

Subject: Practice Direction for Electronic Conduct of Mediations and Hearings During the Covid-19 Emergency

Date of Issue: May 1st, 2020

Introduction

This Practice Direction (“PD”) is intended to serve during the Covid-19 Emergency to ensure that the Canadian Human Rights Tribunal (CHRT or Tribunal) matters can keep moving forward. It is not in the interests of justice to create a large backlog in the Tribunal’s operations and to add undue delay to Tribunal files, where a fair alternative is available. There is no perfect solution, and it is therefore necessary to manage the risks to ensure continued access to justice in the face of the current public health crisis.

This PD provides guidance to the parties for the use of videoconferencing for:

- (a) Inquiry proceedings before the Tribunal pursuant to the *Canadian Human Rights Act* (CHRA); and
- (b) Mediations conducted by a CHRT Member.

This PD is meant to supplement the Rules of procedure of the CHRT, practice directions, and our mediation procedures. It is also meant to be flexible, and will apply to all new matters, but should be readily adapted and applied as well to matters which have begun pre-pandemic. There is no one-size-fits-all approach, and the Tribunal will work with the parties to adapt the PD to the specific circumstances of each case. Finally, the PD does not mandate how mediations and hearings should be conducted. The mediator or member assigned to your case will ultimately decide how the mediation and hearing will be conducted, after hearing from the parties.

Mediations are not mandatory and, in some cases, they may be cancelled if parties do not agree to an electronic form of mediation. The Tribunal wishes to avoid significant delay that may result from waiting for an in-person mediation.

This PD will be updated regularly, as the Covid-19 Emergency evolves. It applies to all cases scheduled for mediation or hearing from now on.

General Provisions

1. Nothing in this PD affects any power that a member or a panel has under the CHRA, the *Rules of Procedure of the CHRT*, or the common law.

2. For the time being, no in-person hearings or mediations can be conducted due to the COVID-19 Emergency. However, matters may proceed by remote electronic access, either videoconference or telephone.
3. In accordance with s. 52 of the CHRA, all hearings remain public, unless a party files a motion to require confidentiality measures and such motion is granted. Accordingly, video recordings of the hearings conducted using videoconference and audio recordings of the hearings conducted using telephone will be made and retained as part of the Official Record. Mediations remain confidential and no recordings of them will be made.

Electronic Filing

4. All documents that are required for the hearing of any matter are to be filed in electronic format only. If hardcopy materials have already been filed, parties must file electronic copies of all materials necessary for the hearing of any matter, as set out below. When the Registry receives the electronic documents, it will acknowledge its reception with the parties.
5. Documents filed must either be in a PDF, txt, or Microsoft Office format. Parties are required to designate a file name for each document they submit that identifies their role in the matter (Commission, Complainant, Respondent, Interested Party etc.), the file number and a short description of the content of the document. (*e.g.* T1234/5679-Complainant-SOP.docx)
6. The file name of a document subject to a confidentiality order must be clearly identified as such, (*e.g.* T1234/5678-Complainant-SOP-CONFIDENTIAL.docx) and should be password protected. Parties must contact the Registry if they need to file a document that is protected.
7. Parties may use any document transmission service that provides shared links to online or cloud drives to serve and file documents. Parties bear responsibility for ensuring that any such services employ necessary safety, security and confidentiality protocols.
8. The size of filing by email is limited to 10MB. Documents that are larger than 10MB must be divided into smaller parts and this should be reflected in the file names. (*e.g.* T1234/5678-Complainant-SOP-Part I; T1234/5678-Complainant-SOP-Part II). Parties should be aware that their internet service/email provider may have stricter limitations on the permitted size of attachments.
9. Electronic service under this Practice Direction shall constitute proper service unless the affected party shows otherwise.

10. Parties are asked not to file books of authorities. Instead, when citing authorities in their written submissions, Parties should simply include hyperlinks to publicly available databases such as CanLII, or the CHRT website. When such hyperlinks are unavailable, parties can send an electronic copy of the authorities (subject to the 10 MB size limit) and highlight the relevant passages.
11. The mediator, the member or the panel will provide more specific instructions about electronic filing of documents for each matter, as needed. Members or mediators will address any pre-hearing or pre-mediation matters in due time.

Mediation and Hearing Proceedings Using Videoconferencing

12. The member or the panel conducting a hearing by videoconference must do so in a manner consistent with the principles of natural justice, ensuring that the parties have sufficient opportunities to present evidence and argument.
13. The mediator conducting a mediation by videoconference must do so in a manner consistent with the terms of the *CHRT Mediation Agreement*.
14. The Registry will send a notice of the hearing or mediation to the parties as soon as practicable. The notice will include, among other things, the following:
 - a. The start time of the event;
 - b. The meeting ID for the event;
 - c. A functioning link for signing into the meeting;
 - d. General Information on how to join the videoconference; and
 - e. A prohibition against sharing the sign-in link/information with any individuals who are not legitimately expected to attend the event.
15. The mediator, the member or the panel may convene a conference call with the parties to answer any questions they may have about the videoconference and to work with the parties to prepare the videoconference event.
16. Parties shall make sure they have the tools readily available to participate at the videoconference, such as access to the videoconferencing program and access to a microphone and a camera.
17. The Tribunal may set up a test session with the parties in advance of the event. Parties can contact the Registry for any question or for support.

Witnesses

18. During the hearing, oaths will be administered by the member or the panel as in the usual course, however the member or the panel should also caution the witness regarding all

measures necessary to ensure the integrity of the testimony and the proceedings. This would include, for example, assurances that the witness is not communicating with persons other than examining counsel, or consulting documents without the consent of the member or panel.

19. Where necessary, the member or the panel will ensure that measures are taken to permit confidential discussions (*i.e. in camera* proceedings), and that rules and procedures regarding the exclusion of witnesses are put into effect.