2009, Section 9(1)*

<sup>25</sup> *Alberta Human Rights Commission Bylaws, September 2009, Section 9(2)*

<sup>26</sup> *Alberta Human Rights Commission Bylaws, September 2009, Section 9(3)*

<sup>27</sup> *Alberta Human Rights Commission Bylaws, September 2009, Section 12(1)*

## SECTION 6 – DECISIONS, REASONS, AND APPEALS

A. TIMELINE

B. MAJORITY RULES

C. ORAL, WRITTEN AND DISSENTING REASONS

D. APPEAL

E. ORDER AFTER INQUIRY



## SECTION 6 – DECISIONS/REASONS/APPEALS

A decision of the tribunal is the final determination of a complaint, unless varied on appeal. Reasons are the tribunal's explanation of why they made the decision they made.

When an authority exercises a statutory power so as to adversely affect the rights of a party, the authority shall furnish to each party a written statement of its decision setting out.

- a) the findings of fact on which it based its decision, and
- b) the reasons for the decision.<sup>28</sup>

### A. TIMELINE

The Bylaws provide that *within 60 days of the conclusion of the hearing, the chair of the tribunal shall serve on the parties to the proceeding:*

- a) *a copy of the tribunal's decision or*
- b) *a statement of when the tribunal's decision will be rendered if not yet reached.*<sup>29</sup>

*The Chief of the Commission and Tribunals or the director may shorten any time period or may increase any time period in these bylaws.*<sup>30</sup>

### B. MAJORITY RULES

The Act provides that *if a human rights tribunal consists of more than one person, the decision of the majority is the decision of the tribunal.*<sup>31</sup>



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<sup>28</sup> *Administrative Procedures and Jurisdiction Act* Chapter/Regulation A-3 R.S.A. 2000, Section 7(a)(b)

<sup>29</sup> *Alberta Human Rights Commission Bylaws*, September 2009, Section 19

<sup>30</sup> *Alberta Human Rights Commission Bylaws*, September 2009, Section 20

<sup>31</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 27(5)

### **C. ORAL, WRITTEN AND DISSENTING REASONS**

Decisions may be given orally by the tribunal chair immediately upon conclusion of the hearing or at the conclusion of the hearing the tribunal may decide to reserve its decision and to present its decision and reasons in writing.

Where oral reasons are delivered, the tribunal may provide a transcript of their reasons in order to fulfill any legislative or bylaw requirements.

Where a tribunal member disagrees with the decision reached by other tribunal members, that member may provide dissenting reasons. Dissenting reasons are important to the evolution of case law. They tell the parties that the case was not clear cut and this may form a basis for appeal.

A decision is not final and will not be filed with Court of Queen's Bench until a remedy is determined.

### **D. APPEAL**

The Act provides that *a party to a proceeding before a human rights tribunals may appeal an order of the tribunal to the Court of Queen's Bench by originating notice filed with the clerk of the Court of the judicial district in which the proceeding was held.*<sup>32</sup>

### **E. ORDER AFTER INQUIRY**

Section 38 of the Act provides that:

*(1) If the order of a human rights tribunal under section 32 or the Court of Queen's Bench under section 37 did not direct a person to cease the contravention complained of, the Minister of Justice and Attorney General may apply to the Court of Queen's Bench for an order enjoining the person from continuing the contravention.*

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<sup>32</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 37(1)

*(2) The Court, in its discretion, may make the order, and the order may be enforced in the same manner as any other order under the Court of Queen's Bench.*<sup>33</sup>



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<sup>33</sup> *Alberta Human Rights Act* R.S.A. 2000, Chapter A-25.5, Section 38(1) and (2)

**APPENDIX**  
**DEFINITION OF TERMS RELATING TO EVIDENCE**

Some of the terms which arise in a discussion of the types of evidence are:

- (1) Oral evidence: Statements made by witnesses at a hearing. At tribunal hearings, witnesses give their evidence under oath or solemn affirmation.
- (2) Documentary evidence: Anything on which things are written or printed. All documents filed with the tribunal which are not in English or French must be accompanied by a certified correct translation, unless the tribunal decides otherwise.
- (3) Direct evidence: First-hand accounts of events, evidence of a fact actually perceived by a witness with his or her own sense. This is to be contrasted with hearsay and circumstantial evidence.
- (4) Hearsay evidence: Second-hand accounts of events; what someone says that another person has said, i.e. when the witness is introducing another person's statement as evidence of the truth of that statement.
- (5) Circumstantial evidence: A witness cannot always be found to prove facts from personal observation. The question in issue may then be established by proof of other facts. If sufficient other facts are proved, the court may "from the circumstances" decide the question.
- (6) Indirect evidence: Hearsay or circumstantial evidence, as contrasted with direct evidence.
- (7) Real evidence: Evidence supplied by material objects produced for inspection of the court; also known as "physical evidence".
- (8) Primary evidence of a document: The original or duplicate original document itself.
- (9) Secondary evidence of a document. Evidence of contents of a document, other than the production of the original document.
- (10) Self-serving evidence: Evidence that a witness has created for himself or herself; due to the risk of fabrication, the Courts generally do not allow a witness to submit self-serving evidence. For example, a person who

- writes to a friend stating that “X” caused the damage cannot normally introduce that letter in court as evidence that “X” did cause the damage.
- (11) Character evidence: A summary of the witness’ past actions, good and bad, or reputation in the community. It is natural to tend to judge whether a person is telling the truth now based on whether the person has or has not told the truth in the past or has been convicted of a criminal offence. Care has to be taken, of course, to ensure that a party is not unfairly prejudiced by the character evidence.
- (12) Probative value: Means that which furnishes, establishes, or contributes towards proof. Evidence has “probative value” if it tends to prove an issue. Evidence which is strong in proving a point is said to have “high probative value”.
- (13) Relevant evidence: Evidence which tends to make the existence of any fact in issue more probable or less probable than it would be without the evidence.<sup>43</sup>



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<sup>43</sup> *Members’ Handbook Convention* Refugee Determination Division, Immigration and Refugee Board, October 16, 1990, Chapter 11, p. 3 & 4