

**PROCEDURE REGARDING HUMAN RIGHTS
ISSUE OR CHALLENGE**

The Supreme Court of Canada decision in the case of *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] S.C.J. No. 14 (“*Tranchemontagne*”) released on April 21st, 2006, confirms that the Social Benefits Tribunal (“the Tribunal”) has jurisdiction to consider challenges to its governing legislation, namely, the *Ontario Disability Support Program Act, 1997* and/or the *Ontario Works Act, 1997*, under the provisions of the *Ontario Human Rights Code* (“the *Code*”). The Court also held that the Tribunal cannot decline to exercise this jurisdiction.

This *Practice Direction* sets out the Tribunal’s procedure to be followed for dealing with a human rights issue or challenge (“*Code* challenge”) that is raised under the *Code*, including notice and filing requirements. This process will allow the Tribunal and the parties to receive sufficient notice of appeals that raise *Code* challenges so that these challenges can be dealt with in an efficient and effective manner, while maintaining a fair appeal process.

1. **Effective Date**
 - 1.1 This *Practice Direction* replaces the *Practice Direction* which was effective June, 2006. This new *Practice Direction* takes effect on October 1st, 2007.
2. **Law**
 - 2.1 Sections 34 and 47 of the *Code*.
 - 2.2 Sections 25.0.1 and 25.1 of the *Statutory Powers Procedure Act*.
 - 2.3 Sections 72, 73, 74, 76, 78 and 79, O. Reg. 134/98, Amended to O. Reg. 383/05 under the *Ontario Works Act, 1997*.
 - 2.4 Sections 61, 62, 63, 65, 67, and 68, O. Reg. 222/98 under the *Ontario Disability Support Program Act, 1997*.

2.5 *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] S.C.J. No. 14.

3. Definitions

3.1 A “Code challenge” described in this *Practice Direction* refers to a human rights issue or challenge made to the Tribunal’s legislation raised under the *Code* in an appeal before the Tribunal.

3.2 A “party” to a *Code* challenge described in this *Practice Direction* refers to any person and/or public or private organization or entity named in the appeal, including the Attorney General for the Province of Ontario and the Ministry of Community and Social Services, and any other person and/or public or private organization or entity that the Tribunal so directs.

3.3 The “merits” of the appeal refers to the issue(s) on the appeal that is not related to the *Code*.

3.4 The “Stage 1 hearing” refers to the first part of the hearing of the appeal by the Tribunal regarding the merits of the appeal.

3.5 The “Stage 2 hearing” refers to the second part of the hearing of the appeal by the Tribunal regarding the *Code* challenge.

4. General Principles

4.1 This *Practice Direction* applies to all appeals before the Tribunal in which a *Code* challenge is raised.

4.2 Where a *Code* challenge has been raised on an appeal before the Tribunal, any person, party or person seeking to be added as an intervener in the appeal is required to follow the procedure set out in this *Practice Direction* for the hearing of the *Code* challenge.

4.3 The timelines set out in this *Practice Direction* may be extended upon notice to the Tribunal where the Tribunal is satisfied that:

- the extension request is made in good faith;

- no substantial prejudice will result to any party affected by the grant of the extension; and,
- there are unusual or exceptional circumstances to warrant the extension.

- 5. Written Notice of Code challenge** 5.1 Where a party intends to raise a *Code* challenge with respect to the Tribunal’s legislation, the party must provide written notice of the *Code* challenge at the time of filing its appeal with the Tribunal or during the appeal process.
- 6. Letter of Acknowledgment & Request for Particulars**
- 6.1 Where the Tribunal receives written notice of a *Code* challenge under subsection 5.1, the Tribunal will send a letter to the party raising the *Code* challenge acknowledging the appeal and requesting particulars regarding the *Code* challenge.
- 6.2 The party raising the *Code* challenge referred to in subsections 5.1 and 6.1 must provide the particulars to the Tribunal within thirty (30) days of receiving the Tribunal’s letter requesting the particulars.
- 6.3 The requested particulars referred to in subsections 6.1 and 6.2 regarding the *Code* challenge include:
- the listed area(s) of the alleged discrimination under the *Code*;
 - the listed ground(s) of the alleged discrimination under the *Code*;
 - the relationship between the claim of the alleged discrimination and the ground(s) selected;
 - the reason(s) for the alleged discrimination;
 - the evidence to be relied upon in support of the claim of the alleged discrimination; and,
 - the desired remedy or resolution.
- 7. Sharing Particulars With Parties** 7.1 Within ten (10) days of receipt of the requested particulars referred to in subsection 6.3, the Tribunal will send a copy of the particulars to all parties to the appeal.
- 8. Participation in Code Challenge** 8.1 Any party in receipt of the particulars sent in accordance with subsection 7.1 must notify

the Tribunal in writing of its intention to participate in the hearing of the *Code* challenge within ten (10) days of receiving the particulars.

- 8.2 Within ten (10) days of receiving a party's notice of its intention to participate in the hearing of the *Code* challenge under subsection 8.1, the Tribunal will notify any other party to the appeal of the party's notice of intention to participate in the hearing.
- 8.3 Where a party does not file a written notice of its intention to participate in the *Code* challenge under subsection 8.1, it will be assumed that the party will not be participating in the *Code* challenge.
- 8.4 Where a party indicates its intention to participate in the *Code* challenge under subsection 8.1, the party must provide the Tribunal with a written response to the particulars within thirty (30) days of receiving the particulars.
- 8.5 The Tribunal will send a copy of the party's response to the particulars provided under subsection 8.4 to any other party to the appeal.
- 8.6 Upon receipt of the response to the particulars provided under subsection 8.4, the party raising the *Code* challenge may provide a written reply to the response, and if so provided, must send the reply to the Tribunal within fifteen (15) days of receiving the response to the particulars.
- 8.7 Upon receiving a party's reply prepared under subsection 8.6, the Tribunal will send a copy of the reply to any other party to the appeal.

9. Pre-Hearing Conference

- 9.1 As a general rule, the Tribunal will hold a pre-hearing conference to determine the procedure for the hearing of the *Code* challenge.
- 9.2 The Tribunal will schedule a pre-hearing conference after sending out the particulars to the parties to the appeal in accordance with subsection 7.1.
- 9.3 A pre-hearing conference will only be held after the Tribunal has received all written responses to the

particulars under subsection 8.4 and any reply to the written responses under subsection 8.6 or the time for submitting the written responses and reply has elapsed.

9.4 Unless there are exceptional or unusual circumstances, the pre-hearing conference will be conducted by way of telephone conference by a member of the Tribunal or delegate of the Chair of the Tribunal.

9.5 The Tribunal will provide reasonable written notice of the date and time for the pre-hearing conference to all parties.

10. Tribunal Procedure Regarding the Code Challenge

10.1 As a general rule, a *Code* challenge raised in accordance with this *Practice Direction* will be addressed by the Tribunal only after the merits of the appeal have been heard by the Tribunal.

10.2 Where the Tribunal grants the appeal on the merits after the Stage 1 hearing, the appeal will be concluded and the Tribunal will not deal with the *Code* challenge.

10.3 The merits of the appeal may be disposed of by the Tribunal in various ways, including:

- a. The party raising the *Code* challenge concedes on the merits of the appeal at the pre-hearing conference held by the Tribunal;
- b. The party raising the *Code* challenge notifies the Tribunal in writing that he/she concedes on the merits of the appeal;
- c. The Stage 1 hearing is scheduled and the party raising the *Code* challenge concedes on the merits of the appeal;
- d. The Stage 1 hearing is held and the Tribunal issues a decision regarding the merits of the appeal; and/or,
- e. The merits of the appeal and the *Code* challenge are heard together in one hearing.

- 10.4 Where the Tribunal denies the appeal on the merits after the Stage 1 hearing, the Tribunal will schedule the Stage 2 hearing to consider the *Code* challenge.
- 10.5 Where a party concedes on the merits of the appeal in accordance with subsection 10.3, the Tribunal will schedule the Stage 2 hearing to consider the *Code* challenge.
- 10.6 Where the Tribunal issues a decision regarding the merits of the appeal, a party who so wishes may apply to the Tribunal for a reconsideration of the Tribunal's decision in accordance with the Tribunal's *Practice Direction 2 – Reconsideration Requests* and the applicable legislation.
- 11. Code Challenge Frivolous and/or Vexatious**
- 11.1 Where a written notice of a *Code* challenge has been filed with the Tribunal in accordance with this *Practice Direction*, the Tribunal may refuse to hear the *Code* challenge where it determines that the *Code* challenge is frivolous and/or vexatious.
- 11.2 Where the Tribunal determines under subsection 11.1 that it will not hear the *Code* challenge, the Tribunal will notify the party who filed the written notice of the *Code* challenge of its determination and will confirm whether the party wishes to proceed with the hearing on the merits of the appeal, absent the *Code* challenge.
- 11.3 Sections 4, 5, 6, 7, 8, 9 and 10 of this *Practice Direction* do not apply with respect to the Tribunal's procedure for dealing with a *Code* challenge where the Tribunal determines the appeal to be frivolous and/or vexatious under this section.
- 12. Application for Intervener Status**
- 12.1 Any person or public or private organization or entity ("the moving party") seeking status to intervene in an appeal before the Tribunal must bring a motion before the Tribunal to request intervener status.
- 12.2 The moving party must file a notice of motion with the Tribunal, to the attention of the General Manager, prior to the hearing of the appeal by the Tribunal. The notice of motion must:

- state the ground(s) upon which the intervener request is based, including any statutory provision or rule that will be relied upon; and,
 - list the documentary evidence, if any, that will be raised at the hearing of the motion.
- 12.3 Upon receipt of the notice of motion seeking intervener status, the Tribunal will advise the moving party of the date and time for the hearing of the motion and will send a copy of the moving party's notice of motion to all of the parties to the appeal, together with the date and time for the hearing of the motion.
- 12.4 A party in receipt of a notice of motion seeking intervener status ("the responding party") may prepare a response to the notice of motion, within fifteen (15) days of receiving the notice of motion, outlining the responding party's position on the motion, including any documentary evidence that will be relied upon at the hearing of the motion.
- 12.5 The Tribunal will send a copy of the responding party's response to any other party to the appeal within five (5) days of receiving the response.
- 12.6 After hearing the motion seeking intervener status, including the oral and written submissions of the moving party and any other responding parties, the Tribunal will issue a written decision granting or dismissing the motion.
- 12.7 Where the Tribunal grants the motion under subsection 12.6, the moving party will be added as a party to the appeal.
- 12.8 A motion brought under this section may be heard by the Tribunal by telephone or video conference or by way of a paper hearing in writing where the nature of the motion or the circumstances make an oral hearing unnecessary or impracticable or the delay necessary to conduct an oral hearing might entail serious consequences.

13. Effect of Failure to Follow *Practice Direction*

- 13.1 Where a party to an appeal before the Tribunal does not follow the procedure set out in this *Practice Direction*, that party may not be entitled to participate in the *Code* challenge, and the Tribunal may not consider or continue the *Code* challenge except in unusual or special circumstances, or where the Tribunal, in its sole discretion, determines otherwise.