



Mediation Guide

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

Guide Contents

Mediation Overview	3
The Duty to Participate	5
Settlement Proposal	7
Developing a Proposal.....	7
Responding to a Proposal.....	7
Complaint Remedies	9
Financial Remedies	9
Non-Financial Remedies.....	10
Agreements and Next Steps	12
Sample Settlement Agreement	13
References	16

Mediation Overview

Filing a human rights complaint gives people the opportunity to seek justice and resolution for harm they may have experienced.

The person filing a complaint is referred to as the “Complainant.” The person, business, or employer responsible for responding to the complaint is referred to as the “Respondent.”

If you are receiving this resource, you may have:

- Filed a human rights complaint
- Expressed interest in resolving the complaint through mediation
- Been identified as a Respondent in a human rights complaint

 **Important:** This resource may also be helpful as an educational resource for those seeking more information about mediation.

Mediation is not about arguing who is right and who is wrong; it is about finding creative solutions to a problem.

Mediation works well for people because:

- it is free
- it is confidential
- it is not adversarial
- the parties are in control of the process

Mediation can happen by email, phone, video or in person. The Commission has its own mediator who knows about human rights law and the issues outlined in the complaint.

Before mediation starts, the parties sign a participation agreement. The agreement sets out:

- the rules of mediation
- the process to be followed
- the role of the mediator

 **Important:** Everything discussed at mediation is confidential, but there are limitations.

The Commission cannot ensure confidentiality when:

- there is fraud or misrepresentation
- there is a court order requiring information disclosure
- it is necessary to confirm the terms of settlement
- details disclosed raise questions about whether the Commission has jurisdiction to proceed with the complaint.

For more information, visit: [Mediation - Human Rights Commission](#)

The Duty to Participate

Each person has different responsibilities throughout the process.

In mediation, the Mediator:

- sets a date for the mediation and notifies the parties
- drafts a participation agreement and helps facilitate conversation
- can discuss procedural options and provide information about specific remedies (e.g., if lost wages are claimed)
- does not represent either party and cannot give legal advice

In mediation, the Complainant must:

- respond to the mediator (i.e., failure to do so may result in the file being closed)
- develop a proposal and outline what they want/need to settle
- engage respectfully in negotiation discussions
- keep their contact information up to date including mailing address, email address, and phone number

In mediation, the Respondent must:

- inform the Commission if they are willing to participate in mediation
- develop a preliminary response addressing the allegations
- develop a response to the proposal (developed by the Complainant)
- engage respectfully in settlement negotiations
- keep their contact information up to date including mailing address, email address, and phone number

For more information, view: [Failure to Participate - Human Rights Commission](#)

Preparing for Mediation

People who choose to resolve a complaint through mediation are focused on resolution. In this section, the Commission outlines four approaches that may help you get ready for mediation.

1. **Resolution is Power** - Resolving a human rights complaint is not a sign of weakness. On the contrary, evidence suggests that taking the lead and setting the terms for a settlement gives you the power. For example, prioritizing resolution may reduce the time, stress, and resources required to participate in the investigation or hearing process.
2. **Focus on the Goal** - It is normal to feel emotional or even angry that you received a complaint or experienced harm. It is important to remember the goal and why mediation was a desired option.
3. **Be Involved and Informed** - Some people may feel excluded from discussions focused on resolution. If this situation arises, remember that questions can be asked, perspectives can be shared, and opportunities exist to ensure all concerns are considered before decisions are made.
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.

Certain approaches may make it harder to reach an agreement. While every complaint is unique, there are limits to the possible outcomes. Focusing on the facts and what you hope to achieve can help support more effective participation in the process. For more information about mediation preparation, visit: [Settlement-Smarts-Final.pdf](#)

Settlement Proposal

A settlement proposal includes written details on what is needed to resolve the complaint. The Respondent is expected to provide an initial reply in response to the complaint, which can be used to develop a proposal.

 **Important:** The Complainant develops a settlement proposal, and the Respondent replies to the proposal.

Developing a Proposal

Settlement proposals must:

- clearly identify the parties to the settlement agreement
- identify what is needed to resolve the complaint
- include an explanation of why proposed solutions are reasonable or fair considering what happened

The Complainant can ask for several “solutions” to resolve a complaint.

Information about solutions can be found under “Complaint Remedies.”

Responding to a Proposal

Responding to a human rights complaint proposal in mediation requires a balanced, respectful, and strategic approach.

Mediation is not the place for:

- submitting evidence
- arguing over allegations outlined in the Notice of Complaint

- invalidating the experiences of others
- discrediting or prematurely assessing “credibility” of the complaint

 **Reminder:** Mediation is a collaborative process aimed at resolving disputes and reaching mutually acceptable agreements.

Responses should:

- outline how the Respondent understands the allegations made
- identify reasons for behaviours, actions, or decisions contributing to the treatment being complained about
- explain how the allegations may be untrue by sharing your version of events
- refrain from discrediting their lived experience or minimizing the impact of treatment

For more information, view: <https://thinkhumanrights.ca/files/Policy-on-Respectful-Behaviour.pdf>

Complaint Remedies

Remedies in human rights law try to put the Complainant in the position they would have been in if the alleged discriminatory action had not occurred. **Remedies are not meant to “punish” the Respondent.**

Financial Remedies

1. General Damages

General damages 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. Based on previous human rights complaints:

- A Complainant who experienced harassment in the workplace received \$5,000.00
- A Complainant who was denied a job because of their gender received \$7,000.00
- A Complainant who was denied the use of a taxi service because of their service animal received \$4,000.00
- A Complainant who was denied an accommodation in an educational setting was awarded \$10,000 in general damages

2. Special Damages

Special damages cover the actual costs or financial losses that people can prove they experienced because of what happened. This may include the cost of medical assessments, assistive technology, lost wages, or other specific financial costs.

For example, were you terminated from your job and lost health insurance that you then had to purchase from a third party? If so, you may be able to

claim the cost of the insurance under special damages.

 **Important:** If special damages are requested, be prepared to provide receipts related to purchases.

3. Lost Wages

Lost wages include the amount of money a person “missed out on” because of discrimination or other unfair treatment. **These losses are only calculated up to the day of settlement.** Any income (including EI benefits) that you received from the date of your termination must be considered in any calculation for lost wages. Claiming lost wages also requires proof of previous salary and earned income.

For example, were terminated on June 1 and found other work on July 1, but remained unemployed for a month? If so, you may be able to claim your lost wages for the period you had no income.

 **Important:** If lost wages are requested, be prepared to provide paystubs and income documentation.

The Complainant has a responsibility to take reasonable steps to reduce the losses they experience. This is called “mitigation.”

For example, if someone loses their job, they are expected to make reasonable efforts to look for other work to reduce their financial loss. If opportunities to reduce those losses were available but were not pursued for personal reasons, those additional losses may not be considered.

Non-Financial Remedies

Remedies can be non-financial. This means outcomes desired to “resolve” the complaint can be unrelated to money. Personal remedies can be

requested for the individual who suffered unfair treatment.

Examples of personal remedies include:

- An apology
- An accommodation plan
- Reference letters
- Job reinstatement

Remedies can also lead to systemic changes and improve outcomes for others, not just yourself. **These are called public remedies**, and they are designed to prevent discrimination and harassment in the future.

Examples of public interest remedies include:

- **Human rights training** - may be requested from the Respondent to increase awareness of their obligations under the Human Rights Act
- **Resource development** - may be requested and undertaken by the Commission to educate people about their rights
- **Policy development** - may be requested where the absence of a policy contributed to the issue experienced

 **Remember:** If you have questions, the Commission's mediator can help calculate losses and provide more information on complaint remedies.

Agreements and Next Steps

A resolution is reached once the parties agree to the terms of settlement. Once the terms of settlement have been negotiated, the mediator will draft a settlement agreement.

A settlement agreement is final and conclusive. This means:

- the terms of settlement are confidential
- the terms end the complaint process
- no further action can be taken against the Respondent

 **Reminder:** The parties may negotiate and agree on the terms of confidentiality that will apply to the settlement agreement.

 **Important:** No further action can be taken against the Respondent unless they fail to follow the settlement agreement.

If the mediator determines that the parties are unable to reach an agreement, the mediation session will end. This does not mean the complaint process is over. It means only that the mediator's role in facilitating discussions between the parties has ended.

 **Reminder:** If the parties are unable to come to an agreement, the complaint will continue through the next stage of the process.

A Complainant may withdraw their complaint at any time before it is referred to the Commissioners for review. A withdrawal can be made either verbally or in writing. For more information, view:

<https://thinkhumanrights.ca/complaint-process/>

Sample Settlement Agreement

WHEREAS (the Complainant) alleged s/he was discriminated against on the basis of (prohibited ground) by the (Respondent) contrary to section 14 of the Human Rights Act, 2010; SNL 2010 c. H13.1 (the Act)

AND WHEREAS the Complainant filed a complaint # with the Human Rights Commission on the ____ day of ____, ____.

AND WHEREAS the Complainant and the Respondent have secured the agreement of a mutually satisfactory settlement:

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. THAT the Respondent shall pay to the Complainant the sum of Dollars (\$.00) payable as general damages which said amount shall be paid within two (2) weeks of execution of the agreement
2. THAT the Complainant shall sign a Full and Final Release attached here to as Schedule "A"; and
3. THAT the parties shall keep the terms of the Agreement confidential between the parties. The Complainant agrees not to public, disclose, or otherwise communicate publicly in any way, directly or indirectly (by him/her or through any agent on his/her behalf) the settlement or the facts surrounding it except where required by law. If asked about the Complaint, the Complainant shall be restricted to stating that the matter was resolved.

It is understood and agreed by the parties to this complaint that the above noted settlement constitutes a full and final resolution of all issues between

the parties arising from this complaint and the Complainant's employment with the Respondent is not deemed to be a determination of any violation of the Act, which determination can only be made by a duly appointed board of inquiry. It is further understood and agreed that the Respondent specifically denies any discrimination.

As required by Section 26 (5) of the Act, this complaint shall be considered settled for the purpose of this Act only if the Executive Director approves the settlement and agrees to its terms.

As required by Section 26 (4) of the Act, where the terms of the settlement are not complied with, the Executive Director may reopen the complaint and proceed as if a settlement had not been effected.

This Agreement may be executed in counterparts, which taken together shall form one Agreement.

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES.

DATED at St. John's, in the Province of Newfoundland and Labrador, this ____ day of _____, _____.

Complainant

Witness

Respondent

Witness

Approved by the Executive Director of the Human Rights Commission:

Date: _____

Signature: _____

CAREY S. MAJID

References

Foo, L. (2023). *Drafting a settlement agreement: A quick guide to the art of effective compromise* | Article | *Chambers and Partners*. Chambers.
<https://chambers.com/articles/drafting-a-settlement-agreement-a-quick-guide-to-the-art-of-effective-compromise>

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>