



Practice Direction 8 - Pre-Hearing Conferences

As provided for under the *Statutory Powers Procedure Act*, the Social Benefits Tribunal (“the Tribunal”) may direct the parties to a hearing before the Tribunal to attend a pre-hearing conference. The purpose of a pre-hearing conference is to provide the parties with an opportunity, prior to the hearing, to discuss the preparations for, and the conduct of, the Tribunal hearing. This may include defining and narrowing the issue(s) in dispute; agreeing to certain facts of the case; disclosing potential evidence and witness lists; consolidating different appeals that raise the same issue; sharing and exchanging other information pertaining to the hearing; deciding on the conduct of the hearing; and, discussing possibilities for the early resolution of the appeal.

This *Practice Direction* sets out the Tribunal’s procedure to be followed for scheduling and conducting pre-hearing conferences. Generally speaking, a pre-hearing conference may be held at the request of a party or at the direction of the Tribunal. Where an appeal raises a human rights issue under the Ontario *Human Rights Code*, however, the parties shall be required to attend a pre-hearing conference to discuss the procedural issues regarding the conduct of the main hearing.

A pre-hearing conference can reduce the length of, and simplify, the main hearing by helping the parties to prepare properly for the hearing and by prompting pre-hearing disclosure of each party’s case. As such, it is anticipated that this new process governing pre-hearing conferences will allow the Tribunal to conduct more efficient, focused and effective hearings.

1. Effective Date

1.1 This *Practice Direction* is effective February 1, 2007.

2. Law

2.1 Sections 5.1, 5.2, 5.2.1, 5.3 and 25.0.1 of the *Statutory Powers Procedure Act*.

3. General Principles

- 3.1 The Tribunal may direct the parties to attend a pre-hearing conference in accordance with the provisions of the *Statutory Powers Procedure Act* and the Tribunal's *Practice Direction*.
- 3.2 A "pre-hearing conference" described in this *Practice Direction* refers to a meeting involving the parties to the appeal, conducted by a member of the Tribunal, by way of one or a combination of the following: telephone, videoconference, oral in-person session, or written hearing.
- 3.3 This *Practice Direction* applies to all appeals filed with the Tribunal, including those appeals in which a human rights issue is raised under the provisions of the Ontario *Human Rights Code*.
- 3.4 A pre-hearing conference is intended to deal with procedural issues related to the main hearing of the appeal, to inform the parties about the preparation required for the main hearing, and, where appropriate, to discuss the early resolution of the appeal. This may include defining and narrowing the issue in dispute, including any human rights issue raised under the Ontario *Human Rights Code*; disclosing potential evidence and witness lists; consolidating appeals which involve the same or similar questions of fact, law or policy; discussing the possibility of resolving the appeal; and, preparing an agreement of facts and evidence.
- 3.5 The parties shall not present evidence at a pre-hearing conference.

4. Who is a "Party" to a Pre-Hearing

- 4.1 A "party" to a pre-hearing conference held before the Tribunal as described in this *Practice Direction* refers to any person who has filed an appeal with the Tribunal and any other person as specified by the Tribunal.

5. Request for a Pre-Hearing

- 5.1 Upon the request of a party, the Tribunal may direct the parties and/or their representatives to attend a pre-hearing conference prior to the main hearing.

6. Direction to Attend a Pre-Hearing

5.2 A party who requests a pre-hearing conference under subsection 5.1 above shall file a written request with the Tribunal setting out the reasons for the request within ten (10) days of the filing of the appeal.

6.1 The Tribunal shall direct that the parties and/or their representatives attend a pre-hearing conference prior to the main hearing where a human rights issue under the Ontario *Human Rights Code* is raised in the appeal, unless there are unusual or special circumstances to dispense with a pre-hearing conference.

6.2 Where a pre-hearing conference has not been held prior to the main hearing of the appeal, and a human rights issue under the Ontario Human Rights Code is subsequently raised during or after the main hearing, the Tribunal shall direct the parties to attend at a pre-hearing conference to discuss the hearing of the human rights issue.

6.3 The Tribunal shall also direct the parties and/or their representatives to attend a pre-hearing conference prior to the main hearing where it considers that a pre-hearing conference may assist in the just and expeditious disposition of the appeal.

7. Notice of Pre-Hearing

7.1 Where the Tribunal has granted a party's request for a pre-hearing conference under subsection 5.1 above, or where the Tribunal has directed that a pre-hearing conference be held under either of subsections 6.1, 6.2 or 6.3 above, the Tribunal shall notify the parties in writing of the pre-hearing conference.

7.2 The Notice of Pre-Hearing Conference issued under subsection 7.1 above shall set out the format for the pre-hearing conference (i.e. telephone conference, videoconference, oral hearing) and the date, time and location of the pre-hearing conference.

8. Conduct of a Pre-Hearing

7.3 The Notice of Pre-Hearing Conference referred to in subsection 7.2 shall be sent to the parties as soon as practicable following the grant of the party's request for a pre-hearing conference under subsection 5.1 or the Tribunal's direction to attend at a pre-conference hearing under either of subsections 6.1, 6.2 or 6.3.

8.1 A pre-hearing conference held in accordance with this *Practice Direction* shall be conducted prior to the main hearing of the appeal, or after the main hearing, where a human rights issue is raised under the Ontario *Human Rights Code* during or after the main hearing.

8.2 The Chair of the Tribunal may designate a member of the Tribunal to preside at the pre-hearing conference.

8.3 Where the parties consent, the member of the Tribunal who presided at the pre-hearing conference may conduct the main hearing of the appeal.

8.4 As a general rule, an electronic (telephone or videoconference) pre-hearing conference shall be conducted where the purpose of the pre-hearing conference is to deal with procedural matters.

8.5 An oral, in-person pre-hearing conference shall be held where a party satisfies the Tribunal that an electronic pre-hearing conference is likely to cause the party significant prejudice.

8.6 The Tribunal reserves the right to hold any combination of electronic, oral or written pre-hearing conferences in respect of an appeal filed with the Tribunal, in addition to the procedure set out in this Practice Direction, where it will assist in the just and expeditious disposition of the appeal or in unusual or exceptional circumstances.

9. Issues to Consider at a Pre-Hearing

9.1 A pre-hearing conference may be held to deal with any or all of the following:

- the issue to be dealt with at the main hearing and whether the issue can be clarified or simplified
- whether to consolidate appeals that deal with the same or similar questions of fact, law or policy;
- whether any facts or evidence may be agreed upon by the parties;
- whether a party should be removed and excluded from participation in the main hearing or whether a person or other entity should be added as a party to the main hearing;
- the dates by which any steps in the appeal process are to be taken or begun;
- the estimated length of the main hearing;
- the order of proceedings at the main hearing;
- the resolution of the appeal, including the possibility of conducting an Early Resolution Session under the Tribunal's Early Resolution Program; and,
- any other matter that may assist in the just and expeditious disposition of the appeal.

10. Pre-Hearing Outcomes

- 10.1 At the conclusion of the pre-hearing conference, the parties may agree to deal with any procedural issue discussed by way of consensus.
- 10.2 The presiding member of the pre-hearing conference shall issue a written procedural order or direction regarding the procedural issues related to the main hearing of the appeal where: the parties have consented to the same pre-hearing conference member conducting the main hearing of the appeal in accordance with subsection 8.3 above; where so requested by a party; or, where the member is of the opinion that a procedural order or direction is necessary in the circumstances.
- 10.3 Where the presiding member issues a written procedural order or direction in accordance with subsection 10.2 above, the procedural order or direction shall be sent to the parties within ten (10) days of the date of the pre-hearing conference.

- 10.4 Where the appeal has been resolved during or following the pre-hearing conference, the appeal shall be withdrawn as soon as practicable by the party who filed the appeal.
- 10.5 For the purposes of subsection 10.4, the Tribunal shall notify all parties in writing that the appeal has been resolved and as such, the appeal shall not proceed to a main Tribunal hearing.