TRANSITIONING TO ONTARIO'S NEW HUMAN RIGHTS SYSTEM: WHAT DO YOU NEED TO KNOW?

PART III
NEW TRIBUNAL RULES:
Transferring Existing Complaints
From the Human Rights Commission to the Tribunal

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I. INTRODUCTION

On 30 June 2008, Ontario's new human rights enforcement regime comes into force. The *Human Rights Code Amendment Act, 2006* (Bill 107) restructured Ontario's human rights institutions to implement a "direct access" model of adjudicating human rights. "Direct access" means that, beginning on 30 June 2008, applications alleging violations of the *Human Rights Code* will be filed directly with the Human Rights Tribunal of Ontario ("the Tribunal") rather than with the Ontario Human Rights Commission. Prior to 30 June 2008, the Commission received, investigated, and mediated complaints and, very importantly, screened complaints to determine which ones could ultimately be heard by the Tribunal. Before 30 June 2008, only those complaints that had been referred to the Tribunal by the Commission proceeded to adjudication. Under the old system only about 5% of all complaints received in any year were referred to the Tribunal. Under the new system, all complaints will go directly to the Tribunal.

The Commission has indicated that by 30 June 2008 there will be approximately 4000 complaints that remain outstanding at the Commission. These are complaints that were filed prior to 30 June 2008.

The key question that arises is "What happens to these existing complaints?" This paper focusses on answering that question.

Under the amended *Code*, a complainant can opt to either

(a) have the Commission continue handling their complaint under the pre-Bill 107 process until 31 December 2008 or

(b) abandon their complaint at the Commission and file a "transitional application" at the Tribunal. This effectively transfers their complaint from the Commission to the Tribunal.

The *Human Rights Code* outlines what powers the Commission continues to have with respect to these existing complaints and outlines the circumstances in which a transitional application can be filed at the Tribunal. New Tribunal Rules ("the Expedited Rules"), released in late June 2008, govern how the Tribunal will handle transferred complaints.

This paper examines both the *Human Rights Code* and the new Tribunal Expedited Rules and explains

* the Commission's powers with respect to existing complaints;
* who can transfer complaints to the Tribunal by making transitional applications;
* when transitional applications can be made;

* what procedures govern how transitional applications are made;

* how the transitional applications will be handled under the Tribunal's expedited process which is established specifically to handle complaints that are transferred before 31 December 2008;

* what rights and opportunities are available for complainants who choose not to transfer complaints between 30 June 2008 and 31 December 2008;

* which existing complaints can be re-filed with the Tribunal between 1 January 2009 and 30 June 2009 and what procedures govern those later transfers.

Unless otherwise indicated, all references in this paper to provisions of the *Human Rights Code* refer to the amended provisions that are in effect as of 30 June 2008.

This paper is Part III in a series of practical and strategic guides that Cavalluzzo Hayes Shilton McIntyre & Cornish LLP has prepared to assist parties in navigating the new human rights regime. Part I provides an overview of the key changes implemented by Bill 107; Part II reviews the new Tribunal Rules that apply to new applications filed with the Tribunal beginning on 30 June 2008; and Part IV provides an analysis of strategic consideration that are of particular interest to trade unions. The complete four-part series is available online at www.cavalluzzo.com.

II. COMMISSION'S POWER TO HANDLE EXISTING COMPLAINTS

After 30 June 2008, complaints that the *Human Rights Code* has been violated will no longer be filed with the Commission. These complaints, now called applications, will be filed directly with the Tribunal. However, the Commission will until 31 December 2008 continue to have the power to handle complaints that were filed prior to 30 June 2008.

In accordance with s. 53(2) of the amended *Code*, unless the complainant elects to abandon the complaint at the Commission and make an application at the Tribunal,[1] for the period between **30 June 2008 and 31 December 2008** the Commission shall continue to deal with existing complaints in accordance with Part IV of the *Code* as it read before 30 June 2008 ("old Part IV").

This means that for this six-month transition period only, the Commission shall continue processing existing complaints as it had previously and for this purpose it continues to have the power to:

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[1] This option to abandon an existing complaint before the Commission and make an application at the Tribunal is discussed in Part III of this paper.

* combine complaints that allege infringements by the same person or that have questions of law or fact in common [old s. 32(3)];

* investigate complaints [old s. 33];

* exercise its discretion to not deal with a complaint because (i) it could or should more appropriately be dealt with under another Act; (ii) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith; (iii) the complaint is not within the jurisdiction of the Commission; or (iv) the facts upon which the complaint is based occurred more than six months before the complaint was filed [old s. 34];

* refer the subject-matter of the complaint to the Tribunal or notify the parties of its decision not to refer the subject-matter of the complaint to the Tribunal [old s. 36];

* reconsider its decisions to not deal with the complaint or refer it to the tribunal [old s. 37]; and

* approve settlements which have been agreed to in writing and signed by the parties [old s. 43].

Where the Commission effects a settlement to a complaint either before 30 June 2008 or in the six month period between 30 June and 31 December 2008, and the settlement was agreed to in writing, signed by the parties and approved by the Commission, that settlement will be enforced under the new *Code* procedures: s. 54. If a party believes that a settlement has been contravened, they may make an application directly to the Tribunal under s. 49.5(3) and seek a remedial order under s.49.5(8) of the *Code*.

Where the Commission refers a complaint to the Tribunal either before 30 June 2008 or before 31 December 2008, the new Part IV of the *Code* will apply to the complaint as though it were an application made directly to the Tribunal under the new Part IV and the Tribunal shall deal with the complaint in accordance with the new Part IV: s. 55.

Under the old system, when a complaint was referred to the Tribunal, the Commission was a party to the proceeding and had carriage of the complaint. This will no longer automatically be the case. Under the transition provisions the following rules apply:

(a) the Commission shall continue to be a party to a complaint that was referred to the Tribunal before 30 June 2008: s. 55(3)(a);

(b) the Commission shall not be a party to a complaint that was referred to the

Tribunal between 30 June 2008 and 31 December 2008 unless

(i) the complaint was initiated by the Commission under the old s. 32(2); or

(ii) the Tribunal sets a date for the parties to appear before the Tribunal before 31 December 2008: s. 55(3)(b) and s. 55(4).

Under the transition provisions, then, if the Commission refers a complaint to the Tribunal before 31 December 2008, but the Tribunal does not set a date to appear at the Tribunal before 31 December 2008, the Commission will not automatically be a party to the complaint. It should be noted though that nothing in the transition provisions prevents the Tribunal from adding the Commission as a party to the proceedings or prevents the Commission from intervening in a proceeding which is referred to the Tribunal before 31 December 2008: s. 55(5).

If a complaint is referred to the Tribunal but the Commission is not a party to the Tribunal proceedings, the transition provisions do not specifically address whether the complainant is entitled to support from the new Human Rights Legal Support Centre. However, s. 45.13 states that the Legal Support Centre shall provide advice and assistance, legal and otherwise respecting an infringement of the rights under Part I of the *Code* and that it shall provide legal services in relation to various matters including “proceedings before the Tribunal under Part IV”. It is our position that these referred complaints should fall within the scope of matters for which legal services and other support should be provided by the Legal Support Centre.

III. TRANSITIONAL APPLICATIONS: TRANSFERRING EXISTING COMPLAINTS TO THE TRIBUNAL BEFORE 31 DECEMBER 2008

Where a complaint was filed with the Commission before 30 June 2008 and remains outstanding at the Commission, the person who made the complaint can at any time between 30 June 2008 and 31 December 2008 elect to abandon the complaint and make an application to the Tribunal with respect to the subject-matter of the complaint: s. 53(3).

These “s. 53(3) applications” or “transitional applications” must be made in accordance with the Tribunal Rules. As authorized under s. 53(4) of the *Code*, the Tribunal has made rules that apply specifically to these s. 53(3) applications to ensure that they are dealt with in an expeditious manner (“the Expedited Rules”).

A. Who Can Elect to Transfer a Complaint to the Tribunal?

Individuals who have complaints outstanding at the Commission on 30 June 2008 are

not required to make a s. 53(3) application to the Tribunal. Under the *Code*, they have the choice whether to stay at the Commission or opt for the expedited procedure under s. 53(3).

Under s. 53(3), the person who made the complaint has the sole authority to elect whether to abandon the complaint at the Commission and make an application with respect to the subject-matter of the complaint to the Tribunal's expedited process.

The complainant does not need the consent of either the Commission or the Respondent. If a complaint was properly filed before 30 June 2008, the Commission cannot require the complainant to abandon their complaint and transfer it under s. 53(3) against the complainant's wishes. The Respondent does not have the right to elect the Tribunal process.

The *Code* and the Rules do not prescribe any particular form or process by which a complainant indicates that it is abandoning a complaint at the Commission. It would, however, be advisable for a complainant to write a letter to the Commission, the respondent and any other parties giving notice that it is abandoning the complaint at the Commission. This is particularly important because it will ensure that the Commission knows that the complainant does not want the Commission to proceed with the complaint. If the Commission is unaware that the complaint is being abandoned, it may proceed to deal with the complaint on the merits in a manner which may preclude the complainant from exercising their right to elect to make an application to the Tribunal.

B. When Can the Election to Transfer to the Tribunal be Made?

There are two time periods during which a complainant may elect to transfer an existing complaint from the Commission process to the Tribunal. Apart from the two kinds of applications made under s. 53(3) or s. 53(5) that are outlined below, no application may be made to the Tribunal if the subject-matter is the same or substantially the same as the subject-matter of a complaint that was filed with the Commission before 30 June 2008: s.53(8).

1. 30 June to 31 December 2008 – Section 53(3) Transitional Applications

A complainant may elect to abandon the Commission process and make a s. 53(3) application **at any time between 30 June 2008 and 31 December 2008** as long as the Commission has not finally disposed of the complaint during that period.

The complaints which remain outstanding at the Commission will have been at the Commission for varying lengths of time and will be at varying stages in the resolution process. Many of the existing complaints will have been at the Commission for many months or even years and may have already proceeded through many stages including fact finding, mediation, investigation and case analysis. Others which have been filed more recently may only have

begun the initial processes of intake, service on the respondent and preliminary inquiries regarding mediation.

Whatever stage a complaint may be at, **as long as it has not been finally disposed of by the Commission**, the complainant has the right to elect to abandon the complaint before the Commission and make a s. 53(3) transitional application to the Tribunal. For example, to take the latest stage in an outstanding complaint, if a complaint has proceeded through case analysis, the Commission has made a decision under the old s. 36(2) not to refer the matter to the Tribunal and the complainant has made an application for reconsideration under the old s. 37, as long as the Commission has not yet made its decision on reconsideration the complainant could still elect to abandon that complaint and make a s.53(3) application to the Tribunal.

2. 1 January 2009 to 30 June 2009 – Section 53(5) Applications

If a complainant elects to continue with a complaint through the Commission process after 30 June 2008 but the Commission has failed to deal with the merits of the complaint by 31 December 2008, the complainant may, under s. 53(5) make an application to the Tribunal between 1 January 2009 and 30June 2009.

It must be underscored that a complainant who continues their complaint with the Commission will only be able to file a s. 53(5) application with the Tribunal if the complaint is not settled or withdrawn and the Commission has not finally dealt with the merits of the complaint by 31 December 2008. If the complaint is settled or withdrawn or the Commission finally deals with it on the merits before 31 December 2008, the complainant can no longer elect to file an application with the Tribunal. Subject to any right of judicial review, the complaint will be at an end.

Where the complaint is still outstanding at 31 December 2008, and an application under s. 53(5) is made, the application process will mirror the regular process established for new applications filed under the *Code*'s new Part IV. For an analysis of this process, see our guide *New Tribunal Rules: Applications filed with the Tribunal as of June 30, 20008* which is Part II of the Cavalluzzo Hayes Shilton McIntyre & Cornish LLP papers in this series *Transitioning to Ontario's New Human Right System: What Do You Need to Know?*

3. Strategic Choices – Should a Complainant Elect to Transfer to the Tribunal or Remain with the Commission?

Whether a complainant can or should elect to transfer their complaint to the Tribunal and when they should make that election are decisions which should be made based on the

particular circumstances of each case. Please contact our office for advice in your particular circumstances.

Parties wishing to transfer their complaints to the Tribunal, however, should be aware that s. 53(3) transitional applications will be handled by the Tribunal in a special stream that provides only an expedited process which typically will not involve calling evidence. Where cases are transferred as s. 53(5) applications in the first half of 2009, those applications will be adjudicated under the Tribunal's regular Rules of Procedure which apply for new applications made after 30 June 2008.

In its public consultation regarding the s. 53(3) expedited rules, the Tribunal noted that:

> "The expedited section 53(3) process is particularly suited to applications where the parties are already identified, the facts in dispute are known, and the legal issues are relatively straightforward. Applications that raise significant public policy issues or a constitutional question, require expert evidence (other than medical evidence), involve complex questions of fact or law or the participation of intervening parties, including the Commission, may not be well suited to this process, but may be better suited to the more party-centred style of hearing conducted in accordance with the Tribunal's July 1, 2008 Rules of Procedure (the July 2008 Rules)."[2]

In addition, it is estimated that 4000 complaints will remain outstanding at the Commission as of 30 June 2008. It is anticipated that a large number of these will elect to transfer to the Tribunal process. In a Notice to the Community released in May 2008, the Tribunal noted that the 4000 outstanding complaints represents more than the anticipated annual number of new applications to the Tribunal and more than twice the number of complaints the Commission has traditionally dealt with annually. The Tribunal's Notice states:

> "To meet these challenges, resources, staff and adjudicators have been assigned to the caseload reduction initiative. However, parties should understand that, given the magnitude of the potential caseload, delays in the scheduling of cases for mediation, resolution conferences or hearings may occur. As the caseload resolution initiative is implemented, the Tribunal will provide information to ensure the community understands and has clear expectations of the Tribunal's scheduling timeframes."

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[2] Human Rights Tribunal of Ontario, Proposed Rules: Section 53(3) Applications, Public Consultation May7 to June 2, 2008.

C. Representation and Access at the Tribunal

In proceedings at the Tribunal, parties may be

* self-represented;
* represented by a person licensed by the Law Society of Upper Canada (i.e. a lawyer); or
* represented by a person authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws: Expedited Rules 1.11.

The last category of representative outlined above would include paralegals who are licensed under the *Law Society Act* as well as a range of other individuals who, under the Law Society regulations and by-laws, are exempt from requiring a licence, such as union representatives, members of the Human Resources Professionals Association of Ontario, employees of legal clinics and some non-profit organizations that are similar to legal clinics, and individuals whose occupation is not the provision of legal services and who are providing assistance to a family member, friend or neighbour without fee.[3]

While it is not specifically addressed, the applicant could also get advice, assistance and legal services from the Human Rights Legal Support Centre: s. 45.13.

Parties, representatives and witnesses are entitled to accommodation of *Code*-related needs by the Tribunal. To receive such accommodation, they should advise the Registrar as soon as possible if accommodation is required: Expedited Rules 2.1. The Tribunal has also circulated a draft Policy on Accessibility and Accommodation which is available online at the Tribunal's website: www.hrto.ca.

The Tribunal's mediation and case resolution conference may be conducted in English, French, or bilingually and, where requested, with interpretation in American Sign Language (ASL) or Quebec Sign Language (QSL). Where a party wishes all or part of the mediation or case resolution conference conducted in French, or requires interpretation in ASL or QSL, the party must notify the Registrar as soon as possible: Expedited Rules 5.8. An individual who requires interpretation services in a language other than English, French, ASL or QSL in order to participate in the mediation or case resolution conference may request the Tribunal to provide the appropriate interpreter services. The Registrar must be notified as soon as possible of such requests: Expedited Rules 5.9. Also see the Tribunal's Practice Direction for Language Interpretation which is available on the Tribunal's website: www.hrto.ca.

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[3] The list of persons may be "authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws" is relatively lengthy. The examples set out here are only illustrative and not exhaustive. For further information see the Law Society's website at www.lsuc.on.ca.

D. Making and Responding to an Application under Section 53(3)

1. Making a s. 53(3) Application

To make an application under s. 53(3), an Applicant must complete the Application Form A which must include

* the complaint or amended complaint that was filed at the Commission; and

* the Commission complaint file number: Expedited Rules 6.1 and 6.2.

The Applicant must deliver the Application to the respondent and file it with the Tribunal: Expedited Rules 6.1. The completed application must be filed with the Tribunal on or before 31 December 2008: Expedited Rules 6.2.

An application made under s. 53(3) must be limited in scope to the subject-matter of the pre-existing complaint before the Commission. The Tribunal Expedited Rules (6.3) provides:

> "Applications made in accordance with these Rules must be based on the subject matter of the complaint or amended complaint filed at the Commission and the Tribunal will not entertain preliminary requests to add grounds, expand the subject matter of the complaint or add parties to the Application."

2. Responding to an Application

A Respondent must complete a Response Form B and include in its response a copy of any responding materials that it filed at the Commission. Where no response was filed at the Commission, the Respondent must provide a brief statement setting out its position on the facts and issues raised in the Application and include any additional material facts necessary to support its case: Expedited Rules 7.1.

Consistent with its objective of establishing an expedited process, the Tribunal has set short time frames for responding to applications. The completed Response must be delivered to the Applicant before being filed with the Tribunal. It must be filed with the Tribunal not later than 35 days after the application was delivered to the Respondent: Expedited Rules 7.2.

If a Respondent who has received an Application Form A fails to respond to the Application, the Tribunal may

(a) deem the Respondent to have accepted all of the allegations in the Application,

including the allegations set out in the complaint;

(b) proceed to deal with the Application without further notice to the Respondent;

(c) deem the Respondent to have waived all rights with respect to further notice or participation in the proceeding; and

(d) decide the matter based only on the material before the Tribunal: Expedited Rules 3.2.

3. Access to Commission Materials

Either an Applicant or a Respondent may ask the Commission to disclose to the party any information that was obtained by the Commission in the course of the Commission's investigation: s. 53(7) and Expedited Rules 5.3.

Parties and their representatives may not use documents obtained under the Tribunal Rules for any purpose other than the proceeding before the Tribunal: Expedited Rules 5.4.

4. Importance of Having Complete Information in Application and Response

It will be necessary for all parties to take care in filing their Tribunal materials to ensure that the application, response or supplemental statement of facts include all material facts and issues to be addressed. The Expedited Rules (3.4) clearly provide that the Tribunal may refuse to address facts or issues that were not raised in the materials filed:

> "Where a fact or issue is not raised in the Application (Form A), complaint, Response (Form B), the Response to the complaint or in a supplemental statement of facts and issues filed after mediation, the Tribunal may refuse to allow the party to present evidence or make representations about the fact or issue unless satisfied there would be no substantial prejudice and no undue delay to the proceedings."

Where a party fails to deliver material to another party or person as required under the Rules, the Tribunal may refuse to consider the material, or may take any other action it considers appropriate: Expedited Rules 3.3. However, the Tribunal also has the power to relieve against a failure to comply with the rules, with or without terms, where doing so would be fair and just and would not substantially prejudice a party or unduly delay the proceeding:

Expedited Rules 3.6.

Where the Tribunal cannot contact a party in accordance with the contact information provided to the Tribunal by that person, the Tribunal may finally determine the application without further notice to that person: Expedited Rules 3.1.

5. Tribunal's Power to Dismiss for Lack of Jurisdiction

The Tribunal may, on its own initiative or at the request of a Respondent dismiss part or all of an Application that is outside the jurisdiction of the Tribunal: Expedited Rules 4.2.

E. Mediation Conference

In its public consultation, the Tribunal indicated that it would schedule a mandatory mediation in every s. 53(3) application. At the mediation conference, a member of the Tribunal will assist the parties to try to reach a settlement. The discussions in mediation will be confidential and the content of the discussions cannot be referred to at the hearing of the application or in any other proceedings with the consent of all parties and the Tribunal: Expedited Rules 8.1.

To ensure that the mediation is productive, the Tribunal has required that the person who attends the mediation on behalf of any party must have authority to participate in all aspects of the mediation discussions and must have authority to settle any and all issues in dispute: Expedited Rules 8.2.

Where in the course of mediation the parties reach a settlement in writing that is signed by the parties, the parties may ask the Tribunal to issue a consent order in accordance with s. 45.9 of the *Code* or may file the written and signed settlement with the Tribunal. All settlements filed with the Tribunal must include a provision waiving the right to make oral submissions and a provision requesting the Tribunal of the Application in accordance with the settlement: Expedited Rules 8.3.

Where the mediation is unsuccessful, the mediator will assist the parties to complete a case management checklist and file it with the Tribunal within five days of the mediation: Expedited Rules 8.4.

F. Case Resolution Conference

Where the mediation does not result in a settlement, the application proceeds to a hearing called a Case Resolution Conference which will finally determine the dispute (unless

the parties consent to a hearing in writing). The Case Resolution Conference is the stage where the application is finally determined.

1. Exchange of Further Pleadings and Documents

Prior to the hearing, the parties exchange further facts and documents along with a list of witnesses they propose to call. Again, this exchange of information happens very quickly following the end of the mediation.

No later than **30 days after the mediation**, unless otherwise directed by the Tribunal, the Applicant must serve on the other parties and file with the Tribunal:

(a) a statement of any additional facts the Applicant intends to rely upon;

(b) a description of the remedies sought; and

(c) a copy of all arguably relevant documents in the Applicant's possession, except where privilege is claimed: Expedited Rules 9.1 and 9.3.

No later than **45 days after the mediation** (which could be only 15 days after receiving the Applicant's additional information), unless otherwise directed by the Tribunal, the Respondent must serve on the other parties and file with the Tribunal

(a) a statement of any additional facts the Respondent intends to rely upon;

(b) the Respondent's position on the remedies requested; and

(c) a copy of all arguably relevant documents in the Respondent's possession, except where privilege is claimed: Expedited Rules 9.2 and 9.3.

Again, it is important to ensure that parties are careful in identifying any arguably relevant documents. The Tribunal may refuse to consider or allow a party to rely upon any document that is not disclosed in accordance with the Rules: Expedited Rules 9.4.

In addition to the above materials, no later than **20 days prior to the Case Resolution Conference**, each of the parties shall deliver to the other party a list of their witnesses, a copy of all documents on which they intend to rely, a copies of any documents not previously provided and a statement of any additional facts on which they intend to rely at the case resolution conference. Each party shall also file with the Tribunal a list of witnesses, a copy of all documents on which they intend to rely at the case resolution conference and a statement of any additional facts on which they intend to rely at the case resolution conference: Expedited

Rules 9.5.

2. Case Resolution Conference

The Case Resolution Conference is will generally be scheduled for only one or two days. The conference will be conducted fairly and in an informal manner: Expedited Rules 9.6.

The mediation and case resolution conference may be conducted in person, in writing, by telephone or by other electronic means as the Tribunal considers appropriate however no application that is in the jurisdiction of the Tribunal will be finally disposed of without affording the parties the opportunity to make oral submissions: Expedited Rules 5.5. Where the proceedings are conducted in-person, the location will be determined by the Registrar: Expedited Rules 5.6.

The parties and their witnesses are required to attend the case resolution conference on the day(s) scheduled and bring any documents on which they intend to rely: Expedited Rules 9.7. Where a party has been notified of the case resolution conference and fails to attend, the Tribunal may proceed in the party's absence; decide the application based solely on the materials before it; or take any other action it considers appropriate: Expedited Rules 5.13.

The Tribunal has very broad powers to conduct an engaged adjudication and take a very active role in directing the Conference in order to get to the substance of the case quickly and fairly. The Tribunal's powers are detailed in Expedited Rules 4.3 which provide as follows:

> To ensure the fair, just and highly expeditious resolution of a section 53(3) Application the Tribunal may:
>
> (a) lengthen or shorten any time limit in these Rules;
>
> (b) add or remove a party;
>
> (c) vary or waive the application of these Rules at any time on its own initiative or on the request of a party, with or without terms;
>
> (d) determine and direct the order in which issues in a proceeding will be considered and determined;
>
> (e) define and narrow the issues in order to decide an application;

(f) define and limit the evidence and the submissions of the parties on any issue;

(g) determine and direct the order in which evidence will be presented;

(h) admit evidence without examination under oath or affirmation;

(i) question a witness in chief or in cross-examination;

(j) require a party or other person to produce any document, information or thing;

(k) make such further orders as are necessary to give effect to an order or direction under these Rules;

(l) attach terms or conditions to any order or direction; and

(m) take any other action that the Tribunal determines is appropriate.

The Tribunal may exercise any of these powers at its own initiative or at the request of a party to facilitate an accessible process and to ensure a fair, just and highly expeditious process to determine the application: Expedited Rules 4.1 and 1.1. In addition, at any point in the proceedings, the Tribunal may issue case management directions: Expedited Rules 5.14.

As part of its public consultation on the Expedited Rules, the Tribunal issued a Notice to the Community in May 2008 which provides insight into the kind of engaged adjudication that will occur:

> "At the Case Resolution Conference, the adjudicator may exercise a number of powers, including
>
> * question the parties, their representatives or the witnesses,
> * express his/her views,
> * define or re-define the issues,
> * determine what matters are agreed to or are in dispute,
> * determine what additional evidence is required to decide the application.
>
> "Parties should be aware that sworn evidence and cross-examination of witnesses will only be part of the process where

> the adjudicator decides it is necessary to resolve a particular aspect of the dispute."

The Expedited Rules (5.15) also indicate that:

> "The Tribunal will not ordinarily permit the introduction of expert evidence, other than medical reports, requests to add parties, consolidate applications or requests to intervene in the application unless exceptional circumstances exist and doing so will not adversely affect the highly expeditious nature of the case resolution conference."

In its Notice to the Community, the Tribunal has advised that

> "The proposed process will not be well-suited for applications that raise significant public policy issues, involve complex questions of fact or law or that would otherwise benefit from a fuller adjudication process and the participation of intervening parties, including the Commission."

The Tribunal decisions that are issued in respect of s. 53(3) transitional applications are aimed at getting a quick and fair resolution to the outstanding complaints more so than at developing the jurisprudence. As indicated in Expedited Rule 10.1, the s. 53(3) Tribunal decisions "shall be determined based on the facts and applicable law but shall not be considered to have precedential value."

G. Reconsideration

After the case resolution conference adjudicator's decision resolving the application is released, any party may request reconsideration. Requests for reconsideration must be made in accordance with the Tribunal Rules of Procedure for Applications under the *Human Rights Code* Part IV. These are the Rules that apply to new application after 30 June 2008. ("New Rules July 2008")

The request for reconsideration must be made within 30 days from the case resolution conference adjudicator's final decision. A request for reconsideration must be made in Form 20, be delivered to all parties and filed with the Tribunal. It must include the reasons for the request, including the basis upon which the Tribunal is asked to grant the request for reconsideration, submissions in support of the request and the remedy or relief sought: New Rules July 2008, Rules 26.1 to 26.3.

A party who has been served with a request for reconsideration need not file a response with the Tribunal unless the Tribunal directs that a response is required. Where directed to file a response, it must be made in Form 21 and must include complete written submissions in support of its position: New Rules July 2008, Rule 26.4.

A request for reconsideration will not be granted unless the Tribunal is satisfied that:

(a) there are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier; or

(b) the party seeking reconsideration was entitled to but, through no fault of its own, did not receive notice of the proceeding or a hearing; or

(c) the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance; or

(d) other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions: New Rules July 2008, Rule 46.5.

The Tribunal shall not grant a request for reconsideration without providing the parties with an opportunity to make submissions: New Rules July 2008, Rule 26.6. However unless the Tribunal decides otherwise, the request for reconsideration shall be conducted through written submissions: New Rules July 2008, Rule 26.7.

Where the Tribunal considers it appropriate to reconsider its decision it may make a decision on the substance of the request without further submissions from the parties or may determine a procedure for rehearing all or part of the matter: New Rules July 2008, Rule 26.8.

The Tribunal may also reconsider a decision of its own initiative where it considers it advisable to do so and will determine a procedure for rehearing all or part of the matter which will include an opportunity for the parties to make submissions: New Rules July 2008, Rules 26.9 and 26.10.