

TRIBUNAL Practice Note No. 3 --- CASE MANAGEMENT

The Tribunal has a duty to conduct inquiries expeditiously and fairly pursuant to section 48.9(1) of the *Canadian Human Rights Act*. Accordingly, and subject to the Tribunal's direction on a case-by-case basis, the Tribunal will apply the following pre-hearing case management process:

INITIAL LETTER FROM THE TRIBUNAL

Following the referral of the complaint to the Tribunal, the Tribunal Registry will send an Initial Letter inviting each party to participate in evaluative mediation.

During an evaluative mediation the Tribunal Member will evaluate the relative strengths and weaknesses of the positions advanced by the parties and may provide the parties with a non-binding opinion as to the probable outcome of the inquiry.

The Initial Letter will request that the parties either:

- accept evaluative mediation and indicate their availability for a one-day evaluative mediation session, to take place within approximately eight (8) weeks of the date of the Initial Letter, or
- decline evaluative mediation.

The parties shall respond to this letter within two (2) weeks of the date of the Initial Letter. If a party does not respond then the party will be deemed to have declined evaluative mediation.

The Initial Letter will also confirm that mediation briefs shall be filed with the Tribunal **three (3) weeks** prior to the date that the Tribunal fixes for evaluative mediation.

Mediation briefs shall particularize each party's position regarding the remedies sought (see Appendix "A" for more information) and must quantify all monetary compensation sought and/or proposed. Upon review of the mediation briefs by the Tribunal, the Tribunal may cancel the mediation if the briefs do not sufficiently address these issues.

RESPONSE TO THE INITIAL LETTER FROM THE TRIBUNAL

In its response to the Initial Letter, each party must indicate whether it declines or accepts evaluative mediation. If evaluative mediation is accepted, each party must indicate the dates of availability for a one day evaluative mediation session (the date, time and location will be confirmed by the Tribunal). Regardless of whether the parties wish to proceed to evaluative mediation, each party must indicate:

- a. the address, facsimile number and phone number, and e-mail of agent/ representative or legal counsel, if applicable;
- b. preferred language of proceedings (English and/or French);
- c. identification of preliminary issues, if any (e.g. requests for joining of files, possible motion to dismiss a complaint, adding a party, etc);
- d. special needs or other concerns of the parties, if any.

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If any of the parties are unrepresented and require direction from the Tribunal at this stage the party may request the same in its response.

CONFIRMATION LETTER

After all parties have responded to the Initial Letter, the Tribunal will send a letter to confirm disclosure dates and the date for the First Case Management Conference Call.

If evaluative mediation is accepted by the parties, the Confirmation Letter will also indicate the date and location fixed for the mediation. It will also confirm the deadline to submit mediation briefs.

DISCLOSURE BY THE PARTIES

Further to the Tribunal's Rule of Procedure 6(5) parties are reminded that they have an ongoing duty to disclose any new relevant document as soon as it comes into their possession.

The Commission

The Commission's file shall be disclosed to the other parties:

- a. within three (3) weeks of the Confirmation Letter where mediation is not mutually accepted;
- b. within three (3) weeks of the mediation session, where no settlement occurred during the mediation session.

The Complainant

The Complainant (and the Commission, if it is participating) must provide, within two (2) weeks of the date fixed for service of the Commission's File, a document with the following information:

- a. **Statement of Particulars**, such information must include material facts (i.e. chronology of events leading up to the complaint), legal issues, relief sought, etc., (in accordance with Rules 6(1)(a), (b) and (c) of the *Tribunal Rules of Procedure*). (See Appendix "A" for more information).
- b. **Disclosure of Documents** which is a list of all relevant documents (including documents relating to claims for monetary loss) and identifies both *Non-Privileged Documents and Privileged Documents*, (in accordance with Rules 6(1)(d) and (e) of the *Tribunal Rules of Procedure*). All documents that are arguably relevant to the complaint must be sent to the other parties, (in accordance with Rule 6(4) of the *Tribunal Rules of Procedure*). The Tribunal should only receive a list of the documents disclosed and should not receive the disclosed documents before the hearing.
- c. **Identification and Summary of Anticipated Testimony of Proposed Witnesses** which summary consists of a signed witness statement or affidavit clearly outlining the direct evidence of each witness, (in accordance with Rule 6(1)(f) of the *Tribunal Rules of Procedure*). In addition, the party will be required to indicate in writing whether it has

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elected to call an expert witness at the hearing of the inquiry, and in the affirmative must indicate:

- the credentials of the expert witness;
- the field or discipline of the intended witness' expertise;
- the issue that the expert will provide an opinion about.

The Complainant and the Commission (if it is participating) must provide, within five (5) weeks of the date fixed for service and filing of the Complainant's and the Commission's Statement of Particulars, **any Expert Witness Reports**, (in accordance with Rule 6(3)(a) of the *Tribunal Rules of Procedure*).

Reply:

The Complainant and the Commission (if it is participating) may, within one week, reply to the Respondent's Statement of Particulars, (in accordance with Rules 6(2)(a) and (b) of the *Tribunal Rules of Procedure*). The parties shall identify the facts with which they agree and those with which they disagree in respect of the Respondent's Statement of Particulars.

The Respondent

The Respondent must provide, within three (3) weeks of the date fixed for service and filing of the Complainant and Commission's (if it is participating) Statement of Particulars, a document with the following information:

- Statement of Particulars**, the Respondent shall identify the facts with which it agrees and those with which it disagrees in respect of the Statement of Particulars of the Complainant and the Commission (if it is participating). Such information must include material facts (i.e. chronology of events leading up to the complaint), legal issues, relief sought, etc., (in accordance with Rules 6(1)(a), (b) and (c) of the *Tribunal Rules of Procedure*). (See Appendix "A" for more information).
- Disclosure of Documents** which is a list of all relevant documents (including documents relating to claims for monetary loss) and identifies both *Non-Privileged Documents and Privileged Documents*, (in accordance with Rules 6(1)(d) and (e) of the *Tribunal Rules of Procedure*). All documents that are arguably relevant to the complaint must be sent to the other parties, (in accordance with Rule 6(4) of the *Tribunal Rules of Procedure*). The Tribunal should only receive a list of the documents disclosed and should not receive the disclosed documents before the hearing.
- Identification and Summary of Anticipated Testimony of Proposed Witnesses** which summary consists of a signed witness statement or affidavit clearly outlining the direct evidence of each witness, (in accordance with Rule 6(1)(f) of the *Tribunal Rules of Procedure*). In addition, the party will be required to indicate in writing whether it has elected to call an expert witness at the hearing of the inquiry, and in the affirmative must indicate:
 - the credentials of the expert witness;
 - the field or discipline of the intended witness' expertise;
 - the issue that the expert will provide an opinion about.

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The Respondent must provide, within six (6) weeks of the date fixed for service and filing of the Respondent’s Statement of Particulars, **any Expert Witness Reports**, (in accordance with Rule 6(3)(a) of the *Tribunal Rules of Procedure*).

FIRST CASE MANAGEMENT CONFERENCE CALL

In the week following the due date for the Complainant’s and Commission’s (if it is participating) reply, the Tribunal will convene a First Case Management Conference Call with the parties at which time dates for the hearing of the complaint will be fixed. The parties must ensure that all witnesses, including expert witnesses, are available for the dates that they propose for the hearing. In addition, any outstanding issues requiring the Tribunal’s intervention will be addressed.

POST-DISCLOSURE EVALUATIVE MEDIATION

The Tribunal may offer post-disclosure evaluative mediation 2 weeks before the hearing.

SCHEDULE

Week #	PARTY	OBLIGATION	RULE
Week 0 <i>(Date to be established in the Tribunal's second letter)</i>	Commission (CHRC)	Filing of the Commission's file and disclosure to other parties	
Week 2 <i>(2 weeks after CHRC file is provided)</i>	CHRC and Complainant	Statement of Particulars (<i>material facts; legal issues; relief sought</i>) Election to call expert witness, general subject of proposed testimony and credentials Identify Documents (<i>Non-Privileged and Privileged</i>) Identify non-expert witnesses and provide signed witness statement or affidavit	6(1)(a), (b), (c) 6(1)(d),(e) 6(1)(f)
Week 5 <i>(3 weeks after CHRC /</i>	Respondent	Statement of Particulars (<i>material facts; legal issues; relief proposed</i>) Election to call expert witness, general subject of proposed testimony and credentials Identify Documents (<i>Non-Privileged and Privileged</i>)	6(1)(a), (b), (c) 6(1)(d), (e)

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Week #	PARTY	OBLIGATION	RULE
<i>Complainant serve particulars and disclosure)</i>		Identify non-expert witnesses and provide signed witness statement or affidavit	6(1)(f)
Week 6 <i>(one week after the Respondent's particulars and disclosure)</i>	Complainant and CHRC	Reply submissions	6(2)
Week 6-7 <i>(following Respondent's disclosure date, the Tribunal will set a date approximately within 2 weeks)</i>	CHRC, Complainant and Respondent	FIRST CASE MANAGEMENT CONFERENCE CALL Identification of outstanding issues requiring the Tribunal's intervention. Scheduling of hearing dates	5
Week 7 <i>(2 weeks after Respondent serves particulars and disclosure)</i>	CHRC and Complainant	Expert Witness Report	6(3)(a)
Week 11 <i>(4 weeks after CHRC / Complainant serve expert report)</i>	Respondent	Expert Witness Report Possible second Case Management Conference Call	6(3)(a)

DATED AT OTTAWA, THIS th DAY OF DECEMBER 2010

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APPENDIX “A”

REMEDIES (RELIEF SOUGHT)

The parties must particularize their positions regarding the remedies sought or proposed further to sections 53(2)(a),(b),(c),(d),(e), 53(3), 53(4) and 54 of the *Canadian Human Rights Act*. This outline must include the following information, if applicable:

Wage Loss

- dates of employment and unemployment (start & end);
- all wages or money received or claimed (e.g. salary, EI, disability, pension, etc.);
- employment status during the period in question: part-time or full-time;
- amount of employment insurance or disability benefits received;
- any other amounts claimed;
- total amount claimed for section 53(2)(c) of *CHRA*;
- any other monies received relevant to this claim.

Any supporting documents used to calculate the wages loss and expenses must be disclosed and attached with an outline/chart including T4s, Notice of Assessments, pay stubs, income tax returns.

Additional costs incurred

- the nature of the additional costs of obtaining alternative goods, services, facilities or accommodation;
- the expenses incurred.

The complainant must provide supporting documentation.

Pain and suffering

- The nature of the pain and suffering experienced;
- The amount claimed for compensation (not exceeding \$20,000).

The complainant must provide supporting documentation.

Special compensation

- Supporting information to determine that the person is engaging or has engaged in discriminatory practice wilfully or recklessly;
- The amount claimed for special compensation (not exceeding \$20,000).

The complainant must provide supporting documentation.

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Interest

- Explanation of the interest claimed;
- The rate and amount of the interest claimed.

The complainant must provide supporting documentation.

Re-instatement

- Determination if re-instatement is requested and to which position.