

The Tribunal is committed to providing fair, efficient, accessible, and timely access to justice. This practice direction outlines the Tribunal's approach to hearing formats and outlines when, and for what reasons, a party might apply for an in-person hearing.

Hearings are held electronically

Amended on December 8, 2021, section 43.1 of the *Alberta Human Rights Act* now permits electronic proceedings, including the Tribunal hearing human rights complaints via videoconference (also known as electronic hearings).

Electronic hearings promote justice, ensuring hearings are timely and accessible, while preserving fairness. Tribunal hearings at the Alberta Human Rights Commission will proceed electronically unless:

- A party can establish that an in-person hearing is required as an accommodation (such as for a disability);
- The Tribunal finds that an electronic hearing format will result in an unfair hearing; or
- The Tribunal otherwise determines that a different hearing format (i.e., by written submissions or in-person) would be more efficient in resolving the complaint, while preserving fairness.

While an agreement between the parties for an in-person hearing or for one that is through written submissions alone will be considered, the Tribunal must balance many interests. This includes the parties' right to a fair hearing and the public interest in having matters heard efficiently and timely.

Factors for determining whether a change in hearing format is required

1. Whether fairness requires the electronic hearing format to be changed:

- The Tribunal has an obligation to ensure fair hearings. What constitutes a fair hearing depends on the circumstances of the case.
- There is no inherent unfairness to an electronic hearing. Other cases have found that credibility assessments can be fairly and efficiently conducted in electronic hearings.
- In-person hearings are not required to ensure fairness simply because a matter involves witnesses and their credibility.¹
- While a party may prefer an in-person hearing, it is not necessarily in the interests of justice to have one. For example, where the location of a hearing would require parties to travel to attend an in-person hearing, having an electronic hearing might reduce delays in finding hearing dates, and reduce costs for parties and the Tribunal (such as hotel costs, gas, time off work).

¹ See *Trudeau v ConSun Contracting Ltd.*, 2020 AHRC 63

- Some hearings may use a combination of virtual and in-person formats, or may occur through written submissions.

2. Whether a party will be prejudiced by an electronic hearing format:

- An unfair hearing may arise where the hearing format results in one or both parties being unable to make their case. To determine if an exception to electronic hearings will be made, the Tribunal will consider whether the electronic hearing format would cause prejudice to the parties, as well as whether a change in the format would cause prejudice. This means the Tribunal will consider whether an electronic hearing, or a change to an in-person hearing, would be unfair to one or both parties.
- Not knowing how to use videoconference technology (i.e. Zoom) is not enough to require an in-person hearing. The Tribunal may be able to provide some technology support, such as a computer in a private room at the Commission's office for a self-represented party to attend the electronic hearing, and upon request, may schedule a practice with a party needing assistance in becoming familiar with the videoconference technology.

3. The complexity of the matter:

- The Tribunal may consider the following factors when deciding whether there should be a change in the hearing format:
 - The number of parties.
 - The nature and volume of the proposed evidence.
- A more complex matter may not support a change to an in-person hearing format.

4. The length of delay that will result if the matter waits for an in-person hearing:

- Significant delay to book an in-person hearing will be seen as evidence that a change in the format would cause prejudice.

5. Whether the application for the change in hearing format was made as soon as the party became aware of the need for accommodation or other fairness issue.

6. Any other factor that is relevant.

How to file a request to change the hearing format

The party requesting the hearing format change must explain why they need to be accommodated with an in-person hearing, or why an electronic hearing will result in an unfair hearing. Accommodation means making changes to policies or rules so that they do not have a negative effect on the person because of the person's mental or physical disability, religion, gender, or another protected ground. At a minimum, the party requesting the new hearing format must show that an electronic hearing format will cause them prejudice.

An application that an electronic hearing will cause a party prejudice must be made in writing. It must include:

1. an explanation for why the party needs the accommodation (e.g. what protected ground the party is claiming and why that would make an electronic hearing difficult for them); or
2. an explanation for how the hearing will be unfair to the party if it is not held in-person.

This must be served on the other parties, which means it must be emailed to the Tribunal Registrar and all other parties.

The deadlines for an application are:

1. The party will file their written request with the Tribunal Registrar and serve it on all other parties at the time of the pre-hearing, immediately after the pre-hearing, or as soon as the party becomes aware that an electronic format would be unfair.
2. The other parties will have seven days to file a response, stating whether they agree or disagree with the application and their reasons for doing so.

A request to have an in-person hearing instead of an electronic hearing because of an accommodation must be made as soon as a party is aware of the need to be accommodated. The other parties do not need to reply substantively to the application for accommodation unless the Tribunal requests their submissions, other than their agreement or disagreement about the proposed hearing format.

If the requesting party needs to provide private medical information to support their accommodation request, they should contact the Tribunal Registrar about what information needs to be provided. Private medical information to support an accommodation request does not need to be shared with the other parties, but the application to change the hearing format does need to be served on all parties.

Contact the Tribunal Office

Website albertahumanrights.ab.ca/tribunal

Email address AHRCTribunal@gov.ab.ca

Phone 780-638-4635

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

TTY service for persons who are deaf or hard of hearing: to call toll-free within Alberta, dial 1-800-232-7215.