INCOME SECURITY ADVOCACY CENTRE
Centre d'action pour la sécurité du revenu

Don Valley Community Legal Services

VIA EMAIL

June 5, 2026

Human Rights Tribunal of Ontario (HRTO)
c/o Registrar
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6
HRTO.registrar@ontario.ca

Dear Registrar:

RE: HRTO Consultation – ISAC and DVCLS' Joint Recommendations on proposed changes to HRTO Rules of Procedure

The Income Security Advocacy Centre (ISAC) and Don Valley Community Legal Services (DVCLS) write in response to the HRTO's request for stakeholder feedback on proposed changes to its Rules of Procedure and Practice Directions. ISAC and DVCLS together represent low-income individuals from equity-seeking communities across Ontario in discrimination applications before the HRTO. We attended the Tribunal's Stakeholder Meeting on May 22, 2026.

ISAC and DVCLS, together with the Clinic Resource Office, represented the applicant in the Divisional Court case *Bokhari v. Top Medical Transportation Services*, 2026 ONSC 1073. The Tribunal has indicated that some of its proposed changes are in response to this decision.

ISAC and DVCLS welcome some of the proposed changes, but have serious concerns with others, which we set out below.

ISAC is a specialty legal clinic funded by Legal Aid Ontario. ISAC's mandate is to advance the rights and interests of low-income Ontarians with respect to income security and employment. It carries out its mandate through test case litigation, policy advocacy, community development, and public education. The clinic regularly advises and represents low-income clients appearing before the HRTO who face significant access to justice barriers.

DVCLS is a community legal clinic funded by Legal Aid Ontario. DVCLS is mandated with providing legal services to low-income individuals and marginalized communities in its catchment area. Our catchment area encompasses Thorncliffe Park, Leslieville, Riverdale, and other eastern areas of the City of Toronto. DVCLS also leads the Toronto East End Employment and Immigration Legal Services ("TEEILS"), a partnership between DVCLS and four other community legal clinics (Scarborough Community Legal Services, West Scarborough Community Legal Services, Neighbourhood Legal Services, and Willowdale

Community Legal Services). Through TEEILS, DVCLS provides specialised employment law and immigration law services across virtually all of eastern Toronto.

(1) Changes to the Tribunal's approach to jurisdictional screening

i. Return to the "plain and obvious" standard is appropriate

We welcome the HRTO's proposed return to the "plain and obvious" standard to assess whether an application falls within its jurisdiction. This standard is consistent with the Divisional Court's instructions in *Bokhari*, and with the Tribunal's own historical practice prior to 2021.

As the Court explained in *Bokhari* (at para. 41), the policy concern that plaintiffs should not be driven from the judgment seat when there is a chance they might succeed, applies with even greater force in the context of quasi-constitutional human rights legislation like the *Code*.

ii. Descriptions of "jurisdictional" issues continue to risk mischaracterizing issues of merit as issues of jurisdiction

The Tribunal proposes to update the description of what constitutes a "jurisdictional" issue in the proposed Practice Direction on Jurisdiction and the Jurisdictional Reviews Informational Sheet & FAQ. We are concerned that the proposed language, like the language in the current Practice Direction, mischaracterizes issues of merit as issues of jurisdiction. This matters because applicants are entitled to - and need - an oral hearing of their human rights claim before it is dismissed on its merits, pursuant to s. 43(2)1 of the *Code*.

In *Bokhari*, the Divisional Court was clear: whether the elements of a statutory human rights claim are made out is not a jurisdictional question (paras. 23-24). Pursuant to ss. 1-6 of the *Code*, the "elements of a statutory human rights claim" include a social area, *Code*-protected grounds, unequal "treatment", and a connection or a link between the unequal treatment and *Code*-protected grounds.

We are concerned that the proposed Practice Direction and Informational Sheet & FAQ characterize some of these "elements of a statutory human rights claim" as issues that can be subject to jurisdictional screening. For example, the proposed Practice Direction includes the following "common examples" of Applications that have been found to be outside the Tribunal's jurisdiction:

- The events and allegations in the Application **do not appear to have occurred within one of the social areas** identified in the *Code*; or
- Although the application alleges reprisal, the **allegations could not engage with the criteria set out in section 8 of the *Code*.**

The proposed Practice Direction also states that:

> Another common jurisdictional problem is that the Application does not plead any facts which could constitute discrimination under the *Code*. In some cases, this is because the Application does not explain how the respondent did something, or failed to do something, that harmed the applicant or negatively affected their interests. In other cases, the Application does not explain how the applicant's *Code* grounds may have been a factor in the adverse conduct of the respondent.

The proposed Informational Sheet and FAQ states that the Tribunal may not have jurisdiction over an Application where:

- The alleged events did not occur within one of the Code's social areas (services, goods and facilities; employment; accommodation/housing; contracts; membership in a vocational association); or
- Based on the applicant's description of events, the respondent's actions could not be prohibited under the *Human Rights Code*.

The four bullet points identified above as well as the "common jurisdictional problem" paragraph can engage issues of merit, in accordance with paragraphs 22-25 of *Bokhari*. This is because they require the Tribunal to make legal determinations about whether the statutory elements of a *Code* claim are established on the facts as pleaded, including whether there is a connection or a "link" between alleged adverse treatment and a *Code*-protected ground.

These are assessments of merit that require either a merits or a preliminary oral hearing (such as a summary hearing under Rule 19A), where applicants have the opportunity to engage with an adjudicator, explain their case, answer questions, and (in the case of merits hearings) marshal a record to support their allegations. We understand that the Tribunal may be concerned about cases that clearly fall outside of a social area or protected ground, but *Bokhari* and s. 43(2)1 of the *Code* still require an oral hearing in these situations. The Tribunal can hold brief, narrowly focused summary hearings to deal with such cases.

We recommend removing the four bullet points identified above, as well as the "common jurisdictional problem" paragraph, as examples of what may be outside of the Tribunal's jurisdiction. They are contrary to the Divisional Court's instructions in *Bokhari* that the Tribunal must not conflate merit with jurisdiction.

iii. Continuous and/or recurring jurisdictional screening is problematic

There are two proposed changes to Rule 13 and the Practice Direction on Jurisdiction that deal with the timing of jurisdictional screening. These two changes are as follows:

1. That the Tribunal intends to shift from assessing jurisdiction through an initial screening process, to assessing it at any time throughout the life cycle of an application. Although the existing Practice Direction already provides for ongoing jurisdictional screening, its incorporation into Rule 13 is new.

2. That the Tribunal may raise jurisdictional issues multiple times, including the same jurisdictional issue, throughout the life cycle of an application.

We have serious concerns with these proposed changes. They do not specify any limits on when, in what circumstances, or how many times the Tribunal can initiate jurisdictional screening. We are therefore concerned that jurisdictional screening will be used in ways that harm applicants, undermine access to justice, and erode public confidence in the administration of justice. For example:

- **The proposed language, without limitations, allows the Tribunal to dismiss an application at a later stage based on information that was available much earlier.** In *Eghbali Babadi v. Kupfert & Kim*, 2025 HRTO 1283 (reconsideration denied in 2026 HRTO 8, second reconsideration pending), the Tribunal allowed the application to proceed through its processes for over 5 years before suddenly initiating jurisdictional screening and dismissing the application. The Tribunal had conducted mediation and even offered a second mediation before issuing a Case Assessment Direction that alleged the application was outside the Tribunal's jurisdiction. The alleged "jurisdictional" issues were based on information that was readily available in the application, so the Tribunal could have issued a NOID with its concerns many years before, right after the application was filed. It did not do so. The Tribunal's approach in this case was wasteful of all parties' and the Tribunal's own time and limited resources.

- **Jurisdictional dismissal at a late stage based on information that was available at an earlier stage prejudices applicants' ability to seek alternative remedies.** If the Tribunal conducts a proper preliminary jurisdictional screening and rejects an application before service on the respondent, the applicant may still have time to pivot to another administrative or civil forum. Where the Tribunal waits years before conducting screening (as it did in *Eghbali Babadi*), the Tribunal effectively traps the applicant in its system until all alternative legal limitation periods have expired, leaving them entirely without a remedy.

- **Recurring jurisdictional screening undermines predictability, finality, and fairness.** While the Tribunal can screen for jurisdiction, multiple or recurring screening that can happen at any time introduces uncertainty and undermines finality. Parties should not be subject to unpredictable or repeated screening. Instead, the Tribunal should screen for jurisdictional issues at the earliest opportunity (ideally before the application is served on the respondent(s)), and only do so again in rare and exceptional circumstances where new information not previously available comes to light.

  Parties come to the Tribunal after experiencing the harm of discrimination. Many clients are vulnerable, self-represented, and have overcome language or other barriers to file a complaint of discrimination at the Tribunal. If a matter is accepted into the Tribunal's process, these parties deserve clarity and finality.

Finally, repeated and inconsistent decisions on the same issue can be procedurally unfair. Over the past year, the Divisional Court twice granted judicial review of Tribunal decisions on the basis that the Tribunal's inconsistent decisions on the same issue gave rise to procedural unfairness.[1] Permitting the Tribunal to repeatedly determine the same jurisdictional issue without justification would give rise to the same issues of unfairness.

- **Recurring or late jurisdictional screening is onerous on parties and would cause a chilling effect.** Jurisdictional screening can be legally complex and resource-intensive for parties, particularly for self-represented and unsophisticated applicants. According to the Tribunal's most recent statistics, 85% of applicants are self-represented.[2] Our clinics regularly assist individuals with language barriers, literacy barriers, and disabilities to file applications at the Tribunal. "Jurisdiction" is a technical legal concept that may be overwhelming and confusing for applicants to address.

  Many individuals simply abandon their applications (including meritorious applications) after receiving a NOID; repeated NOIDs are likely to increase the likelihood of such abandonments. A continuous threat that a matter may be reviewed for jurisdiction may also have a chilling effect on individuals bringing forward claims of discrimination.

- **Inefficient use of resources.** Section 41 of the *Code* requires the Tribunal to adopt practices and procedures that will facilitate fair, just and expeditious resolutions of the matters before it. Repeated jurisdictional screening is unlikely to be fair, just, or expeditious.

  The Tribunal is currently facing a significant backlog and increasing new applications. In this context, multiple or ongoing jurisdictional reviews would likely strain limited Tribunal resources that are much needed elsewhere. These reviews are also time- and resource-consuming for the parties that need to respond to them. The Tribunal's priority at this time should be to clear the backlog that occurred after the COVID-19 pandemic, and schedule merits hearings.

- **Abuse of process to revisit the same jurisdictional issues:** *Functus officio* is a legal doctrine stating that once a decision maker has made a final determination on a matter, they have exhausted their statutory power in relation to that matter. As a result, they are prevented from re-opening or revisiting their own final decisions. This doctrine is a critical anchor of the justice system and the good governance of administrative tribunals.

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[1] See *Galace v. Winners Merchants International L.P.*, 2026 ONSC 826 (Div. Ct.), where the Tribunal had dismissed an application as an abuse of process due to the applicant's failure to provide medical evidence that the Tribunal had earlier found the applicant was not required to provide. See also *John v. Swedcan Lumican Plastics Inc.*, 2025 ONSC 3022 (Div. Ct.), where the Tribunal had scheduled a summary hearing, despite having earlier declined a respondent request for summary hearing.

[2] Tribunals Ontario Open Data, "Human Rights Tribunal of Ontario (HRTO) – Intake report: Applications Received – Applicant representation", July 2025-Sept 2025, available at https://tribunalsontario.ca/en/about/open-data/#panel3.

Once the Tribunal has determined a jurisdictional issue and allowed an application to proceed, it should not revisit the same issue unless new information or evidence that was not previously available comes to light. Returning to and re-opening the same jurisdictional issue at different stages without new information or evidence - in effect, requiring the applicant to keep fighting the same battle again and again - would constitute a serious abuse of process.

Recommendations on continuous or recurring jurisdictional screening

We recommend that the proposed Rule 13 and Practice Direction include clear parameters on when and how the Tribunal will conduct continuous or recurring jurisdictional screening. These parameters should include the following:

- The Tribunal will review all applications at the outset - prior to service on the respondent(s) - for any potential jurisdictional issues, and promptly issue a NOID where an issue is identified. This ensures that any jurisdictional issues are identified and addressed at the earliest opportunity, and affords applicants deemed to be outside of the Tribunal's jurisdiction the opportunity to seek out an alternative forum. At the Town Hall, the Tribunal indicated its intention to screen applications at the earliest stage possible, and we agree that is the appropriate approach.

- Once the Tribunal determines that an application is within its jurisdiction, it should initiate jurisdictional screening again in rare and exceptional circumstances only - for example, where new evidence or information that was not previously available comes to light. The Tribunal should not initiate jurisdictional screening again based on information that was already available to the Tribunal.

iv. Clarity required in how the Tribunal will raise jurisdictional issues

The Tribunal has increasingly relied on Requests for Additional Submissions ("RAS") instead of Notices of Intent to Dismiss ("NOIDs"). We are concerned that the Tribunal may still employ the RAS or other practices outside of the Rules and Practice Direction, to initiate jurisdictional screening in a manner that does not comply with the Rules or Practice Direction (for example, by requiring submissions within a shorter timeframe).

The proposed Practice Direction should clarify that RAS will not be used to initiate jurisdictional screening. If RAS are used later in the jurisdictional screening process, the Practice Direction should state that they will be subject to the same requirements as NOIDs (including on timeframes to provide submissions).

v. Clarify that where evidence is required at the jurisdictional screening stage, an oral hearing will be provided if assessing the evidence to make findings of fact

Both the current and proposed Practice Direction provide that the Tribunal will request evidence at the jurisdictional screening stage in "some cases". In *Bokhari*, the Court noted

that evidence may be required to assess jurisdiction in some circumstances, but that in such cases, findings of fact should be made at an oral summary or merits hearing (para. 43).

The proposed Practice Direction should confirm that the Tribunal will provide an opportunity for an oral hearing if it needs to assess evidence to make findings of fact on jurisdictional screening. This is not clear from the proposed language in the Practice Direction, which states only that "When evidence is required from an applicant at the stage of jurisdictional review, the HRTO accepts the evidence as true for the purposes of considering its jurisdiction." Confirmation that an oral hearing will be provided before any findings of fact are made would provide clarity and reassurance to parties that the Tribunal will act consistently with the Court's directions in *Bokhari*.

vi. Parties should get at least 30 days to respond to a NOID

The current Rule 13 provides applicants 30 days to file submissions responding to a NOID. The proposed Rule gives only 28 days. The Tribunal should maintain a timeline of 30 days to file submissions responding to a NOID.

Thirty days' response time is standard in many administrative contexts. The extra two days costs the Tribunal nothing. More importantly, the extra two days' time is helpful to applicants (usually self-represented) who face multiple barriers to responding to a complex jurisdictional screening notice in a timely way. (Those barriers include, for example, language and literacy barriers, disability-related barriers, technology barriers, and lack of legal knowledge and understanding). We also encourage the Tribunal to be flexible where possible with requests for extensions of time, and to not rush to dismiss cases as abandoned.

The Tribunal advises that its proposed change to 28 days is "to align to current practice". However, the Tribunal has been using multiple jurisdictional screening tools in recent years (including NOIDs, Case Assessment Directions, and RAS), each with different time limits. In our experience, applicants were given up to 45 days to respond to a NOID in the past. It is therefore unclear which "current practice" the Tribunal is referring to.

vi. Tribunal should not rush to deem cases as abandoned

The proposed Practice Direction states that if an applicant does not file submissions by the deadline in the NOID, this may cause the Tribunal to consider whether the applicant has abandoned the Application. Of late, commentators and practitioners like Emily Shepard have noted a steep rise in abandonment-based dismissals at the Tribunal.[3] The case law reveals very tight timelines for when a case will be deemed abandoned at the Tribunal. For example, the Tribunal has dismissed cases as abandoned within 2 to 4 weeks of an applicant missing their deadline to respond to a NOID.[4] In some cases, dismissals were issued within just 6,[5]

[3] Emily Shepard, "The Rise of Abandonment Dismissals at the HRTO and Increasing Barriers to Access for Applicants" (2025) 38 Cdn J of Admin Law & Practice 247.
[4] Vohra v. Halton District School Board, 2023 HRTO 1556 (2 weeks); *Baksh v. Ernescliffe Non-Profit Housing Co-operative Inc.,* 2023 HRTO 1536 (Dismissal in 4 weeks for a case that involved 14 individual respondents)
[5] *Bhindi v. City of Ottawa,* 2023 HRTO 1569.

11,[6] or 13[7] days of an applicant missing a deadline. Some of the dismissals are a result of Tribunal error: in two recent cases, the Tribunal discovered it had dismissed matters as abandoned in error because it had missed emails from an applicant. Those errors were only discovered because the applicants in these cases requested reconsideration.[8]

The Tribunal ought not to take such a rushed approach towards deeming cases as abandoned for a failure to respond to a complex jurisdictional request. Its current approach is punitive towards applicants who may realistically need more time to obtain legal assistance or respond, and who may not know how to effectively communicate those needs to the Tribunal due to factors like language or literacy barriers.

(2) Changes to Practice Direction on Communicating with the Tribunal

Overall, the changes to this Practice Direction provide clarity and helpful guidance to parties. We are pleased that the Tribunal has incorporated into this Practice Direction the contextual approach to abandonment analysis ordered by the Divisional Court in *Ramirez v. Rockwell Automation Canada Ltd.* We highlight three areas for improvement below.

First, the Tribunal ought to approach communication with unlicensed representatives differently than LSO licensed representatives. While the current version of the Practice Direction provides that "if the representative is not licensed by the Law Society of Upper Canada, the HRTO generally will communicate with both the party and representative", the proposed version omits this and instead provides that "if a party is represented, [...] it is the representative's responsibility to keep their client informed". Accordingly, the Tribunal will communicate only with the representative even if the representative is not licensed by the LSO.

This change concerns us because unlicensed representatives are not legally accountable to the applicants they represent. If they miss a deadline, do not respond to a communication, or stop representing the applicant without notice to the Tribunal, it is the applicant who will suffer. We recommend that the Tribunal continue to communicate with applicants directly as well as their unlicensed representatives. There is no added cost or time associated with this precaution.

Even where a party is represented by a licensee, when the Tribunal issues a final warning letter before dismissing an application as abandoned, the Tribunal should copy the applicant personally. In the stakeholder meeting presentation, the Tribunal noted it would only do so when there appeared to be a problem reaching the representative. As a dismissal finally determines an applicant's rights, they should be copied on final warning letters in every case.

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[6] *Sathi v. Canada Post,* 2023 HRTO 1520.
[7] *Burmi v. St. Clair College,* 2023 HRTO 1446.
[8] *Muthuthamby v. Richmond Hill Society Of Temple,* 2022 HRTO 1324; *Persaud v. Centre for Addiction and Mental Health*, 2024 HRTO 978; *Mittal v. LifeLabs Inc.,* 2023 HRTO 1562.

Second, though this is not mentioned in the revised practice direction, we have observed that the Tribunal sometimes dismisses applications due to responses that are considered "unresponsive" to the request. An "unresponsive" response should have different consequences than a total lack of response. An unsatisfactory response goes to the merits and should not justify a decision of abandonment. Only a total lack of response should be considered grounds for a dismissal for abandonment, based on a contextual analysis.

Third, we recommend the Tribunal use plain language in all policies. For example, in the section titled Referencing Applicable File Number in Communications, this Policy Direction could use the terms "names of parties" or "the name of the case" instead of "style of cause".

(3) Changes to reconsideration process

We support the Tribunal's shift towards assigning reconsiderations to a different adjudicator than the one who handled the initial decision in most cases. We believe this enhances fairness and accountability, and aligns the HRTO with other Tribunals Ontario tribunals.

(4) Changes to Practice Direction on Case Management Conference Calls (CMCC)

The proposed Practice Direction states **"**If the applicant does not attend the CMCC, the Application may be dismissed as abandoned." This punitive approach does not reflect the spirit of the Divisional Court's direction in *Ramirez v. Rockwell Automation Canada Ltd.*, which called for a contextual approach to abandonment decisions. An applicant may be unable to attend a CMCC due to a medical emergency, for example, but fully intend to continue with their case.

Instead, where an applicant fails to attend a CMCC without a reasonable explanation, their matter should still proceed – but without their input on the procedural issues discussed at the CMCC. This is a fair and proportionate response to a failure to attend a CMCC; wholesale dismissal of an application is not.

If the Tribunal still proceeds with an abandonment determination, then it should take the approach proposed in the Practice Direction on Communicating with the Human Rights Tribunal of Ontario to deciding whether an application has truly been abandoned. This would ensure consistency and fairness in the Tribunal's approach to abandonment dismissal decisions. Alternatively, the Tribunal could send a follow-up letter requesting an explanation before taking any action, as is the Tribunal's current practice when a party fails to respond to correspondence. This approach balances efficiency with fairness by offering the applicant a second chance before they lose their right to proceed with their application.

(5) Changes to process for withdrawing applications

There is a word missing in the revised rule:

> 10.1.1 An applicant requesting to withdraw an Application only as against certain respondents must specify in their request against whom they are requesting withdrawal.

(6) Changes to Summary Hearing Rule and Practice Direction

We welcome the removal of the requirement to serve the summary hearing practice direction and shifting that responsibility to the Tribunal. This will ensure all self-represented parties receive clear, detailed, plain language information about the summary hearing process.

Thank you for considering our feedback. We would be pleased to discuss any of the above with you.

Sincerely,

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