



The Restorative Approach – Frequently Asked Questions (FAQ's)

Restorative Approach

This is short explanation of how the Human Rights Adjudication Panel applies a restorative approach in its work. The *Human Rights Act* provides for a restorative approach to be applied throughout the human rights system. This includes pre-hearing conferences, mediations, and hearings before the Panel.

The Panel has received training in restorative practices which may be used at any point in the adjudication process. In applying a restorative approach, Panel adjudicators may use practices and procedures that differ from those in traditional adversarial processes. This may include the use of restorative questions to facilitate structured conversations which can often lead to resolution. Adjudicators will still make decisions, based on applying evidence to legal tests, recognizing that a restorative approach offers greater participatory and remedial opportunities for parties within the process.

Frequently Asked Questions (FAQ's)

The following FAQs set out the manner in which adjudicators will use the restorative approach in pre-hearing conferences, mediations, and hearings before the Panel.

What is a restorative approach?

In applying a restorative approach, Panel adjudicators will make every effort to understand the effects of whatever happened, giving rise to a complaint, for everyone involved. The process we undertake will give you opportunities to express how you feel about what happened and its impact. Part of our role as adjudicators is to facilitate a conversation of your experiences and the feelings those experiences have generated, through a safe and respectful structured format.

How does a restorative approach work?

If you attempted restorative dispute resolution with the Commission's staff before your complaint was referred to the Panel, your experience at a pre-hearing conference should be very similar. We sit in a circle, and everyone in the circle has an equal chance to speak. The adjudicator will ask questions which invite you to share your perspectives. The adjudicator's facilitation is done in the context of a carefully designed and structured process which is respectful and non-adversarial in nature.

In addition, the adjudicator will guide the parties through the items that need to be addressed before a hearing is scheduled following the Rules of Practice and Procedure. This may lead to an open discussion about the parties' expected evidence, documents, or considerations about the merits. It may also lead to a mediation using restorative practices, if the pre-hearing conference opens a discussion that requires more time or facilitation.

Who participates?

In a restorative pre-hearing conference, there may be opportunities to bring other participants to the circle. This may include family members or other support persons, or representatives of affected community groups. There is flexibility in how a restorative approach is applied, and parties can expect to work with adjudicators to determine who can meaningfully contribute to a circle.

What are the benefits of a restorative approach?

The restorative approach very often leads to a resolution of the complaint before it goes to a hearing. Adjudicators can promote and encourage resolution before the hearing, while we also place a high value on resolution being totally voluntary. When feelings, impacts and experiences are shared between participants, the opportunity for you to contribute to your own resolution is enhanced, as you come to better understand other participants' perspectives on the same events.

What if we do not resolve the complaint?

If the restorative approach does not generate a resolution at the pre-hearing conference (or mediation) the adjudicator will set a hearing date. The adjudicator may discuss with the parties whether another adjudicator should be assigned, depending on how deeply the merits of the case were discussed at the pre-hearing conference.

Hearings will proceed like any similar proceedings, in the sense that participants will present documents, call witnesses, and make submissions to support their case. The distinguishing feature of human rights hearings is that adjudicators can use restorative, non-traditional and non-adversarial techniques. They will also consider the impacts they hear regarding the complaint in making decisions.

Adjudicators may, for example, begin the hearing by giving everyone an equal chance to give their narrative, or in other words, to tell their side of the story. This may help to identify areas of agreed or undisputed facts, and to define the scope of areas where parties will be subject to questioning.

Adjudicators can also be expected to take an active role in asking questions of witnesses and parties. This may include questions about the impact of events on the persons involved, regardless of whether those events establish the complaint as founded or unfounded.

What is "restored" through a restorative approach?

In classic adjudication, someone generally wins and someone loses at the end of the hearing. The human rights system seeks instead to restore relationships, individual dignity and feelings or self-worth, and a community that values human rights. Some of the key goals underpinning this approach are that all involved will have a chance to be heard, understand the reasons for the decision, and take away from adjudication with a clear path forward.

This does not mean adjudicators will shy away from conducting hearings and making difficult decisions, by applying relevant legal tests and being guided by principled decision-making. It does mean that matters or questions of key importance to participants are not left unanswered. The opportunity for participants to address those questions will be woven into every stage of the Panel's proceedings.

There will still be human rights decisions. Regardless of the outcomes, however, the restorative approach aims to leave participants feeling their lived experience has been heard and understood by the other participants.