



## Practice Direction #32

### Procedure When Raising a Human Rights or Charter Question

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#### 1.0 This Practice Direction

- explains the obligations of a party who intends to raise a Human Rights question under the *Ontario Human Rights Code*. The question can be about the legislation or the Workplace Safety and Insurance Board (WSIB) policy that applies to the WSIAT.
- explains the obligations of a party who intends to raise a question under the *Canadian Charter of Rights and Freedoms*. The question can be about the legislation or WSIB policy that applies to the WSIAT.
- explains the WSIAT's procedure when a Human Rights or Charter issue has been raised.
- sets out what happens when a party does not follow the procedure.

#### 2.0 Principles

- 2.1 The WSIAT can consider a Human Rights question to its legislation under the *Ontario Human Rights Code*.
- 2.2 The WSIAT can consider a Charter question to its legislation under the *Canadian Charter of Rights and Freedoms*.
- 2.3 The purpose of this Practice Direction is for the following groups to get sufficient notice of appeals that raise Human Rights or Charter questions
  - a. the Workplace Safety and Insurance Appeals Tribunal (WSIAT)
  - b. the Attorney General of Ontario
  - c. the Attorney General of Canada

### **3.0 Written Notice of Human Rights Question**

- 3.1 Parties raise a Human Rights question under the *Ontario Human Rights Code* according to the legislation or WSIB policy that applies to the WSIAT. In these cases, the party must file a written notice with the WSIAT containing
- a detailed explanation of the Human Rights question raised including the material facts of the challenge raised
  - the section(s) of the *Ontario Human Rights Code* used or the legal basis for the argument
  - what the party wants to happen because of the question
  - the name, address, phone number and email address of the party's representative (if any)
  - the name and WSIAT number of the appeal where the issue is raised
- 3.2 The party raising the Human Rights question must send written notice of the Human Rights question to the Attorney General of Ontario. They also need to send notice to any other parties to the appeal as soon as it is required.
- 3.3 Notice sent under sections 3.1 and 3.2 must be received as soon as possible. This can be no later than 60 days before the first scheduled hearing date.

### **4.0 Written Notice of Charter Question**

- 4.1 A party must comply with section 109 of the *Courts of Justice Act* if they intend to raise a question under the *Canadian Charter of Rights and Freedoms*. The question must be about the legislation or WSIB policy that applies to the WSIAT.
- 4.2 A party must serve a notice of constitutional question on the Attorney General of Canada and the Attorney General of Ontario. The notice must be served as soon as the circumstances requiring it become known. A copy of the notice of constitutional question must also be provided to the WSIAT and all parties to the appeal.
- 4.3 The notice of constitutional question should be similar to Form 4F. This is provided in the *Ontario Rules of Civil Procedure* (Review <http://www.ontariocourtforms.on.ca/english/forms/civil/index.jsp>).

#### 4.4 The notice must include

- a detailed explanation of the Charter question raised including the material facts of the challenge raised
- the section(s) of the *Canadian Charter of Rights and Freedoms* used or the legal basis for the argument including the constitutional principles being argued
- what the party wants to happen because of the question
- the name, address, phone number and email address of the party's representative (if any)
- the name and WSIAT number of the appeal where the issue is raised

### 5.0 WSIAT Procedure with a Human Rights or Charter Question

5.1 A Human Rights or Charter question that is raised under this Practice Direction will be addressed by the WSIAT after a decision has been made about the issues in the appeal under the applicable legislation and WSIB policy.

5.2 The WSIAT will not decide the Human Rights or Charter question if it is no longer required after the final decision on the other issues to the appeal is made.

5.3 The WSIAT may consider other procedures for dealing with a Human Rights or Charter question. This is in addition to the procedure in this Practice Direction, when required.

### 6.0 Disclosure of Information – Written Submissions and Evidence

6.1 Parties to an appeal involving a Human Rights or Charter question must follow the same disclosure requirements for a hearing. Written submissions and evidence must be served on the other party or parties to the appeal. It must be filed with the WSIAT before the hearing.

6.2 Human Rights or Charter questions are only decided when it is required after the final decision on the other issues is made. The WSIAT will not need written submissions and evidence from the parties about the Human Rights or Charter question raised in the appeal until it hears the Human Rights or Charter question.

## **7.0 Effect of Failure to Follow Practice Direction**

- 7.1 A party to an appeal must follow the procedure in this Practice Direction for raising a Human Rights or Charter question. If they do not, they will not be entitled to raise the Human Rights or Charter question in any proceeding of the WSIAT. This is unless it is ordered by the WSIAT.

## **8.0 References and Resources**

### **8.1 Legislative Authority**

*Workplace Safety and Insurance Act, 1997*, section 131 (the WSIAT can determine its own practice and procedure)

*Courts of Justice Act*, section 109 (notice of constitutional question)

*Ontario Rules of Civil Procedure*, Form 4F (notice of constitutional question)

*Ontario Human Rights Code*

Canadian Charter of Rights and Freedoms, Constitution Act, 1982

### **8.2 Decisions**

*WSIAT Decision No. 794/97* (WSIAT jurisdiction to consider Charter)

*WSIAT Decision No. 1529/04 I2* (WSIAT jurisdiction to consider Human Rights questions)

*Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513 (authority to consider Human Rights question)

*Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] 2 S.C.R. 504 (authority to consider Charter questions)

### **8.3 Related Practice Directions**

#8 – Disclosure

#35 – Calculation of Time

#36 – Delivery and Filing Documents