

October 23, 2024

To: Ena Chadha (Chair of HRLSC Board), Remi Warner (Acting Executive Director of HRLSC), HRLSC Board of Directors, HRLSC staff, Mariela Orellana (Director, Agency and Tribunal Relations Branch, Attorney General), Kristyn Wong-Tam (Official Opposition critic for the Attorney General), Tribunal Watch, and interested members of the public

We represent a cohort of lawyers at the Human Rights Legal Support Centre (“HRLSC” or the “Centre”). We have volunteered to sign this letter by name. Other lawyers have opted not to sign because they are concerned about their job security given the current direction of the HRLSC.

Ontario’s human rights system is made up of three separate agencies:

- The Ontario Human Rights Commission (“Commission”) works to promote, protect and advance human rights through research, education and policy development;
- The Human Rights Tribunal of Ontario (“HRTO”) is where human rights applications are filed and decided; and,
- The HRLSC provides legal assistance to people who may have experienced discrimination under the *Human Rights Code*.

We believe that the HRLSC is not currently able to fulfill its statutory mandate to provide legal services to Ontarians at the HRTO. We are writing this letter to request immediate action to ensure the long-term viability of the HRLSC as a legal services organization and to safeguard access to justice for all Ontarians who may have experienced discrimination.

The HRLSC is required to provide legal services to all Ontarians

The HRLSC was created in 2008 when the Government of Ontario amended the *Human Rights Code* to allow applicants direct access to the HRTO.

The HRLSC is required by law to provide legal services to all Ontarians who are seeking to enforce their rights under the *Human Rights Code*. The *Code* states that the HRLSC is required to provide “support services, including legal services” and lists a

series of “legal services” that the HRLSC must provide (sections 45.12 and 45.13). The legal mandate of the HRLSC is clear in its name as the Legal Support Centre.

The HRLSC has also adopted “core values”, including “providing its services in a timely manner that will meet the needs of those who seek assistance and legal support” and “delivering high quality legal services through well-trained and committed staff.”

The Ontario Human Rights Commission

Since 2008, the Commission has had a different statutory mandate. Its mission is to promote human rights through education, policy development, public inquiries and litigation. The functions of the Commission outlined in the *Code* include “to develop and conduct programs of public information and education” (s. 29).

The HRLSC is currently incapable of providing its mandated legal service to all Ontarians

In the past year, the HRLSC’s Executive and Board have taken steps to reduce the Centre’s ability to provide legal services to applicants at the HRTO, moving instead toward a focus on policy, education and outreach. These areas of focus are not within the mandate of the Centre, they are squarely within the legislated role of the Commission.

As a result of the new focus on policy, education and outreach, the HRLSC does not have sufficient staff to provide the legal services outlined in the *Code*. We cannot meet our core values of providing timely, high-quality legal service.

Since 2014, the HRLSC has decreased the number of lawyers on staff by over 50%. In the past year alone, five lawyer roles have been effectively eliminated. Many lawyers have either left or gone on leave, and their positions have not been backfilled. Since 2016, the Centre has also eliminated Legal Services Representative and Human Rights Representative roles, who assisted with client interviews, drafting applications and attending mediations.

The HRLSC has used the salaries from these departing lawyers and legal staff to hire numerous non-legal staff (increasing its non-legal staff by 30% since 2016), to pay for the continued use of external consultants to work on strategic planning, and to create a new non-legal services department: Communications, Outreach and Education. This department and its staff are tasked with work that is within the statutory mandate of the Commission. The HRLSC does not need to educate the public about human rights: this is squarely within the mandate of the Commission. The HRLSC is a legal services organization, providing Ontarians with meaningful access to justice at the HRTO.

Two of the ten remaining non-management lawyers have been on rolling contracts for more than three years, and are seen as “backfills”. In contrast, the Centre’s Executive has created and hired a new permanent Policy Research Advisor to assist the acting Executive Director in non-legal services.

With such a limited number of lawyers, the HRLSC has been unable to provide the core legal services we are required to deliver. The statistics on our level of services show a steady decline in all areas from 2016 to present. As a few examples:

- When an applicant is referred to speak with a lawyer, they are waiting approximately 3-5 months for this interview. This timeline is significantly longer than previous years. As a result, the HRLSC is unable to assist clients with mediations and other hearing events that are taking place within 3-5 months of clients contacting the Centre. Many HRT0 deadlines fall within this timeframe.
- Due to our capacity issues, we are providing almost no early dismissal interviews. This is particularly concerning as the HRT0 has moved toward seeking increased early dismissals of cases. Without these interviews, vulnerable applicants must advocate for themselves without legal advice.
- The HRLSC is not able to represent applicants at most mediations. We are attending even fewer mediations than during the pandemic when many mediations were adjourned or cancelled. In 2020-21, we attended 281 mediations, while during 2022-23, we attended 236 mediations. In 2018-19, we attended 481 mediations.
- Our reduced capacity has meant markedly fewer settlements. In 2022-23, we assisted with 242 settlements, while in 2018-19, we assisted with 526.
- We have had to turn away applicants with strong claims of discrimination because we simply do not have the capacity to represent many of the people who contact us. We are attending 80% fewer merit hearings than in 2016. In 2022-23, we attended only 17 hearings. This is despite the HRT0 recovering from the pandemic and regularly scheduling merit hearing dates.
- We no longer provide legal advice for applicants who have received a request for summary hearing or requests for reconsideration. Again, this is particularly concerning because the HRT0 has been dismissing significantly more cases based on administrative oversights and other errors than before the pandemic.
- We are unable to offer retainers to assist most applicants with the pre-hearing disclosure process (preparing their documentary evidence, drafting witness statements, and drafting case summaries). This is especially concerning, given that the HRT0 has recently increased the complexity of their disclosure requirements, including significantly shorter timelines.

This is a significant reduction from the level of service that we were able to provide with a full complement of lawyers and legal staff.

The HRLSC has made a recent decision to redirect resources away from direct legal services. The HRLSC has been using its limited budget to hire non-legal staff at a time when the existing legal staff are unable to fulfill our statutory mandate to provide timely, high-quality legal services to applicants in Ontario.

Prospect of further reduction in number of lawyers

The current strain on our legal services is having an impact on our remaining lawyers. Many of the lawyers have left because of the HRLSC's decision not to invest in and support its legal services providers, further jeopardizing the HRLSC's ability to provide legal services.

Lawyers at the HRLSC have recently unionized over ongoing issues related to the HRLSC's decision not to provide fair salaries to lawyers. Legal Aid Ontario lawyers make approximately 33% more, and lawyers working for the Ministry of the Attorney General often make 100% more than HRLSC lawyers. While this issue is not the focus of this letter, it has influenced the HRLSC's ongoing inability to retain many of its experienced lawyers.

Necessity of direct legal services to the human rights system

The legal services provided by the HRLSC are vital to the efficiency and success of Ontario's human rights system. Many applicants at the HRTO are self-represented, and we act as a guide to the applicable law and procedure. We help clients to focus on the relevant issues to ensure that the HRTO's and the parties' resources are used efficiently. We are also able to give our clients fulsome advice about the possibility of settlement to ease the strain on HRTO resources.

We have serious concerns about the impact that this current situation is having on the vulnerable Ontarians who need our assistance and on the human rights system as a whole. The rights set out in the *Human Rights Code*, and the values and ideals it represents, are simply words on paper if individuals do not have the ability to meaningfully assert and enforce the rights set out in it. This is the crucial need that the HRLSC was designed to meet in 2008. We ask that the Board and Executive of HRLSC help us continue to play this vital role for the people of Ontario by listening to and seriously considering our concerns set out in this letter.

Sincerely,

Megan Maxwell

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