

# Procedure When Raising a Human Rights Or Charter Question

---

## 1.0 This Practice Direction:

- explains the obligations of a party who intends to raise a Human Rights question under the *Ontario Human Rights Code*<sup>1</sup> with respect to the legislation or WSIB Policy applicable to the Tribunal
- explains the obligations of a party who intends to raise a question under the *Canadian Charter of Rights and Freedoms*<sup>2</sup> with respect to the legislation or WSIB Policy applicable to the Tribunal
- explains the Tribunal's procedure where a Human Rights or Charter issue has been raised in accordance with this Practice Direction; and
- sets out the effect of a party failing to follow the procedure set out in this Practice Direction.

## 2.0 Principles

- 2.1** The Workplace Safety and Insurance Appeals Tribunal ("Tribunal") can consider a Human Rights question to its legislation under the *Ontario Human Rights Code*, in accordance with the decision of the Supreme Court of Canada in *Tranchemontagne v. Ontario*<sup>3</sup> (*Director, Disability Support Program*).
- 2.2** The Tribunal can consider a Charter question to its legislation under the *Canadian Charter of Rights and Freedoms*, in accordance with the decision of the Supreme Court of Canada in *Nova Scotia (Workers' Compensation Board) v. Martin*<sup>4</sup>.
- 2.3** The purpose of this Practice Direction is to allow the parties, the Tribunal, the Attorney General of Ontario and the Attorney General of Canada to receive sufficient notice of appeals that raise Human Rights or Charter questions.

---

<sup>1</sup> *Ontario Human Rights Code*, R.S.O. 1990, c. H.19

<sup>2</sup> *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, R.S.C. 1985, Schedule B to the *Canada Act 1982 (U.K.) 1982*, c. 11.

<sup>3</sup> [2006] 1 S.C.R. 513

<sup>4</sup> [2003] 2 S.C.R. 504

### 3.0 Written Notice of Human Rights Question

3.1 Where a party to an appeal intends to raise a Human Rights question under the Ontario *Human Rights Code* with respect to the legislation or WSIB Policy applicable to the Tribunal, the party must file a written notice at the Tribunal containing:

- a detailed explanation of the Human Rights question raised consisting of the material facts of the challenge raised
- the section(s) of the Ontario *Human Rights Code* relied upon, or the legal basis for the argument
- the desired remedy
- the name, address, telephone and fax numbers of the party's representative, if any
- the name and WSIAT number of the appeal in which the issue is raised.

3.2 The party raising the Human Rights question must send written notice of the Human Rights question to the Attorney General of Ontario and to any other parties to the appeal as soon as the circumstances requiring it become known.

3.3 Notice sent under sections 3.1 and 3.2 must be received as soon as possible, and in any event no later than 60 (sixty) days before the first scheduled hearing date.

### 4.0 Written Notice of Charter Question

4.1 Where a party to an appeal intends to raise a question under the *Canadian Charter of Rights and Freedoms* with respect to the legislation or WSIB Policy applicable to the Tribunal, the party must comply with section 109 of the *Courts of Justice Act*. One of the requirements under section 109 is to serve a notice of constitutional question on the Attorney General of Canada and the Attorney General of Ontario. The notice must be served as soon as the circumstances requiring it become known. A copy of the notice of constitutional question must also be provided to the Tribunal and all parties to the appeal.

4.2 The notice of constitutional question should be similar to the form provided in the Ontario Rules of Civil Procedure. The notice must contain:

- a detailed explanation of the Charter question raised consisting of the material facts of the challenge raised
- the section(s) of the *Canadian Charter of Rights and Freedoms* relied upon, or the legal basis for the argument, identifying the nature of the constitutional principles to be argued
- the desired remedy
- the name, address, telephone and fax numbers of the party's representative, if any
- the name and WSIAT number of the appeal in which the issue is raised.

## **5.0 Tribunal Procedure Regarding Human Rights or Charter Question**

- 5.1** A Human Rights or Charter question that is raised in accordance with this *Practice Direction* will be addressed by the Tribunal only after a decision has been made on the other issues in the appeal under the applicable legislation and Board policy.
- 5.2** Where the Tribunal has made a final decision on the other issues to the appeal so that a decision on the Human Rights or Charter question is no longer required, the Tribunal will not decide the Human Rights or Charter question.
- 5.3** The Tribunal may consider other procedural methods for dealing with a Human Rights or Charter question, in addition to the procedure set out in this *Practice Direction*, where circumstances require.

## **6.0 Disclosure of Information: Written Submissions and Evidence**

- 6.1** Parties to an appeal involving a Human Rights or Charter question must comply with the same disclosure requirements as required for an oral hearing before the Tribunal in the *Practice Direction: Disclosure, Witnesses and the Three-Week Rule*. Written submissions and evidence must be served on the other party or parties to the appeal and filed with the Tribunal in advance of the hearing in accordance with the relevant disclosure provisions in the *Practice Direction: Disclosure and the Three-Week Rule*.

**6.2** Written submissions and evidence from the parties in respect of the Human Rights or Charter question raised on the appeal will not be required until such time as the Tribunal hears the Human Rights/Charter question.

**7.0 Effect of Failure to Follow *Practice Direction***

**7.1** Where a party to an appeal before the Tribunal fails to follow the procedure set out in this *Practice Direction* for raising a Human Rights or Charter question, that party will not be entitled to raise the Human Rights or Charter question in any proceeding before the Tribunal unless otherwise ordered by the Tribunal.

Dated at Toronto, Ontario this 1st day of October, 2007  
Workplace Safety and Insurance Appeals Tribunal  
I.J. Strachan, Tribunal Chair