

Highlights of the new Bylaws

The new Bylaws of the Alberta Human Rights Commission, approved December 1, 2020, have reworked the past bylaws to address the process at various stages of a complaint, including a complaint with the Director or with the Tribunal.

This document is a summary of the key updates included in the 2020 Bylaws. Parties should review the actual Bylaws for specific procedures that apply to their stage of the complaint process. Parties should also review the Practice Directions posted online for matters that are at the Tribunal stage.

The Bylaws are divided into three parts:

Part 1 includes common bylaws dealing with procedures at the Director or Tribunal stage.

Part 2 applies to complaints dealt with by the Director.

Part 3 applies to complaints before the Tribunal.

Part 1: Highlights of the common bylaws to the Director and Tribunal:

- An authorized representative may represent a party to a complaint (s.8).
- A person may seek to be a litigation representative for a minor or a person who lacks mental capacity (s.7). Once a minor becomes 18 years, the litigation representative will automatically be removed from the complaint.
- Documents may be delivered by email where the parties have provided an email address. However, proof of service is still dictated by section 43 of the Human Rights Act.

Part 2: Highlights of the Bylaws that apply to matters with the Director:

Document filing

- The process for filing documents with the Director is included in section 9, including how a document may be delivered, what it must include, and when it will be deemed to be delivered.
- Documents filed with the Director regarding a complaint, unless otherwise indicated by the Director, will be delivered, by the Director, to the other parties (s. 10.6).
- Section 11 outlines the details necessary to file a complaint that will be accepted by the Director to be processed. Where a complaint is filed with missing information the complainant will be given 30 days to provide the missing information, at which time, if the information is not provided the file will be closed (s. 11.4).
- Where missing information is provided to the Director within the timelines, and the complaint is accepted as falling under the Act, the date of acceptance will be the original date the complaint was filed with the Director (s. 11.6).

Acceptance of a complaint

- Where an inquiry does not meet the requirements to be a complaint under the Act and is refused, a person may make an application to reconsider the decision not to accept the complaint. The review of the complaint inquiry will be done by a different person than the one who originally refused the inquiry (s. 11.8).
- Once a complaint has been accepted, it will be sent to the respondent for a response (s. 13). Where the respondent wants to argue that there has already been a settlement agreement signed by the parties, the issues in dispute are already the subject of another complaint, or the complaint is under federal jurisdiction, the respondent need not provide a detailed response to the complaint, but may provide the applicable information to support a dismissal or not accepting the complaint (s.13.5). The Director may still require a full response where applicable (s. 13.6).
- The Director may make amendments to a complaint to add or remove a party, area, ground or allegation; to separate complaints that name multiple respondents; to sever a complaint; or to combine two or more complaints (s.14.1). Section 14.2 outlines the submissions a party makes to support a request for amendments.

Conciliation and investigation

- Conciliation may be conducted virtually (s.15.3). The Director may accept electronic documents in proceedings such as investigations and conciliations (s.10.5).
- The responsibilities of the parties in a conciliation (s.15) and in an investigation (s.16) is outlined in these sections.

Consideration by the Director

- The Director may exercise the power to conciliate, investigate or consider a matter through direct referral (s.17). Where a respondent makes a settlement proposal to a complainant that is not accepted, under section 17.4, the respondent may provide submissions on why the matter should be discontinued after a fair and reasonable offer was made as per section 22(1)(b) of the Act. The complainant will have an opportunity to provide information on why they refused the offer.

Part 3: Highlights of the bylaws that apply to matters before the Tribunal:

Appeals of the Director's decision

- Appeals of the Director's decision are outlined in section 22 of the bylaws (and section 26 of the Act). The parties may provide additional submissions that are relevant to the original complaint, and any case citations, but need not provide hardcopies of legislation or case law.

Proceedings at the Tribunal

- Where the Director has carriage of a matter, the Director may determine the nature and extent of their participation at Tribunal (section 23).
- Proceedings of the Tribunal may be held virtually (s. 24.2 TDRs, s.26.1 pre-hearings, s. 20.2 hearings and other matters).

Settlement Agreements

- Where one party fails to comply with a signed settlement agreement, the Tribunal may hear submissions from the parties and make an order to ensure compliance.

Filing documents

- The Tribunal process for filing documents is found in section 21. The parties must file all of their documents with the Tribunal and serve them on all of the other parties. For instance, any emails sent to the Tribunal must be shared with the other parties in a complaint.
- The documents required to be submitted and the timelines in which they must be filed with the Tribunal, and served on the other parties, are outlined:
 - for an appeal of the Director's decision in section 22,
 - for a TDR in sections 24.4 and 24.5, and
 - for a tribunal hearing in sections 27.2, 27.3, and 27.4.
- The timeline for when the Tribunal considers documents to have been delivered is defined in sections 21.7 and 21.8.

Tribunal hearings

- Section 20.4 outlines some of the orders and directions that the Tribunal may make. The Tribunal may decide to consider an order on its own, or one of the parties might make an application to the Tribunal for such an order to be made.
- Where a party does not include a witness name or provide a document in advance as required, the witness will not be permitted to appear at a Tribunal hearing, or the document may not be presented, without prior permission of the Tribunal (s. 27.5).
- A party may not make submissions on a fact or issue that was not previously raised in the exchanged documents with the Director or Tribunal, unless the Tribunal is satisfied that there would be no prejudice to a party and no undue delay to proceedings (section 27.6).
- A notice to attend must be requested from the party requiring it. The practice direction on Notices to Attend can be found on the Tribunal website. The requesting party has the responsibility of delivering a notice to attend to the witness at least 21 days prior to the first day of the hearing, and to pay the attendance money and other expenses (s. 27.8).
- Where a complainant, who has been notified of a hearing, does not respond or attend, or does not comply with an Order of the Tribunal, the matter may be dismissed (s. 27.9).
- The Tribunal may proceed in the absence of a respondent where the respondent has been notified of the hearing and fails to respond or attend, or fails to comply with an Order of the Tribunal (s. 27.10). In this case, the Tribunal may determine that the respondent no longer will receive notices, is not entitled to present evidence at the Tribunal, may deem the respondent to accept all the facts alleged, may decide on the matter based solely on the materials before the Tribunal, or take any other appropriate action.
- Where a party commences an appeal of an interim decision, the Tribunal may proceed with hearing the complaint, unless otherwise ordered (s. 27.11).
- All hearings are open to the public, and all decisions are posted in the public domain (on CanLII). In exceptional circumstances, a party may request to have a decision anonymized, or privacy interests of a party protected (s.29). Initials will be used to identify children under the age of 18, and other potential parties where it is necessary to protect the identity of minors or other sensitive information (s. 29.4).
- A party that has given notice, before the end of a hearing, that costs will be requested may, within 7 days of the Tribunal decision, ask for costs (s. 32).

Withdrawal and reconsideration of a complaint

- A complainant may withdraw a complaint by filing a Notice of withdrawal form. The respondent may respond or object to the notice of withdrawal no later than 5 days after it is delivered to them (s. 30.2). In this case, the complainant may only withdraw the complaint on such terms as determined by the Tribunal.
- Under section 33 of the Act, a party may ask for a reconsideration of a tribunal decision, within 30 days of a decision. The bylaws outline further details on when the extraordinary remedy allowing a reconsideration of a decision is permitted and what submissions must be provided (s. 31).

Contact the Alberta Human Rights Commission

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To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

TTY service for persons who are deaf or hard of hearing: to call toll-free within Alberta, dial 1-800-232-7215.

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