

The SOAR INDEX

Access to Justice for self-represented parties

A self-assessment questionnaire for tribunals

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1 Introduction

Access to justice for self-represented parties appearing before tribunals requires systems and processes that meet their needs. Tribunals must consider the impact on self-represented parties when bringing changes to their systems and processes. Tribunals can do so through an on-going assessment of how they are meeting the needs of those who represent themselves.

In recent years, tribunals have transformed their operations significantly, using technology to support virtual hearings, enhanced electronic filing, increased digital information, and remote participation.

As a result, the accessibility of tribunal processes has increased for many parties. But this transformation may also result in barriers for some self-represented parties, notably those without reliable access to internet.

The Society of Ontario Adjudicators and Regulators (SOAR) has developed this Index as a resource that tribunals can use to self-assess their processes and consider how they could further enhance access to justice for self-represented parties.

The word “tribunal” is used in the Index refers to adjudicative tribunals as well as boards, commissions, panels and other public bodies that operate within the broader justice sector.

The Index is not intended to apply equally to all tribunals. Some of the points will have more relevance than others but may still be of help as a tool to consider things that could be done to make the tribunal more accessible for self-represented parties.

2 Why are people self-represented?

While some self-represented parties choose to represent themselves, research by the National Self-Represented Litigant Project has shown that, depending on the tribunal and the issues at stake, most would prefer to be represented, but are unable to find or afford representation.

The reasons for self-representation may include:

- The amount of money involved in a case may be significant for a person, especially someone with low income, but may be less than the cost of representation.
- Legal Aid does not provide support for most tribunal cases. Legal Aid Community Clinics can assist low income people appearing before a small number of specific tribunals.
- Lawyers or paralegals may offer to take a case on a contingency basis meaning that there are no costs if the person is unsuccessful, but significant costs if they do succeed.
- Bad experience with a lawyer or paralegal in the past.

A person with mental health issues is more likely to be self-represented because it may be difficult to find a representative they can trust or who is prepared to take them as a client.

Self-assessment questions

Does the tribunal have representation referral information available on its website?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Has the tribunal done an assessment of the reasons that people appearing before it are self-represented?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- [Workplace Safety and Insurance Appeals Tribunal \(WSIAT\) WSIAT Finding a Representative](#)
- [National Self-Represented Litigant Project: Identifying and Meeting the Needs](#)
- [Law Society of Ontario: Finding a lawyer or paralegal](#)

3 Plain language and communication

Self-represented parties need information from the tribunals they want to access:

- to decide if the tribunal is the right place to resolve their legal issues.
- to understand the process, know what is happening as the case progresses, what the tribunal expects from them, and how to provide evidence.
- to know what to expect when a hearing or mediation is scheduled, and how to ask for accommodation for disability.

Self-represented parties may also be brought to the tribunal as a respondent in a case brought by others. These participants also need to be able to easily access information about the tribunal's processes and their rights and obligations as a party.

Tribunals must be able to communicate the answers to these questions, and other specific questions a self-represented party may have about their case, in ways that will be understood. When a tribunal issues a decision or a direction, it must be written in plain language and easily understood.

3.1 Website

A website design or re-design should keep self-represented parties in mind to ensure that information is clear, easy to access and easy to understand.

Self-assessment questions

Is the information on the tribunal's website only available online?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are there user guides, explaining the hearing process, specifically designed to assist self-represented parties?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Can paper copies be mailed when requested or picked up at an office/ physical location?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Does the tribunal have a process to ensure the website content is culturally appropriate?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Have the website and information guides been tested for usability and plain language?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is the website compliant with the Accessibility for Ontarians with Disabilities Act (AODA)?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there a video showing a typical hearing?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
If hearings are public, is there information about how a hearing can be observed?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there information about where parties can go for legal advice (for example, legal aid, community legal clinics, Law Society of Ontario (LSO) referral service)?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there a way to collect feedback about website issues?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

3.2 Guides and information

In addition to legislation and regulations, many tribunals have:

- rules setting out the tribunal's hearing processes and the obligations of parties,
- practice directions, and
- forms that parties must use.

Simply having links to all of this information may be overwhelming — too much information can be an access to justice barrier.

Some self-represented parties may be more comfortable with an in-person visit to the tribunal to request information.

Self-assessment questions

Is there a step-by-step guide designed for self-represented parties to help navigate the sources of information?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
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Is the guide regularly updated to reflect changes?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are applicable Rules, Procedures, and Practice Directions easily found?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are applicable Rules, Procedures, and Practice Directions written in plain language?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there an in-person information and contact centre available that people can call or visit during regular business hours?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- [Centre for Plain Language](#)
- [Social Security Tribunal: Getting Help with your Appeal](#)
- [Condominium Authority Tribunal: Guide for Self-Represented Parties](#)
- [Workplace Safety and Insurance Appeals Tribunal: Self Represented Parties](#)
- <https://tribunalsontario.ca/en/supports-and-services/>

3.3 Navigators

Some tribunals have developed a Navigator function to assist parties to understand the tribunal's processes. A Navigator, usually a tribunal staff member, cannot provide legal advice but can provide legal information.

Some tribunals train intake staff to provide navigation assistance. Others have designated staff for this purpose. There is potential for the future development of artificial intelligence (AI) navigation systems.

Self-assessment questions

Are tribunal navigators available to assist parties to understand the tribunal's processes?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
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Resources

- [Social Security Tribunal: Navigators](#)
- [Workplace Safety and Insurance Appeals Tribunal: Navigators](#)
- [Landlord and Tenant Board: Navigation](#)

3.4 Application form and other forms

Forms that are too long, not in plain language, or not easy to fill in or file may create barriers for self-represented parties. Some self-represented parties access the internet primarily using their phone. Design of forms and other tribunal information documents should ensure that the documents can be easily accessed using phones as well as computers.

Self-assessment questions

Have forms been reviewed for plain language?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is a paper copy of the forms available and can they be filed in paper form?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Do the forms include embedded information and explanations to help people complete it?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Can the forms be easily accessible using phones as well as computers or tablets?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are options available for people with low vision?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are forms accessible and regularly reviewed for accessibility?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Do forms require paid PDF software to function well?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Can a draft be saved and worked on again later?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

3.5 Accommodation

Self-represented parties may not know that they can request accommodation for special needs or how to make the request. The tribunal's systems and technology should be accessible for some special needs, such as vision and hearing impairments, to avoid the need to request such accommodation. For others, it is important that the tribunal have a clear and readily available process for requesting an accommodation. Staff and adjudicators should receive on-going training in how to manage requests.

Self-assessment questions

Do the tribunal's information sources and processes conform with the Access for Ontarians with Disabilities Act (AODA) legislation? For example, can they be accessed by a person with a vision impairment?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there information readily available about the accommodation process and how to request an accommodation?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are there staff available to deal with accommodation requests and to assist with any related issues?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Have adjudicators been trained in how to deal with accommodation requests that may arise during a hearing?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- [National Self Represented Litigant Project: Struggling for Accommodation](#)
- [Workplace Safety and Insurance Appeals Tribunal: How to Ask for Accommodation](#)
- [Social Security Tribunal: Accommodation Policy](#)

4 Pre-Hearing Access Issues

Many tribunals use pre-hearing case management to clarify issues, deal with cases that are outside the tribunal's jurisdiction, explore options for settlement, or prepare the case for hearing, including requirements to provide documents and/or witness statements. These processes can be confusing for self-represented parties and can result in barriers.

4.1 Pre-hearing case management

Self-assessment questions

Is there information available to explain the tribunal's case management processes?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are pre-hearing requirements clear and easy to find or access?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
If a case raises a question of jurisdiction, are the parties clearly informed that their case might be dismissed?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
If a case raises a question of jurisdiction, do the parties have enough time to seek legal advice and respond, once informed that their case might be dismissed?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there information available or provided that explains the role of witnesses?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are self-represented participants referred to on-line resources such as the Canadian Legal Information Institute (CanLII)?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

4.2 Documents

Documents may be considered as evidence in a case. Representatives will typically understand which documents are relevant and how to seek disclosure of documents from the other side. Self-represented parties may be unsure of what documents they need to provide and may not

know they can ask for documents (known as disclosure) from the other side.

Many tribunals require documents to be filed electronically. This may be efficient but may create barriers for self-represented parties who may not have the required technology, hardware, and/or reliable internet.

Self-assessment questions

Is information provided to help self-represented parties understand the sort of documents that may be relevant for their case?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Can documents be filed in paper form?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there assistance available to help people file documents electronically?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Can the hearing record be accessed electronically and is there assistance available to do so?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

4.3 Mediation

Mediation can be a very effective way to resolve cases, but it can also cause barriers for self-represented parties who may not be familiar with how mediation works at the tribunal, especially if there is a power imbalance between the parties.

Self-assessment questions

If the tribunal offers mediation or alternative dispute resolution, are there guides or videos available for self-represented parties to understand these processes?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Have mediators been trained about how to manage perceived or actual power imbalances?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

→ [Condominium Authority Ontario: Mediation a User Guide](#)

5 Hearings

5.1 Language and Support

A hearing is often stressful for any party and may be more so for a self-represented party. A represented party has someone to speak on their behalf, bring out their evidence, keep notes about the evidence, and make submissions. A self-represented party must do all of this on their own. These tasks can be even more difficult if the self-represented party is not fluent in English or French.

Courts in Canada allow self-represented parties to have someone with them to provide support. The support person is not a legal representative but can help make the process less stressful for the self-represented party. This support person is sometimes referred to as a “McKenzie friend”, a term that originated in the United Kingdom. McKenzie friends are most common in family law cases but can be very helpful in other legal proceedings including tribunal cases. It is up to the adjudicator to determine whether the support person is appropriate and what their involvement will be.

Plain language during the hearing can help ensure that self-represented parties understand the process and proceedings. There are many legal terms that are often used because they concisely capture a legal concept. The use of these terms (often in Latin) can be alienating for self-represented parties.

Self-represented parties who are not fluent in English or French have obvious barriers in a hearing. Some tribunals provide interpretation services at the tribunal’s cost. Other tribunals require parties to bring their own interpreters. Parties need to be able to know what to do if they require translation assistance.

Self-assessment questions

Are interpretation services available from the tribunal. If not, is there a mechanism for accommodating languages other than English and French?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are adjudicators trained in the use of plain language during hearings?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Can parties have support people with them (e.g. family or friend) who are not representatives?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

→ [National Self-Represented Litigant Project: The McKenzie Friend](#)

5.2 Active Adjudication

Active Adjudication can be an important tool to improve access for self-represented parties. There are many forms of active adjudication, but the usual purpose is to make the process accessible and understandable so that all participants have a meaningful opportunity to present their case and to understand the case against them. This might require modifications to the standard hearing model. At the same time, it is important for adjudicators to understand the limits to active adjudication. For example, it is appropriate to provide legal information, but not legal advice.

The [Canadian Judicial Council Statement of Principles on Self-Represented Litigants](#) (endorsed by the Supreme Court of Canada: [Pintea v. Johns, 2017 SCC 23](#)) identifies the following as things that may be appropriately done in a hearing:

- a) explain the process;
- b) inquire whether both parties understand the process and the procedure;
- c) make referrals to agencies able to assist the litigant in the preparation of the case;
- d) provide information about the law and evidentiary requirements;
- e) modify the traditional order of taking evidence; and
- f) question witnesses.

Self-assessment questions

Is there ongoing training for adjudicators to enhance active adjudication skills?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there a tribunal document that endorses active adjudication and explains what it may mean for hearings?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- [Council of Canadian Administrative Tribunals: Active Adjudication Repository](#)
- [Ian Mackenzie: Active Adjudication and Impartiality](#)
- [Lorne Sossin and Samantha Green: Administrative Justice and Innovation: Beyond the Adversarial/Inquisitorial Dichotomy](#)
- [Condominium Authority Tribunal: Active Adjudication](#)

5.3 Virtual hearings

Virtual hearings can work very well for some self-represented parties. However, for others, a requirement to participate in a virtual hearing can create barriers. This is particularly so for self-represented parties who do not have access to reliable internet services, do not have facility with computers, or do not have the technical knowledge to comfortably

participate in a virtual hearing. According to the Canadian Radio-Television and Telecommunications Commission (CRTC), while closing the “digital divide” is an important goal, approximately 20% of rural communities do not have access to broad band internet.

Self-represented parties are more likely to have difficulties connecting to a virtual hearing. Some tribunals and courts have staff, sometimes known as hearing moderators, who contact the parties before the hearing starts to ensure that everyone can connect.

Hybrid hearing formats are another possibility, but caution is required to avoid a perception of different treatment. For example, if the adjudicator and one party attend the hearing in person or participate by video, a self-represented party is participating by phone may feel that they are not participating on an equal basis.

Self-assessment questions

Does the tribunal have facilities where an in-person hearing can be held?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Can the parties choose the hearing format (e.g. in-person, virtual, or hybrid)?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are there options available for people who do not have reliable internet?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Do those options allow all parties to participate equally?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there support available to assist parties who experience technical difficulties, both before the hearing starts and during the hearing?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- [National Self-Represented Litigant Project: Public Access to Virtual Hearings](#)
- [Kathy Laird: Digital Transformation: The Impact on Access to Justice](#)
- [Tribunals Ontario: Guide to Video Proceedings](#)

5.4 Adjournments

Some self-represented parties face a significant barrier when the adjudicator adjourns a hearing so that the self-represented party can seek representation. While it is appropriate to establish that the self-represented party is aware of their right to representation, it may not be appropriate to assume that the self-represented party will find a representative if the hearing is adjourned. Some people will simply give up. Others may find a representative but not realize that the representative is not competent, leading to “under representation”, possibly resulting in a worse outcome for the person than if they had proceeded to represent themselves.

Self-assessment questions

Are adjudicators trained about the availability of representation for people appearing before the tribunal and about the reasons why people may be self-represented?

- ☐ Yes
- ☐ In progress
- ☐ No
- ☐ Not applicable

6 Decisions

6.1 Decision Writing

Writing a clear and concise plain language decision with adequate reasons is especially important for self-represented parties who need to know what the decision is, what the reasons are and what, if anything, happens next. Many decision makers find it more difficult to use plain language if they are not used to doing so.

Many decision makers have endorsed a “point first” approach to decision writing. In this approach, the conclusion about an issue is set out first with the reasons and context coming second. This can make it easier for the reader to understand the decision.

Self-assessment questions

Is there ongoing training on decision writing?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there decision writing training for adjudicators that emphasizes plain language?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
If there is a draft decision review process?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Does it include plain language?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- [Plain Language Association International: What is Plain Language?](#)
- [Centre for Plain Language](#)
- [SST's Decision writing guide](#)

6.2 Decision Release

At the end of a hearing, parties typically want to know what happens next and when they will receive a decision. Many tribunals have standards setting out the tribunal's expectations for when a decision will be released, but these may not be publicly available. Experienced counsel may know the standards, but self-represented parties may not. A clear communication protocol if the standards are not met may help reduce anxiety about a delayed decision.

Some tribunals make decisions that can have a profound effect for the parties involved. Depending on the issues at stake, a negative decision may trigger a strong emotional response or psychological crisis. A represented party will have someone to assist them in understanding the decision and how to manage if the decision has not gone their way. A self-represented party may not have such support.

Some tribunals have a decision release protocol for cases where the tribunal is aware of the potentially negative impact a decision may have. These cases obviously require a sensitive approach tailored to the circumstances. It could, for example, involve contacting the person's family doctor to let them know that a decision is coming.

Self-assessment questions

Does the tribunal have a protocol for issuing decisions that may trigger a strong emotional reaction?

- ☐ Yes
- ☐ In progress
- ☐ No
- ☐ Not applicable

Resources

→ [Workplace Safety and Insurance and Appeal Tribunal: Guide to Sensitive Decision Release Process](#)

7 Training of staff and adjudicators

7.1 Training

While many self-represented parties are more than capable of effective participation and advocacy, some self-represented parties can present challenges for staff and adjudicators. Self-represented parties may have mental health issues. Others may have difficulty communicating or understanding the tribunal's expectations. A tribunal may have resources to deal with these situations, but self-represented parties may not know how to ask for assistance or know that the resources exist.

In the hearing room, self-represented parties may be subject to inappropriate questioning or bullying. Self-represented parties may themselves engage in abusive or inappropriate behaviour directed at the other party or the adjudicator.

Self-assessment questions

Are staff and adjudicators trained in how to interact with and assist self-represented parties?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are staff and adjudicators trained on how to interact and support people with mental health issues?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there cultural competency and diversity, equity and inclusion training for staff and adjudicators?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are staff and adjudicators trained in conflict de-escalation for example, when there is overpowering, belittling, or disrespectful behaviour?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

7.2 Recruitment and performance review of adjudicators

Some skills are specific to adjudication with self-represented parties. These can be taken into account when recruiting new adjudicators and when assessing the performance of existing adjudicators.

Some of the relevant competencies include:

- a) Active adjudication
- b) Dealing with self-represented parties
- c) Plain language written and oral communication
- d) Decision writing

- e) Cultural competency
- f) Hearing management
- g) Dealing with a potential power imbalance in a hearing setting

Self-assessment questions

Does the job description for adjudicators include competencies related to self-represented parties?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Is there a system for reviewing the performance of adjudicators and, if so, does it include these competencies?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- [SOAR: Performance Review of Adjudicators](#)
- [Council of Canadian Administrative Tribunals](#)

8 Consultations

Many tribunals have established outreach and engagement programs as a way of consulting with tribunal users.

At some tribunals, there is a consultation committee, composed of members of the bar and other regular users of the tribunal. These groups can provide important feedback on existing and proposed systems and processes. This can include feedback on how changes may affect self-represented parties.

Some tribunals use post-hearing questionnaires or interviews to track user experience. These can be used on an ongoing basis or for a short period to obtain a snapshot of user experience.

Consultations specifically about issues related to self-represented parties with organizations such as the National Self-Represented Litigant Project may also be helpful.

Self-assessment questions

Is there a stakeholder outreach or engagement program that meets with stakeholders regularly?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are there methods to measure user experience with hearings and the tribunal's processes?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are there post-event surveys collected from self-represented parties?	☐ Yes ☐ In progress ☐ No ☐ Not applicable
Are there Key Performance Indicators (KPI) that measure tribunal performance and are any specific to self-represented users?	☐ Yes ☐ In progress ☐ No ☐ Not applicable

Resources

- WSIAT — [Exit surveys for hearing participants](#)
- WSIAT— [Posting of KPIs on the website](#)