



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

**Bile Ali, Abyan Ali, Abdullah Ali, Ladan Ali, Mustafa Ali,
Ruki Ali, Saido Gashan, Mohamed Faqi, Hussein Geire,
Maha Jabur, Adar Haji, Saido Hersi, Mohamed Yusuf
and Abdullahi Sadiq**

Applicants

-and-

**Hazelview Investments Inc.,
City of Ottawa, Mustang Equities Inc.,
TC Core GP, TC Core LP**

Respondents

CASE ASSESSMENT DIRECTION

Adjudicator: Eva Nichols

Date: May 19, 2023

File Numbers: 2019-36509-I, 2019-36510-I, 2019-36511-I, 2019-36512-I,
2019-36513-I, 2019-36514-I, 2019-36515-I, 2019-36516-I,
2019-36517-I, 2019-36518-I, 2019-36519-I, 2019-36521-I,
2019-36522-I, 2019-36523-I

INTRODUCTION

[1] These are 14 Applications, previously consolidated by the Tribunal, alleging discrimination on the grounds of race, colour, place of origin, ethnic origin, family status and receipt of public assistance in housing. The Applications were filed in April 2019. The Applications which were originally also filed against the City of Ottawa as well have now been withdrawn against that respondent.

[2] The respondents have since confirmed in their Response that there are an additional 23 Applications filed with the Tribunal alleging the same breaches of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (“Code”) and which name the same respondents. It is also alleged that the parties have agreed among themselves that the remaining 23 Applications should also be consolidated with the others, creating a very large single cluster for the purposes of adjudication before the Tribunal. This has not so far been confirmed by counsel for the applicants.

[3] The Applications allege that the named respondents, primarily their current and/or former landlord, engaged in discriminatory activities which resulted in some, most or all of the applicants being displaced from their homes. The Applications also allege that the actions of the landlords amounted to “demographic engineering” and was focussed upon the “elimination of multi-cultural and ethnic enclaves”. The applicants claim that the respondents wished to rebuild the development where they lived and replace the buildings as well as the residents with “more desirable” residents.

[4] The Applications also allege that the landlord neglected the tenants’ concerns and allowed the properties to deteriorate, as a way of trying to drive the tenants away and vacate the properties. Where the tenants did not move of their own accord, the Applications allege a system of evictions.

[5] The applicants seek a series of remedies including, but not limited to, an order that the respondents build and offer the applicants new rental units such as or very similar to

those that they had occupied previously provided at the same monthly rent, as well as a large sum of monetary compensation for each of them for the alleged breach.

[6] The respondents have filed an equally long response, where they deny the allegations made in the Applications and look to the Tribunal to dismiss them as having no reasonable prospect of success of proving that there has been a breach of the *Code*.

[7] They request that the Tribunal does this by scheduling a summary hearing to address their assertion that the Applications have no reasonable prospect of success of proving a breach of the *Code*. In this statement, they rely on certain past Tribunal decisions which have stated that the *Code* is not intended to provide individuals with the opportunity to file public interest applications or to bring forward systemic discrimination allegations independently or differing from individual claims.

[8] The respondents also allege that economic or social conditions are not among the grounds protected by the *Code*. Further, that as the Tribunal has stated previously, the *Code* does not guarantee a right to housing, although housing is one of the social areas protected by the *Code*.

[9] The purpose of this Case Assessment Direction (“CAD”) is to set out the next steps for addressing these Applications in a productive and purposeful manner.

[10] Based on the above submissions from the parties and the issues raised in the Applications and the Response, the Tribunal has decided to hold a summary hearing to decide the following issue:

- whether the Tribunal should dismiss all or part of these Applications because there is no reasonable prospect that all or some part of these Applications will succeed.

[11] This is called a “summary hearing”. In addition to the description below, please also see the enclosed frequently asked questions sheet for more information and you

may also review the Tribunal's Practice Direction on Summary Hearing Requests, which is available on the HRTO website.

WHAT IS A SUMMARY HEARING?

[12] Where it appears that there is no reasonable prospect that all or part of an Application (or as is the case here, several Applications filed by different applicants, naming the same respondents and/or alleging the same or closely linked facts of discrimination) will succeed, the Tribunal may determine that it is appropriate to hold a summary hearing on that issue. The summary hearing gives the applicants an opportunity to explain more fully the allegations contained in the Application. It also provides the Tribunal with the opportunity to hear arguments from the parties before it makes its decision whether the matter should continue within the Tribunal process to a hearing on the merits of the Applications.

[13] There are no witnesses called to testify at a summary hearing and the parties are not expected to submit any documents for the summary hearing. Instead, the Tribunal will make its decision based on the materials already filed by the parties and their oral submissions at the summary hearing.

[14] The Tribunal will dismiss an Application or Applications after a summary hearing, if it determines that there is no reasonable prospect that it or they will succeed at proving a breach of the *Code* by the named respondents. In some cases, the Tribunal may find that only a part of the Application has no reasonable prospect of success, and the Tribunal may permit the remainder of the Application or Applications to continue in the Tribunal's process.

IS THERE NO REASONABLE PROSPECT THAT ALL OR PART OF THESE APPLICATIONS WILL SUCCEED?

[15] As stated above, these Applications allege a breach of the *Code* on the grounds of race, colour, place of origin, ethnic origin, family status and receipt of public assistance in the social area of housing. The applicants allege that the named respondents,

discriminated against them in the way that they dealt with their requests for repairs of their homes, and in the way that they displaced them from their homes with the goal of redevelopment and attracting a different group of tenants.

[16] It is not clear whether the applicants have any evidence to establish a link between the respondents' actual and/or alleged actions and the *Code* grounds that the applicants rely upon. At the summary hearing the applicants will be expected to explain what evidence they expect to be able to call at a hearing on the merits of the Applications to support the link between the allegations and the *Code* grounds that the rely upon.

[17] The Tribunal cannot decide general allegations of unfairness that are unrelated to the *Code*. At the summary hearing the applicants will be expected to explain how the respondents' alleged actions could and did amount to a violation of the *Code*. While I note that the applicants claim that they are not making general allegations of unfairness but claim that they experienced direct discrimination under the *Code*, that is not entirely clear from the contents of the Applications and the references to international law and such social concepts as demographic engineering.

[18] Further, it is not clear how the alleged contraventions of the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 by the respondents have any direct or even indirect link to the alleged breaches of the *Code*.

NEXT STEPS AND DIRECTIONS

[19] When the Tribunal considers how to address the issues raised by a cluster or group of Applications that allege the same or similar facts, it often proceeds on the basis of one or two test cases. Such examples include the cases where the special diet allowance provided by the Province of Ontario is concerned (*Ball v. Ontario (Community and Social Services)*, 2010 HRTO 360) or the funding of Jewish schools by the Province of Ontario (*Zuchter v. Ontario (Education)*, 2021 HRTO 49).

[20] As a first step, the applicants need to decide, preferably among themselves, which Application or Applications of the 14 that have already been consolidated by the Tribunal will be the test case or form the test case cluster. Such a cluster may be two or three of the Applications already filed and which, in the opinion of the applicants, will allow for the most comprehensive presentation of the issues before the Tribunal.

[21] Once this has been determined among the applicants, they need to inform the Tribunal and the other party or parties of the test cases that will be the basis of the summary hearing.

[22] The Registrar will schedule a summary hearing with the parties held by videoconference. Although summary hearings are typically scheduled for a half day, given that there will likely be up to three test case Applications heard in this instance, the summary hearing will be scheduled for a full day.

Additional Documentation, Witnesses, and Case Law

[23] If the parties wish to refer to any additional documents at the summary hearing, other than the documents already filed, they must deliver them to the Tribunal and each other no later than 30 days before the scheduled summary hearing.

[24] As noted above, no witnesses are called to testify at a summary hearing.

[25] If the parties wish to rely upon any case law at the hearing, they must provide the Tribunal and the other party a list of cases they intend to refer to in the hearing at least 14 days before the hearing. Parties are required to provide the other parties copies of the cases on their case list at the same time as they send them their list. Parties are not required to provide the Tribunal with copies of any cases that are publicly available on the CanLII legal website (<https://www.canlii.org/en/on/onhrt/>).

[26] For additional information on summary hearings, please consult the Frequently Asked Questions document included with this CAD and the Tribunal's Practice Direction

on Summary Hearing Requests available on the Tribunal's website at <http://www.sjto.gov.on.ca/hrto/rules-and-practice-directions/>.

DIRECTIONS

[27] The parties are directed to comply with the directions set out in this CAD.

[28] The Registrar will schedule a one-day summary hearing for the matter.

Dated at Toronto, this 19th day of May, 2023.

A handwritten signature in black ink that reads "Eva Nichols". The signature is fluid and cursive, with a horizontal line underneath it.

Eva Nichols
Member



HUMAN RIGHTS TRIBUNAL OF ONTARIO

SUMMARY HEARINGS: FREQUENTLY ASKED QUESTIONS (FAQ)

What is a summary hearing?

A summary hearing is used to determine at an early stage whether an application should be dismissed because it has no reasonable prospect of success. The rules relating to summary hearings are found in Rule 19A of the HRTO's Rules of Procedure.

What is the difference between a summary hearing, a preliminary hearing and a merits hearing?

Summary hearing: A summary hearing is a kind of preliminary hearing that deals specifically with the question of whether the HRTO should dismiss all, or part of, an application because it has no reasonable prospect of success. This is a different, lower test than the balance of probabilities test the HRTO applies when making other decisions. Sometimes a summary hearing will be combined with a preliminary hearing to address other issues.

Preliminary hearing: A preliminary hearing is any hearing that is scheduled before a merits hearing occurs.

Merits hearing: A merits hearing is a full hearing into the application where the Tribunal hears evidence from witnesses and where the parties make submissions about whether the respondent has violated the Human Rights Code ("Code").

Why does the HRTO hold summary hearings?

There are two main reasons why the HRTO may hold a summary hearing:

1. In some cases, the allegations made in the application may not appear to fall under the *Code*. In this kind of case, the focus of the summary hearing is on the legal basis for the applicant's claim and whether or not there is any reasonable prospect the allegations amount to a *Code* violation.
2. In other cases, it may not be clear that there is evidence available to the applicant to prove the connection between what the respondent is alleged to have done and the grounds on which the applicant claims to have been discriminated. In this kind of case, the focus of the summary hearing is on the evidence the applicant has, or may be able to get, to prove a link between the respondent's actions and the grounds listed in the Application.

What am I going to be asked to talk about if I am an applicant at a summary hearing?

The adjudicator conducting the summary hearing may ask you to clarify the allegations you made in your Application. In addition, he or she may ask you to clarify why you are saying that the respondent's actions in your case amount to a violation of the *Code*. He or she may also ask you questions about the witnesses and documents you intend to bring to prove your case if your Application were to go forward to a merits hearing.

What am I going to be asked to talk about if I am a respondent at a summary hearing?

The adjudicator conducting the summary hearing will ask you to provide your position on whether the HRTO should dismiss the Application on the basis that it has no reasonable prospect of success.

Does the HRT^O hear evidence (for example witness testimony) at a summary hearing?

No witnesses testify at a summary hearing and generally the parties do not submit documents at a summary hearing.

As an applicant, I have one of the personal characteristics (grounds) protected under the Code and I have been treated adversely. Is that enough to be successful at a summary hearing?

No. Discrimination in the legal sense requires proof that any adverse treatment experienced by an applicant is linked, at least in part, to the Code ground(s) being alleged. For example, an applicant who alleges age discrimination must show that their age was at least one of the reasons for the adverse treatment experienced.

The allegations of adverse treatment must also arise in one of the social areas covered by the Code (employment, housing, services, contracts, vocational associations).

I am an applicant and the HRT^O has told me that it is not clear that there is a connection/link between what the respondent is alleged to have done and the grounds in my Application. What does this mean?

If the HRT^O has told you this in a Case Assessment Direction, it is because it is not clear that you have evidence available to support your belief that the adverse treatment you experienced occurred because of the personal characteristics (grounds) listed in your Application.

While the HRT^O generally accepts the facts about the adverse treatment alleged by the applicant, this does not mean accepting your assumptions or beliefs about the reason for the adverse treatment.

In order to warrant proceeding to a full merits hearing an applicant must be able to point to some evidence, which goes beyond his or her feeling or belief, that could prove that a prohibited ground of discrimination played a role in what he or she experienced.

Although, the parties do not submit evidence for the purposes of the summary hearing, the applicant should be prepared to explain to the HRTO what witnesses and/or documents he or she proposes to bring forward if the HRTO were to allow the Application to proceed to a merits hearing.

As a respondent, I have non-discriminatory reasons for the actions I took towards the applicant. Is that enough for me to be successful at a summary hearing?

No. In a summary hearing, the HRTO generally assumes the applicant's version of events to be true. The focus of the summary hearing is on whether the events alleged by the applicant amount to a violation of the Code and/or on whether there is any evidence available to the applicant to connect the events he or she is alleging to a ground of discrimination protected under the Code.

While the primary focus in the summary hearing is usually on the applicant's proposed evidence, the respondent's allegations may also be considered where the facts are not in dispute or where it is plainly obvious that a fact must be true.

How long will the summary hearing take?

Most summary hearings are scheduled for a half-day (3 hours). However, most summary hearings do not require a half-day to complete. It is up to the adjudicator conducting the summary hearing to manage the timing of the parties' submissions at the summary hearing.

I know the HRTO does not hear evidence at a summary hearing but can I submit documents for the adjudicator to look at?

The HRTO discourages parties from filing documents for the purpose of a summary hearing. If you do wish to file additional documents, you must submit the documents to the HRTO and send a copy to the other party/parties in accordance with the directions set out in the Case Assessment Direction that directed the summary hearing.

Can I submit copies of case law?

You are allowed to submit copies of any case law that you would like to refer to in the summary hearing. Please note, that the HRTA has access to any cases on CanLII (an online legal database with cases from across Canada), and does not require the parties to provide copies of any cases available of CanLII. Parties should, however, provide a list of cases they intend to refer to in the summary hearing. If you wish to rely on any cases, you must provide a copy of the cases to the other party/parties at least 14 days before the summary hearing.

Where can I find more information about summary hearings?

The HRTA Practice Direction on Summary Hearing Requests is available on its website at <http://www.sjto.gov.on.ca/hrto/rules-and-practice-directions/>.

All HRTA decisions, including summary hearing decisions, are available on the Canadian Legal Information Institute website at www.canlii.org.

Rule 19A of the HRTA's Rules of Procedure governs summary hearings. The HRTA's Rules of Procedure are available at <http://www.sjto.gov.on.ca/hrto/rules-and-practice-directions/>