



Mediation Guide

Disclaimer: The content in this document is provided for information purposes only. It should not be interpreted as legal or other professional advice.

Overview

The human rights complaint process may not be right for everyone or every situation. We know that justice looks different to everyone and that there are other ways to handle conflict. The Commission focuses on using people's strengths, building relationships, and finding solutions.

“Service” is a legal term that refers to the formal process of delivering the complaint to the other parties involved. This is done to ensure that the respondent (the party being complained about) is properly informed of the complaint and has the opportunity to respond.

It is possible to resolve human right issues before the complaint is served on the respondent. This is called pre-complaint. We offer early resolution based on what happened and our capacity. It works well when:

- it appears that we have the power to act (a legal term known as jurisdiction)
- the people have an ongoing relationship, or they want to move forward on their own, but in a healthy way
- the people involved are committed to resolving the problem in creative ways
- the people involved don't want to fight about what happened
- the people involved agree to talk and move quickly

Success can mean different things to different people. If a reasonable solution is not found through pre-complaint, we will review the information gathered and reassess whether we can move forward with a human rights complaint.

Mediation can be an option through the human rights complaint process. **This option can occur once the complaint is served on the person, business, or employer being complained about.** To help people figure out which process is best for them, we have developed a self-assessment tool. This tool will encourage people to think about what they want and what they need before engaging with any conflict resolution services.

Self-Assessment Tool

Assessing one's wants and needs before starting a conflict resolution process is essential. Understanding one's goals and priorities can lead to better outcomes and a more focused approach. Below is a step-by-step guide and some tools that can help individuals identify their goals and set realistic expectations.

1. What do I want to achieve?

Examples: an apology, compensation, reinstatement, policy changes, or raising awareness.

2. What matters most to me?

Determine your priorities, whether personal justice, systemic change, or both.

3. Am I prepared emotionally?

Are you willing to meet with the other party? Think about whether you're ready to face potential challenges, such as delays, negotiations, or conflict.

4. Can I commit the necessary time and energy?

Evaluate whether you have the capacity to engage in the process, which can be lengthy and demanding.

5. Do I want immediate relief, long-term change, or both?

Adopting a Resolution Mindset

People who agree to resolve a complaint through mediation are focused on resolution. In this section, we focus on 4 attitudes you can adopt to prepare for negotiations and make this process easier to navigate.

1. Resolution is Power

Resolving a human rights complaint is not a sign of weakness. On the contrary, experience suggests that taking the lead and setting the terms for a settlement gives you the power. It is fact that 95% of cases will resolve before a hearing. If you prioritize resolution, you can reduce the time and stress of having to participate in an investigation and/or hearing process.

2. Focus on the Goal

It's normal to feel emotional or even angry at times. As a case progresses, try to regularly evaluate your position. Remind yourself that you have contacted us because you want to resolve the situation you

are going through. Remind yourself of that goal often.

3. Be Involved and Informed

Some people may feel excluded from discussions focused on resolution. If you find yourself in this situation, remember that you have the right to ask questions, provide your perspective, and ensure your voice is heard before any decisions are made. **This is your complaint!**

4. Be Practical and Flexible

Taking a practical approach to resolving your complaint can help lower stress and may lead to a faster resolution. Keep in mind that in any dispute, no one gets everything they want.

Attitudes that Delay Settlement

1. “But my case is different...”

Of course, your case is unique and personal to you. However, this attitude may result in the Complainant feeling entitled to a better outcome than what is typically offered. This can prevent negotiations or reasonable settlement terms. In mediation, both parties need to engage in good faith. A "but my case is different" mindset can make it harder to find a common ground.

2. “I’m angry and I have good reason to be!

Your emotions are real and justified but allowing them to drive decision-making can cloud judgment. Taking a step back to focus on your goal can help you make choices that serve your best interests. Expressing frustration aggressively in negotiations or legal settings can make the other side less willing to engage.

3. “I’ll be happy when justice is achieved.”

What does "justice" mean to you? A formal ruling in your favor? A public apology? Financial compensation? If you don't define it clearly, you may never feel truly satisfied with the outcome.

Instead of these attitudes, we recommend that you:

1. Stay honest with yourself:

Recognize what you truly want, not just what others suggest or what seems easiest.

2. Focus on what you can control:

Understand that some outcomes (e.g., systemic changes) may take time and are not guaranteed. Sometimes our processes can also take time due to a lack of human resources.

3. Be open to professional guidance:

A legal or human rights expert can help you refine your goals and manage expectations. Our mediator can provide guidance or information

on typical human rights remedies.

Mediation

Mediation happens once a complaint form gets served on the Respondent. Mediation is not about arguing who is right and who is wrong. It is about trying to find ways to resolve a problem. These problems can be ongoing or be previous actions that have caused harm. Mediation can happen at any time during the complaint resolution process. Mediation works well for people because:

- it is free
- it is confidential
- it is not adversarial
- the parties are in control of the process
- it is a way to find a creative solution to a problem

The Human Rights Commission has its own mediator who knows about human rights law. The mediator also knows about the issues in the complaint. **The Commission's mediator does not represent either party and cannot give legal advice.**

The mediator helps to facilitate the conversation and guides resolution without prejudice. This means that nothing disclosed will be used against you in the investigation process. Everything discussed at mediation is confidential. There may be non-disclosure agreements signed, if and when,

negotiations conclude, and a settlement is reached. This means you can't share information about your case or the resolution process.

People involved in mediation must prepare documentation. Mediation can take time, patience, and understanding. Remember to do a self-assessment before developing a proposal to engage in smart negotiations.

Developing a Proposal

The person who filed the complaint is required to develop a proposal. A settlement proposal typically includes written details on what is needed to resolve a situation or achieve a sense of justice.

A person can ask for a number of solutions such as: money, getting your job back, receiving an apology, requiring human rights training or requesting policy changes. It is important for proposals to have a rationale. Meaning, it is key to provide an explanation of why the asks detailed in the proposal are reasonable or fair considering what happened.

People can ask for more time to send in a proposal. The request must be made to the mediator who will inform the other side. A party can change their mind about mediation. You must contact the mediator if this happens and let them know.

Responding to a Proposal

The person who receives the complaint (the Respondent) is required to respond to the allegations. People can ask for more time to send in their response to a proposal.

Responding to a human rights complaint proposal in mediation requires a balanced, respectful, and strategic approach. Mediation is a collaborative process aimed at resolving disputes and reaching mutually acceptable agreements. Your response should reflect an openness to dialogue, a clear understanding of the complaint, and a willingness to work toward a resolution.

Individuals are encouraged to seek Independent Legal Advice regarding a proposal and/or the merits of their Human Rights complaint, if they feel it is necessary.

Financial Remedies

Financial remedies in human rights law are intended to put the complainant in the position they would have been in if the alleged discriminatory action had not occurred. It is not intended to punish the respondent. Remedies can be tailored to the specific nature of the harm and the circumstances of the violation.

General Damages

General damages (financial compensation) are typically awarded for injury to dignity, feelings and self-respect caused by the discrimination or harassment. In Newfoundland and Labrador general damages are not high. They are typically calculated based on the vulnerability of the complainant and how long the treatment occurred.

Special Damages

Special damages are a type of payment that cover actual costs or losses that people can prove they endured because of what happened. For example, this could include medical bills, or any other specific financial costs. The idea is to help the person get back the money they've lost due to the situation. If you are seeking special damages, be prepared to provide receipts.

Lost Wages

Calculating lost wages involves figuring out how much money a person missed out on earning because of discrimination or other unfair treatment. Lost wages are only calculated up to the day of settlement. It requires proof of previous salary and proof of earned income. Be prepared to provide paystubs and income documentation.

Mitigation

There is a duty in human rights law for a Complainant to mitigate or reduce their losses. This means that if a person is fired, they have an obligation to make reasonable efforts to try to find other work so that they reduce their financial losses.

Non-Financial Remedies

Remedies can be aimed at personal interests (the individual who suffered the violation) or public interests (the broader community or society). The

following remedies focus on helping the **individual complainant**—the person whose rights were violated. Some examples include:

An Apology

A genuine apology is a powerful tool for taking responsibility, making amends, and rebuilding trust. It can help the Complainant heal and allow the Respondent to grow from their mistakes. While apologizing can feel uncomfortable, it is an important step toward integrity, self-awareness, and accountability. For more information on the power of a meaningful apology, click [here](#).

Accommodations

We can work to resolve accommodation disputes. Accommodations are adjustments, modifications, or supports provided to individuals to ensure they can fully participate in workplaces, schools, services, or other settings without facing discrimination. Employers and service providers are required under human rights laws to remove barriers for individuals who are part of protected groups. By helping people think differently about a situation and challenging normal practices, accommodations can easily be achieved.

Reference Letter

In mediation, a reference letter is not just a testimonial or character reference. Instead, it functions as a potential remedial action for resolving a dispute. The reference letter could help mitigate the effects of a dispute by providing an official recognition of the complainant's skills, character, or achievements, possibly facilitating future employment or relationships that were affected by the dispute.

As mentioned, there are also public interest remedies that are aimed at protecting and promoting the **wider community's rights** and interests, not just the individual who filed the complaint. The idea is to prevent further harm and make sure that similar violations don't happen again in the future. Some examples include:

Human Rights Training

We can provide human rights training to respondents. We can also provide training to any employer or service provider who is interested in learning more about human rights. Human rights training can be developed to address specific areas of concern. Some presentations we frequently provide are:

- Introduction to Human Rights
- Human Rights in the Workplace
- The Duty to Accommodate
- Human Rights in Housing

Resource Development

We can develop resources based on what happened to prevent this from happening to someone else. Some resources we have created to provide public information about specific human rights issues include:

Housing and Human Rights – <https://thinkhumanrights.ca/files/Guideline-to-Housing-Rights-in-Newfoundland-and-Labrador-7.pdf>

2SLGBTQIA+ Inclusion & Human Rights -

<https://thinkhumanrights.ca/files/Final-2SLGBTQIA-Inclusion-Human-Rights.pdf>

Policy Change

This remedy is a type of corrective action aimed at addressing forms of oppression that may be reinforced through policy. We can require an organization or institution to modify, develop, or eliminate policies, practices, or procedures that conflict with the [Human Rights Act](#). The goal is to create structural changes that prevent similar violations from happening in the future.

Reaching an Agreement

A settlement is reached once the parties agree on the terms. The mediator will draft a settlement agreement if the complaint is resolved. A Settlement Agreement outlines the terms agreed to by the parties. It also says that the terms are confidential and that it ends the dispute between the parties. However, a complaint can be re-opened if the terms of the agreement are not followed.

When Mediation is Unsuccessful

If the mediator determines that the parties are unable to come to an agreement, the mediation session may end. This doesn't mean the dispute is over, but it does mean the mediator's role in facilitating the discussion is

finished. The following may happen next:

1. The Complaint Moves Forward

If the mediation fails, the complaint may proceed to the next steps in the legal process, such as complaint review and investigation.

2. Further Negotiations May Be Possible

Even if mediation does not result in an agreement, the people involved may choose to return to mediation at a later stage.

Important Reminders

A complaint can be dismissed at any time before it is sent to a hearing. If the complaint lacks sufficient evidence to support the allegations of discrimination, the case may be dismissed under Section 32 of the Human Rights Act. A complainant will be notified if their complaint is reviewed under Section 32.

The people involved have a responsibility to participate in the human rights process. All people involved with the Commission must keep their contact information current including mailing address, email address, and phone number.

A complainant can also decide to withdraw their complaint at any time. A complaint can be withdrawn verbally or in writing. If a complainant fails to

participate, we will assume they no longer want to continue. Their complaint will be considered withdrawn, and the file closed.

References

Representing Yourself Canada. (2020). *Settlement smarts: Tips on effectively using negotiation, mediation, and judge-led settlement processes*. Representing Yourself Canada.

<https://representingyourselfcanada.com/wp-content/uploads/2020/06/Settlement-Smarts-Final.pdf>