



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Reconciling Competing Rights: A Draft Framework for Organizations

OESC Conference, January 27, 2011

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Workshop Overview

- Context
- Draft framework at a glance
- Defining values interests & rights
- Legal principles
- Overview of the analysis
- Applying framework to your scenarios
- Questions & answers

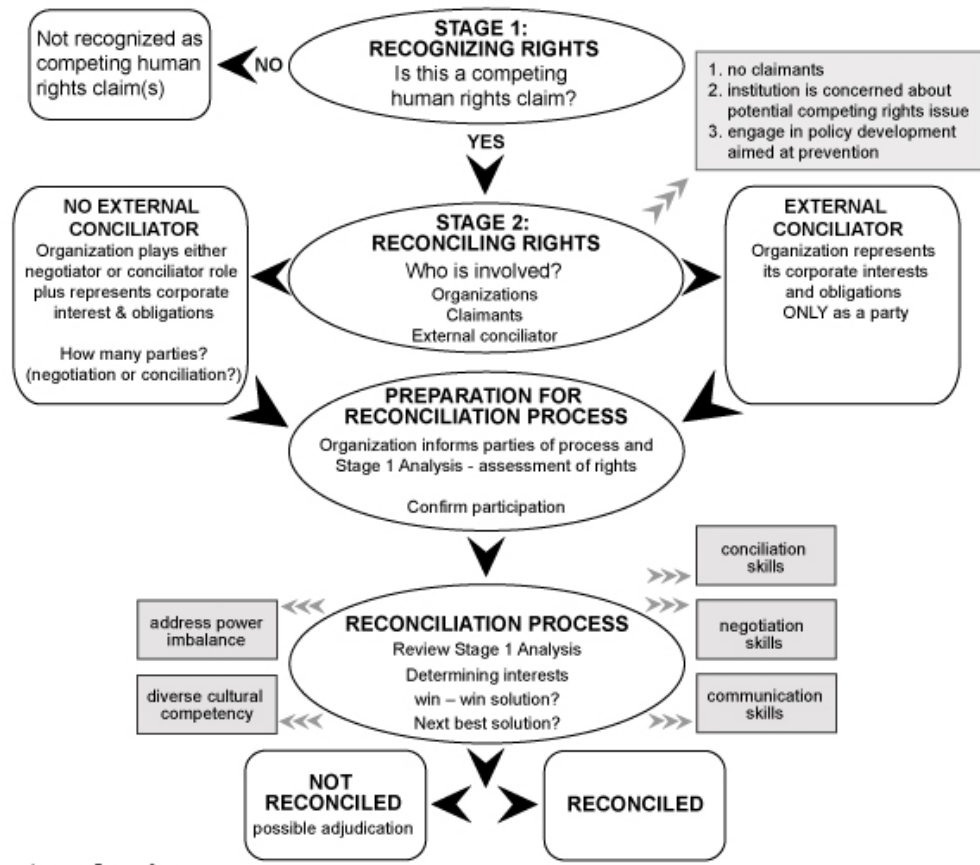
Context

- Emerging scenarios of competing human rights claims & organizational needs
 - Competing human rights claims – where stipulated human rights collide
 - Common scenarios:
 - creed and sexual orientation
 - creed and creed
 - disability and creed
 - disability and disability
 - many more

Context

- Recent case law with balancing principles and some steps but no comprehensive process or framework to guide organizational response
- OHRC mandate
- Competing Rights Policy development
 - Research: Interviews, literature review, case law review,
 - Policy Dialogue and papers (March/10)
 - Framework Testing (Dec/10)

Framework for addressing competing human rights claims for organizations



Analysis

STAGE 1: RECOGNIZING

1. What is being claimed?
 - a. Do both claims relate to individuals or groups rather than business interests?
2. Do claims connect to a human right or other legal right?
 - a. Constitution, legislation, international standards or case law
 - b. At least one claim falls under a human right
 - c. Claims fall within the scope of the right
3. Do claims amount to more than minimal interference?

STAGE 2: RECONCILING

4. Is there a solution that allows enjoyment of each right?
5. If not, is there a "next best" solution that allows some enjoyment of the right?

Framework goals

- Show mutual dignity & respect
- Recognize nature of rights
 - Enshrined in domestic and international law
 - Apply equally to all
 - Come with responsibilities
- Engage in responsibilities
 - Avoid interfering in rights of others
 - Cooperate to find solutions
- Reconcile competing rights as much as possible

Framework and analysis

- Framework includes two parts
 - **Analysis:** The thinking behind the process that could be used by any person making a decision on how to balance competing rights (eg. Tribunal decision-maker).
 - **Process:** Procedure or process that may be used by an organization to resolve competing rights concerns raised by one or more parties (eg. Principal or equity lead)

Key definitions

- **Rights – legally identified “right” or entitlement**
 - Those in *Charter, Code* have higher status than other rights set out in other laws (eg. *Residential Tenancies Act*)
- **Interests** – Issue in which a person has a concern, share, portion or stake
 - may be elevated to a right in some cases
- **Values** – Important moral principles and standards that are not actionable in law but may inform how a human rights claim is dealt with
- **Beliefs** -- Things believed to be true” or opinions “firmly held,” also not actionable in law

Distinguishing “competing rights”

- There will be many situations in which two or more of the above may come into conflict
- Human rights and other legal entitlements will usually hold a higher status than interests, values and beliefs
- Generally, the OHRC’s tool is intended to help resolve competing human rights and other rights that are legally codified

Key legal principles

Derived from case law:

- No “bright-line rules” – key legal principles operate together to provide guidance
- No rights are absolute – are inherently limited by rights of others
- No hierarchy of constitutional/human rights – all are equally deserving
- Aim is to achieve reconciliation that fully respects importance of both sets of rights
- Context is critical – rights cannot be assessed in a vacuum

Stage 1 - Draft analysis

Recognizing competing rights

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Stage 2 - Draft analysis

Reconciling competing rights

4. Is there a solution that allows enjoyment of each right?
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Framework – procedural component

- Overlays the analysis and guides organizational response
 - organization not a claimant but has legal liability
 - must consider all options
- Organization applies two step process
 - Stage 1 -- Process to apply stage one analysis to context
 - Stage 2 – If competing rights situation, then go into alternative dispute resolution process

Stage 1 Process

- Organization applies analysis in two step process
 - Step 1: Preliminary quick process, if appropriate
 - Investigation, analysis, preliminary decision to confirm competing rights claim, discussion aimed at win/win resolution
 - processes may be combined and relatively informal and quick

Stage 1 Process

- If not resolved move to Step 2: more formal process
 - investigation, analysis, decision to confirm if competing rights scenario If competing rights situation
 - typically more complicated scenarios – slower, more legalistic process
 - Proceed to formal ADR Stage 2 if confirmed as competing rights scenario not amenable to quick resolution

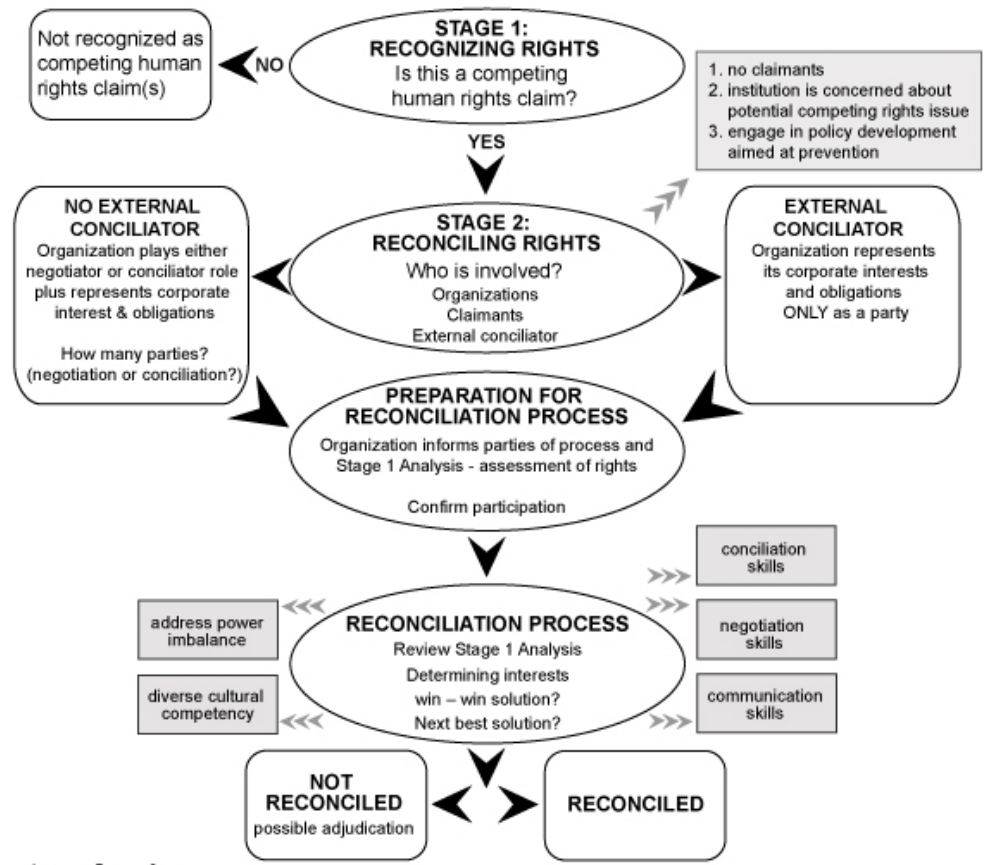
Stage 2: Reconciling Process

- Are active claimants involved ?
 - Where no claimants present:
 - Policy development route (prevention)
 - or find claimants and convert to ADR route
 - Where one or more claimants:
ADR route
 - Determine configuration of dispute (organization, 1/2/3 parties)
 - Conciliation or negotiation
 - Aim at win/win first – “next best” second

ADR approaches

- Negotiation
 - A formal process of dispute resolution that does not involve a neutral party facilitator
- Conciliation
 - A formal process in which an impartial third party facilitates constructive communication and negotiations aimed at reconciling the competing claims and interests of involved parties
 - May include internal or external conciliator

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Next steps

- **OHRC:**
 - Future consultation & involvement from sectors other than education
 - Refinement of framework and detailing
 - Policy statement
 - Promotion and training
 - Feedback

Question and Discussion

For discussion

- What scenarios have you encountered?
- Could you apply the analytical component of the Draft Framework to resolve this?
 - What rights are being claimed?
 - Are they substantially interfering with one another?
 - What options are there for resolving the matter?

Improving the Framework

- Are the draft Framework and its analytical and procedural components easy to understand and apply?
- What do you like or not like about the draft Framework?
- What would you change?
- What about other alternatives?