

## **Alberta Human Rights Tribunal Practice Direction**

### **Litigation Representative**

#### Introduction

A party to a complaint at the Alberta Human Rights Commission who is under 18 years of age, or lacks the mental capacity to participate in the process, may be represented by a litigation representative. A litigation representative manages the complaint, makes decisions on behalf of the represented person, and becomes the party to which all correspondence is sent regarding the complaint.

Individuals who have the capacity to participate in a proceeding will not need a litigation representative. The Commission's bylaws (section 7) and this practice direction only apply where a person requires a litigation representative.

#### Responsibilities of a litigation representative

A litigation representative must take all steps necessary to protect the interests of the represented party in a human rights complaint, including:

- a. keeping the represented person informed of all decisions and consulting with the represented person about the proceedings, to the extent possible;
- b. considering the impact of the proceedings on the represented person;
- c. deciding whether to retain legal counsel and providing instructions to them;
- d. gathering information that is requested by the Commission;
- e. putting forward the best possible case;
- f. responding promptly to Commission communications;
- g. acting in a manner that is courteous and respectful of those involved;
- h. participating in good faith and considering a reasonable settlement offer;
- i. updating the Commission of new contact information; and
- j. immediately informing the Commission if the litigation representative is no longer representing the party to a complaint.

#### Litigation Representative declaration

A litigation representative will fill out the *Litigation Representative* [form](#) and declaration agreeing to take on this role and outlining the reasons why the person needs a litigation representative. The litigation representative must provide a current address where the Commission can send documents. The Commission may require documents, such as a personal directive or proof of guardianship, to support the party being represented by a litigation representative.

### Representing a minor

For complaints made by a parent or guardian involving a minor, the parent or guardian will fill out the *Litigation Representative* form obtained from the Commission. They will send this form, along with the complaint being made, to any person who has custody or guardianship rights regarding the minor. Once they receive permission from the other parents or guardians to represent the minor, the litigation representative will send the completed form to the Commission. The form requests information, including:

- the minor's birthdate;
- the relationship of the minor to the litigation representative; and
- a declaration that other parents or guardians have given their permission.

Once the minor turns 18 years of age, they will automatically have carriage of the complaint, unless it is shown they lack mental capacity to do so. Where a minor does not want a parent or guardian to represent them, the minor should contact the Director's office or Tribunal.

### Representing a person who lacks mental capacity

A person is presumed to have the mental capacity to manage and conduct their matter and to appoint and instruct a legal representative. However, where a person lacks mental capacity, a friend, family member or support worker may be a person's litigation representative.

Where the person requires a litigation representative to participate in the proceedings, the form requests information, including:

- the authority that the person has to act as a litigation representative;
- the reason the person believes they should represent a party to a complaint;
- the relationship of the party to the litigation representative.

### Becoming a litigation representative

The Commission may ask for submissions on whether to accept an individual as a litigation representative, and may refuse or remove a litigation representative because: (section 7.4 of bylaws):

- a. there is a conflict;
- b. the represented person has capacity;
- c. the litigation representative withdraws;
- d. a more appropriate person has come forward; or
- e. a litigation representative is not needed at that stage of the process.

Once the Commission receives and accepts the form, the litigation representative will be notified, and all further documents regarding the matter will be sent to the litigation representative.