

The Vexatious Litigant A Tribunal Perspective

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Human Rights Tribunal of Ontario
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The HRTO Context: The Parties

- The Tribunal receives approximately 3200 applications each year alleging violations of the *Human Rights Code*, R.S.O 1990 c. H.19, as amended.
- Applicants are typically members of Code protected, often disenfranchised, groups;
- Some applicants will come to the Tribunal with mental health issues, sometimes acknowledged often not.



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The HRTO Context: The Parties

- Respondents are not always large sophisticated organizations represented by counsel.
- In most cases there are one or more individual respondents to the Application.



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The HRTO Context: The Parties

- Depending on the stage of the proceeding respondents tend to be much more often represented by counsel or paralegal than applicants. Particularly at the hearing stage applicants are most often self represented.



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The HRTO Context: The Problem

- In 2008 Ontario adopted what has become known as the direct access model for the resolution of human rights disputes
- The Tribunal does not require filing fees and has no authority to award costs
- Many of the parties (mostly applicants) are self represented
- Significant case load



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The HRTO Context

The vexatious litigant absorbs enormous amount of staff and adjudicative time limiting the access of other parties to the Tribunal's services.

The conduct of a vexatious litigant will often impose a significant direct burden on the other parties in the case.

Since 2008 the Tribunal has made 19 vexatious litigant declarations.



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The HRTO Context: The Rules

- Pursuant to its statutory mandate the Tribunal has made Rules in an effort to ensure the fair, just and expeditious adjudication of the Applications before it



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The HRTO Context: The Rules

However in order to ensure access to justice the legislature has imposed some limits on this power. Of particular note in this discussion is the requirement that an Application within its jurisdiction not be dismissed without affording the parties an opportunity to make oral submissions.

See Section 43(2) of the Code.



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The HRTO Context: The Rules

The Tribunal's Rules seek to achieve the following goals:

Ensure access to justice for all of the parties before it;

Ensure fairness between the parties in any particular case;

Prevent the abuse of the Tribunal's process;

Prevent the abuse of one party by another.



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The HRTTO Context: SPPA

- Section 23(1) of the SPPA empowers a Tribunal to make such Orders as are necessary to prevent an abuse of its process.



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The HRTO Context: The Rules

A3.1 The rules and procedures of the tribunal shall be liberally and purposively interpreted and applied to:

- (a) promote the fair, just and expeditious resolution of disputes,
- (b) allow parties to participate effectively in the process, whether or not they have a representative,
- (c) ensure that procedures, orders and directions are proportionate to the importance and complexity of the issues in the proceeding. (emphasis added)



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The HRTTO Context: The Rules

A4.1 The tribunal may exercise any of its powers at the request of a party, or on its own initiative, except where otherwise provided.



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The HRTO Context: The Rules

A7.1 All persons participating in proceedings before or communicating with the tribunal must act in good faith and in a manner that is courteous and respectful of the tribunal and other participants in the proceeding.



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The HRTO Context: The Rules

A8.1 The tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.



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The HRTO Context: The Rules

- A8.2 Where the tribunal finds that a person has persistently instituted vexatious or conducted a proceeding in a vexatious manner, the tribunal may find that person to be a vexatious litigant and dismiss the proceeding as an abuse of for that reason. It may also require a person found to be a vexatious litigant to obtain permission from the tribunal to commence further proceedings or take further steps in a proceeding.



The HRTO Context: Electronic Filing

- The Tribunal's Rule 1.21 permits electronic filing.
- A not unusual behaviour of the vexatious litigant at the Tribunal has been the filing of voluminous materials with the Tribunal and/or the repeated delivery of voluminous materials to the other parties or groups and individuals associated with an opposing party.
- See *Dai v. Presbyterian Church in Canada*, 2012 HRTO 1975



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Roy v. SBT, 2014 HRTO 449, para. 17

In order to prevent the ongoing abuse of the Tribunal's process which I have found has occurred by the applicant's conduct in his multiple proceedings before the Tribunal, the Tribunal confirms and clarifies its earlier Direction that **all** communication by the applicant with the Tribunal shall be by regular mail to the Registrar. **The Tribunal will not accept or respond to any communication by the applicant which is delivered electronically** including any Requests for Leave to file an Application, any Applications, and any Requests for Order, any Requests for Reconsideration or any other communication of any kind. **Communications from the applicant delivered by any other means (including electronic means) will not be acknowledged or processed by the Tribunal.**



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The HRTO Context: The Order

- The applicant is declared a vexatious litigant. I order that the applicant Clive Roy may not file further applications at this Tribunal without leave of the Tribunal.
- If the applicant seeks leave of the Tribunal to file any such future application he must include with his complete application submissions that outline why the application is intended as a legitimate assertion of his Code rights, is not intended to vex the respondents and will not result in an abuse of process. The Tribunal will consider any future applications which fail to include these submissions as incomplete and will treat them as such.
- See *Roy v Toronto (City)*, 2014 HRTO 214 at para: 118



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The HRTO Context: Other Tools

The Summary Hearing

- 19A.1 The Tribunal may hold a summary hearing, on its own initiative or at the request of a party, on the question of whether an Application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application or part of the Application will succeed.



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The HRTO Context: Other Tools

- The NOID (Rule 13)
- Where it appears that an Application may be outside of the Tribunal's jurisdiction the Tribunal may issue a NOID directing the applicant to explain in written submissions how their Application falls within the Tribunal's jurisdiction.



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