

LEARNING DISABILITIES ASSOCIATION OF ONTARIO
Submission to Consultation on HRTO Proposed Rules of Procedure
March 2008

The Learning Disabilities Association of Ontario (LDAO) is the provincial association representing the interests of persons with learning disabilities throughout Ontario. Originally founded in 1963 to assist parents of children with learning disabilities to obtain access to special education services, the LDAO has expanded its mandate to include adolescents and adults who have learning disabilities, in postsecondary and employment sectors.

The Learning Disabilities Association of Ontario is pleased to have the opportunity to comment on the *Proposed Rules of Procedure* for the Human Rights Tribunal of Ontario. Over the past two years LDAO has corresponded with then Attorney General Michael Bryant, Tribunal Chair Michael Gottheil and Helena Birt, Transition Director of the Human Rights Legal Support Centre, and made a submission to the Standing Committee on Justice Policy on Bill 107. We continue to be concerned that the new process for human rights complaints be simple enough that individuals with learning disabilities are able to navigate the system and that they receive appropriate supports and accommodations at every stage.

Comments on the *Information on the Proposed Process for Resolving Human Rights Applications*

The *Information on the Proposed Process for Resolving Human Rights Applications* on the HRTO website is quite well explained, but would not be sufficient for an individual who was unrepresented to follow the process and deal with all the forms required. If an applicant was not able to access the services of the Human Rights Legal Support Centre, they would need someone else to help them through the process. Unfortunately there are restrictions on who can provide such advocacy support, and there is no mechanism of funding for disability advocates.

The *Proposed Rules of Procedure* refer to “the Tribunal”, whereas the *Information on the Proposed Process* talks about “the adjudicator”. The latter explanation of the process implies that one person will play many roles, from helping the applicant understand the process, to scheduling a summary hearing or conference call, to assigning a mediator, to conducting a pre-hearing assessment, to ultimately making the final decision. There could be perception of some conflict of interest in performing all these roles. Also, it is usual in a tribunal for more than one decision-maker to be involved in the final decision.

Specific comments on the *Proposed Rules of Procedure*:

RULE 1 GENERAL RULES

Powers of the Tribunal

1.7 x) This clause gives too much discretion to the Tribunal, without any clear accountability

Representatives

1.15 New By-laws of the Law Society Act may severely restrict disability organizations in supporting individuals with disabilities.

Filing Documents with the Tribunal

Individuals with learning disabilities may require help with filling out documents, organizing and formulating their ideas in recounting their experiences on the application, and organizing their own documents.

RULE 2 ACCOMMODATION OF *HUMAN RIGHTS CODE*-RELATED NEEDS

2.1. Persons with learning disabilities may require a variety of supports and accommodations at all stages of the Tribunal process. Receptive and expressive language difficulties may interfere with their understanding of legal processes and ability to present information, and extra time may be needed because of problems with organization, time management and memory. Having materials available in alternative formats will be necessary for all those who have a print impairment.

RULE 3 TRIBUNAL PROCEEDINGS

Setting Dates in a Proceeding

3.3 If the hearing dates are set without consultation with the parties, there should be a process for rescheduling if the applicant or respondent has compelling reasons.

Recording of Proceedings

3.6 Some individuals with learning disabilities might require this accommodation so that they can go over the proceedings later in order to understand them.

Non-Attendance at a Hearing

3.12 There may be legitimate reasons for a party to fail to attend a hearing, or the disability itself may be a reason, so a process for rescheduling should be available.

RULE 9 REPLY

An applicant with a language-based learning disability might need help understanding the Response, and formulating a Reply.

RULE 11 REQUEST TO INTERVENE

11.1 There should be transparent guidelines on how the Tribunal determines “the extent to which an intervenor will be permitted to participate in a proceeding”. These guidelines should include consideration of the wishes of the Applicant.

11.6 It is hard to understand in what circumstances the Commission would intervene without the consent of the Applicant. In most cases the Applicant’s wishes should be honoured, and if there are systemic issues, the Commission could make a separate application.

RULE 16 MEDIATION

The *Information on the Proposed Process* states that the Tribunal mediator would have experience in human rights law. In addition to this, the mediator would need to be trained and qualified in mediation processes, and be considered impartial by both sides. This role should be filled by someone other than the adjudicator of the case.

RULE 21 TRIBUNAL-ORDERED INQUIRIES

The inquiry process is not outlined or explained in *Information on the Proposed Process*. Questions arise about qualifications for the person conducting the inquiry and who pays for the inquiry.

RULE 27 REQUEST FOR RECONSIDERATION

27.5 Reasons for reconsideration should include disability-related reasons for missing a deadline or hearing.

Thank you for the opportunity to submit these comments for your consideration.