SBH MANAGEMENT LAWYERS

UPDATE

Stringer Brisbin Humphrey's Electronic Newsletter

Significant Changes to the Human Rights Tribunal's Rules

Kelly McDermott and Jeremy Schwartz

Effective July 1, 2010, the Human Rights Tribunal of Ontario has made significant changes to its rules of procedure, and corresponding forms and practice directions.

Surprisingly, these changes have gone essentially unnoticed by the community (or at least no one else is talking about it). The changes may fundamentally alter the way applications are handled at the Tribunal. Employers and other respondents in particular will be happy to learn that the new rules will likely increase efficiency and fairness in their favour.

Some of the changes are less pronounced, including new document filing requirements and changes to how minors are named in written decisions. However, employers and other respondents should take note of the following significant changes:

1. **Mediation-Adjudication**: Previously, Vice Chairs acted as mediators in the formal mediation process and could not thereafter adjudicate at a hearing. The new rules provide that the Vice Chair assigned to adjudicate the matter can, on the consent of the parties, take a break in the adjudication proceedings to act as mediator, and if unsuccessful, return to adjudicate. This is not unusual, as Vice Chairs at the Ontario Labour Relations Board as well as labour arbitrators commonly take this dual role.

2. **Replies**: Previously, applicants had the *right* to reply to the response, but were not *obliged* to do so. Under the new rules, all applicants who dispute the factual assertions contained in a response must file a reply (unless their submissions are already contained in the application). Although the rules do not expressly say as much, presumably one possible consequence of an applicant's failure to file a reply would be a denial of the right to do so later through an amendment of pleadings, except on consent or with permission of the Tribunal.

3. **Summary Hearings**: In June 2008, when the *Human Rights Code* underwent substantial amendments, employers and their counsel were shocked when the new Code and rules removed the long-standing language permitting respondents to bring a motion essentially to summarily dismiss applications on the basis that they were frivolous, vexatious or an abuse of process. Although the Tribunal has been permitting respondents to bring such motions by way of a "request for order during proceedings," there was no formal process for dealing with this specific type of request. Now there is.

Unfortunately, respondents must still file a complete response to an application even if they intend to bring this motion. However, a respondent could make a concurrent "request for order during proceedings" to delay filing its response until after the Tribunal determines this motion.

These welcome changes should help to provide a more structured, efficient approach to the administration of certain applications.

For more information about these important changes to the rules, or assistance regarding your organization's human rights challenges, please contact:

Kelly McDermott at kmcdermott@sbhlawyers.com or 416-862-8085; or
Jeremy Schwartz at jcshwartz@sbhlawyers.com or 416-862-7011.

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UPDATE is an electronic publication of **STRINGER BRISBIN HUMPHREY**
110 Yonge Street, Suite 1100, Toronto, Ontario M5C 1T4

T: 416-862-1616 Toll Free: 1-866-821-7306 F: 416-363-7358

E: info@sbhlawyers.com I: www.sbhlawyers.com