

Case Path Pilot Practice Direction

Background

The Tribunal is launching a one-year pilot project regarding the process for considering complaints under s. 27 of the *Human Rights Code* [**Case Path Pilot**]. Section 27(1) of the *Code* gives the Tribunal discretion to dismiss complaints without a hearing to conserve resources and promote timely resolution of complaints. This section plays a “gatekeeping function” for the Tribunal to safeguard against the time and expense of hearings where one is not warranted. In the context of significantly increased case volumes, the practice of allowing respondents to elect making a s. 27(1) dismissal application has led to the Tribunal dedicating disproportionate resources to these applications and contributed to delay.

Under the Case Path Pilot, the Tribunal will more actively exercise its discretion to invite submissions under s. 27(1) to promote timely and fair resolution of complaints.

Case Path Pilot

The Case Path Pilot applies to all cases where the Tribunal did not automatically set dates for an application to dismiss the complaint, including those that were captured by the Practice Direction of November 8, 2021 *Emergency Pause on New Applications to Dismiss* [**Emergency Pause**].

This Practice Direction replaces the Emergency Pause and sets out an interim process under s. 27(1) of the *Code*. It also replaces the practice direction *Application to Dismiss a Complaint Against Individual Respondents* issued November 7, 2019. The Case Path Pilot does not limit the Tribunal’s discretion under ss. 27(1) or 27.2(3) or otherwise to manage a complaint proceeding.

Process

The Tribunal will set dates for the disclosure of documents after a respondent files a response to complaint. The Tribunal may modify the deadlines for disclosure in [rule 20\(2\)-\(3\)](#) of the Tribunal’s Rules of Practice and Procedure.

After the deadline for document disclosure under [rule 20](#), the Tribunal will review the complaint and response(s), including amendments, to determine the process or “path”. There are two “paths” in the Case Path Pilot. The first is the default path, proceeding directly to hearing. The second is submissions under s. 27(1). The paths will operate as follows:

Hearing Path

When a complaint is proceeding directly to a hearing, the Tribunal will notify the parties by letter. The Tribunal will schedule a case conference with the parties to set down hearing dates and discuss next steps.

Submissions Path

When the Tribunal assesses that submissions under s. 27(1) of the *Code* may further the just and timely resolution of the complaint, it will provide instructions to the parties, including a deadline for submissions. Examples of when such circumstances may arise include:

- The Tribunal may not have jurisdiction over the complaint: s. 27(1)(a).
- The complaint may not set out an arguable contravention of the *Code*: s. 27(1)(b).
- The factual disputes indicate that the matter may be resolved in a faster and fairer way through written submissions than an oral hearing: s. 27(1)(c).

For example, it appears that factual disputes could be determined based on documents and would not need the cross-examination of witnesses at a hearing.

- The complaint names individual respondents whose participation may not further the purposes of the *Code*: s. 27(1)(d)(ii).
- The complaint may have been resolved in another proceeding or in a settlement agreement: s. 27(1)(d)(ii) and (f).
- All or part of the allegations in the complaint are filed outside the time limit: s. 27(1)(g).

The Tribunal may determine more than one issue under s. 27 applies. The Tribunal's practice direction [Page Restrictions on Applications to Dismiss a Complaint](#) continues to apply.

Request to File Dismissal Application

Where a case has been assigned to the hearing path or if a respondent wants to make submissions under s. 27(1) not set out in the Tribunal's instructions for the submissions path, a respondent may file a [Form 7.5 – Request to File a Dismissal Application \[Request\]](#) based on new information or circumstances. Any Request must be filed within 14 days of:

- the letter advising that the complaint will be scheduled for a hearing, or
- the date on which new information or circumstances that form the basis of an application come to the respondent's attention.

New information must not include information already set out in the complaint or response to complaint.

Continued Suspension of Rule 19 Application to Dismiss

The deadline to file an application to dismiss a complaint set out in [rule 19\(2\)-\(3\)](#) of the Tribunal's Rules of Practice and Procedure remains suspended.

The deadline in [rule 19\(4\)](#) is modified to require a respondent to file the Request at least four months before the date set for a hearing.

Effective Period of Practice Direction

This Practice Direction was put into effect on May 6, 2022, for one year and has been extended to May 1, 2025. For reasons explained in the *Case Path Pilot Extension and Review*, the Practice Direction is extended to May 1, 2026.

Emily Ohler

Chair