

What happens at an informal hearing? Pilot Project

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General Information

The goal of the hearing process is to resolve disputes between parties in a way that:

- is accessible, quick, inexpensive, informal and flexible
- is procedurally fair
- applies human rights law and principles
- is proportional to the circumstances of each complaint
- is supportive of the parties involved in the hearing process
- realizes that there are other ways to resolve disputes

These considerations should guide the actions and decisions of all people involved in the hearing process.

Hearings can either be informal or formal. This guideline deals with the informal human rights hearing process.

Informal hearings are faster, simpler, less costly, less adversarial and less intimidating than formal hearings. They are best used where:

- the complaint is simple and uncomplicated
- the hearing is not expected to take too long
- the parties are not represented by lawyers or a lawyer or support person attends the hearing, but does not play an active role
- the facts are generally not in dispute
- there are few to no witnesses and credibility is not at issue
- the only issue is a legal or policy question
- the parties still work together or have some sort of ongoing relationship and want to reduce conflict

Informal hearings can be done in writing, in person, by phone or by video conferencing.

Hearings are recorded by the Adjudicator for their own information and/or where necessary to accommodate the needs of one of the parties. The sound recording does not form part of the official record of the proceedings. The Commission does not transcribe (or print) any of the sound recordings. A party can request a copy of the sound recordings. Any transcription will be at the party's own cost. The sound recording shall not be publicized or used for any purpose other than in the complaint proceeding.

At the start of an informal hearing a party may request that the written decision be anonymized. This means using initials instead of names to protect a person's privacy. An adjudicator can grant this request in order to protect the interests of children or in certain exceptional circumstances (personal or sensitive information or a threat to personal safety). The general approach is to balance the public interest in freedom of expression and the principle of an open justice system with the negative consequences of disclosing personal information.

The normal rules of evidence do not apply in an informal hearing. The Adjudicator can accept into evidence any document or testimony that is relevant, material, and reliable. The Adjudicator can also ask the parties to provide them with other documents they think are relevant. The Adjudicator's job is to look at each piece of evidence and determine its relevance and what weight or "probative value" it should be given.

Informal hearings can be converted to formal hearings in certain appropriate circumstances.

Informal hearings are not open to the public. The Adjudicator's written decision is put on the Commission's website and may be published on other legal sites to meet our public education mandate.

Written Informal Hearing

Written hearings are generally done where:

- the only issue is a legal or policy question
- the facts are not in dispute
- there are no witnesses

- the parties agree that all of the factual evidence is in the Commission Record

Hearings done in writing are very straight-forward. The parties can file a final written submission or say they have nothing more to add. The Adjudicator can also ask the parties to comment on a specific issue raised at the pre-hearing conference meeting.

Filing dates for any written submissions get set at the pre-hearing conference meeting. In most cases, parties can email their submissions to the Adjudicator.

Generally, the Commission will file a legal brief first. The main goal of the Commission's legal brief is to review the relevant human rights issues. The Commission's legal brief will include:

- a summary of the relevant legal issues
- a review of the legal tests the Complainant needs to meet to prove discrimination and/or harassment
- a review of the legal tests the Respondent needs to meet to defend against the allegations of discrimination and/or harassment
- a review of the specific legal issues identified at the pre-hearing conference meeting
- relevant human rights cases
- a review of possible orders, decisions or remedies
- a review of any systemic or public interest human rights issues, where necessary

The Complainant and then the Respondent file a written submission or say they have nothing more to add. The parties' submissions should include:

- a brief summary of their side of the story
- a review of the relevant evidence (facts or documents)
- an answer to any specific legal questions identified at the pre-hearing conference meeting
- the remedy, decision or outcome they are seeking

The Commission and/or the Complainant can file a reply brief to address any new issues raised in the Respondent's legal brief.

Oral Informal Hearing

The parties can also have an informal hearing in person, over the phone or by video conference. These types of hearings are best done where:

- the parties are not represented by lawyers or a lawyer or support person attends the hearing, but does not play an active role
- there are few witnesses
- the complaint is simple and uncomplicated
- the facts are generally not in dispute
- the law is clear
- there are no policy or systemic issues

The Commission files its legal brief (see the previous section on written hearings) and gives a copy to the Adjudicator and the other parties. The parties do not need to file anything else. The hearing is more like a conversation where the parties get to tell their side of the story. The Adjudicator takes a more active role in leading the hearing, can ask questions of the parties and can ask to hear from and question other witnesses, if necessary.

There is no cross examination of opposing parties or witnesses and no formal objections, as the goal is to be less adversarial. The parties at the informal hearing are usually the Complainant and the individual Respondent or a person representing the Respondent who is knowledgeable about the facts of the case. The Commission rarely attends an informal oral hearing.

A party may file other relevant documents at the hearing, but must first ask the Adjudicator for permission and must give a copy of the documents to the other party.

Preparing for the Hearing

The best way to prepare for an informal hearing is to make a plan.

Start by reading the Commission Record and any other documents exchanged between the parties.

Write down your story in point form. It might be helpful to write it down in the order the events actually happened. List the facts you need to prove and the information and/or documents (evidence) you have to prove those facts.

Think about how you would explain your story to another person who does not know what happened.

What do you need to prove?

If you are the Complainant you need to prove:

- that you were discriminated against or harassed
- that there is a connection between the discriminatory treatment and one of the prohibited grounds (disability, race, gender, religion etc.)
- that you suffered a loss or a disadvantage as a result of the discrimination or harassment

For example:

I was fired by ABC Company after I told them I was pregnant. I am asking for money for lost income and general damages for pain and suffering.

	FACTS	EVIDENCE
1	I was fired because I am pregnant	<ul style="list-style-type: none">• I told my manager I was pregnant on September 27• We had a meeting on September 29th to discuss possible accommodations at work• My manager told me that they had safety concerns about me working while pregnant and they did not want me taking too much time off work in the future• The meeting got heated and I was fired

2	I lost \$5,000 in income	<ul style="list-style-type: none"> • My pay stubs show that I earned \$2,500 per month • I tried to find another job, but it took me two months (I have copies of all the applications I sent and notes of the interviews I had)
3	I suffered injury to my dignity, feelings and self-respect	<ul style="list-style-type: none"> • I was very upset about getting fired and that ABC Company didn't think I could do a good job while pregnant • My husband and friends saw me upset • I wrote about my feelings in a journal

If you are the Respondent:

You get a chance to show the Complainant's version of what happened is not correct. List the parts of the Complainant's case that you want to challenge. Then list the information and/or documents (evidence) you have to prove it.

If you have a defence to the complaint, you will need to prove it at the hearing. List the facts you need to prove and the evidence you have to prove those facts.

For example:

I own ABC Company and am responding to a complaint that alleges I discriminated against an employee on the ground of sex (pregnancy). She says that she was fired as soon as we found out she was pregnant and that we did not try to accommodate her.

	Allegation	Challenge/Defence	Evidence
1	Employee was fired because of her pregnancy	She quit	<ul style="list-style-type: none"> • We had a meeting on September 29th to discuss possible accommodations at work • Our employees have physically demanding

			<p>jobs and are exposed to noxious chemicals</p> <ul style="list-style-type: none"> • We got into an argument at the meeting and the employee told me she was “leaving and never coming back” and then she walked out • Another employee who works in the next office will say that he heard the entire argument
2		<p>A large part of the job is to handle noxious chemicals. I run a small company and there was no one else who could do the work. I tried to accommodate the employee but had no other work to give her.</p>	<ul style="list-style-type: none"> • I only have one other employee in this area, and handling noxious chemicals is half the job. I think the employee would agree with this. • I will say that I suggested she take a leave until she could get a medical note to say she can work with noxious chemicals • I will say that I couldn't think of any other option that would work, and then she quit during our argument

Hearing Procedure

Oral hearings usually take place in the Human Rights Commission Boardroom. We are located on the 5th Floor of the Natural Resources Building on Elizabeth Avenue, St. John's.



The general procedure of an informal hearing is as follows:

	Who is responsible?	What happens?
1	Adjudicator	<ul style="list-style-type: none"> • records the proceedings • calls the hearing to order, confirms the names of the parties and reviews the informal hearing process
2	Parties	<ul style="list-style-type: none"> • confirm that they consent to and understand the informal hearing process
3	Adjudicator	<ul style="list-style-type: none"> • confirms that the Commission Record is accepted by the parties and can be relied upon as evidence • asks if there are any preliminary matters to be dealt with
4	Adjudicator	<ul style="list-style-type: none"> • asks the Complainant to explain, under oath, what happened to them and the

		<p>remedy, decision or outcome they are seeking (see section on remedies)</p> <ul style="list-style-type: none"> • questions the Complainant • asks the Respondent if there are any other questions that they should ask the Complainant
5	Adjudicator	<ul style="list-style-type: none"> • asks the Respondent to explain, under oath, their side of the story • questions the Respondent • asks the Complainant if there are any other questions that they should ask the Respondent
6	Commission Lawyer (if present)	<ul style="list-style-type: none"> • raises any public interest issues
7	Adjudicator	<ul style="list-style-type: none"> • asks questions of the Commission's lawyer if there is a public interest in doing so • asks questions of other witnesses
8	Complainant	<ul style="list-style-type: none"> • gives a brief summary of why they feel they were discriminated against and/or harassment and the remedy, decision or outcome they are seeking (see section on remedies)
9	Respondent	<ul style="list-style-type: none"> • gives a brief summary of why they did not discriminate or harass the Complainant
10	Complainant	<ul style="list-style-type: none"> • responds to any new issues raised by the Respondent in their summary
11	Adjudicator	<ul style="list-style-type: none"> • asks the parties if there is anything else they want to say • tells the parties what happens next • ends the informal hearing

Failure to Attend an Informal Hearing

The parties must attend and be prepared for the informal hearing. It is the parties' obligation to keep their contact information current and advise the Commission if they move or change phone numbers or email addresses.

A party can request an extension of time for filing written briefs or a postponement of the oral hearing, but will need to give a good reason for re-scheduling. The request should be made to the Commission's lawyer who will send it to the Adjudicator. The parties are notified about the Adjudicator's decision.

A Complainant may withdraw part or all of their complaint at any time by completing a Withdrawal of Complaint Form.

If a party does not participate and/or an extension of time or postponement is not granted, the hearing will go ahead without their participation and the complaint may be dismissed.

What Types of Remedies are Available in Human Rights Law?

Think about why resolving this complaint is important to you.

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. It is not intended to punish the Respondent.

Some examples of remedies include:

- I need a specific accommodation, such as a new desk at work, a ramp in my apartment building or time off work for a religious reason.
- I don't want this to happen to other people. I want the person I'm complaining about to introduce an anti-discrimination/harassment policy and do human rights training.
- I want to find another job and move on. I need an apology or a letter of reference.
- I lost money or had to spend money on certain items, such as lost income, increased rent or moving expenses (special damages).

- I am looking for money to compensate me for injury to my dignity, feelings and self-respect (general damages).

What are 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 generally not high:

- a Complainant who experienced harassment in the workplace: \$5,000.00
- a Complainant who was denied a job because of their gender: \$7,000.00
- a Complainant who was denied the use of a taxi service because of their service animal: \$5,000.00

Some of the factors that may be considered when determining general damages are:

- the impact the discrimination had on you
- how badly you were treated
- the vulnerability of the Complainant
- whether the discrimination happened on one occasion or over a long period of time

What are special damages?

Special damages are intended to compensate you for money that you have lost or been forced to spend because of the discrimination. This type of financial remedy is meant to put you back in the financial position you would have been in if the discrimination had not occurred in the first place.

For example:

If you lost your job because of discrimination, you should calculate the amount of earned income that you lost each week that you were unemployed. For example, if you earned \$10 per hour and you were off work for 10 weeks, you would ask for:

$$\text{\$10 per hour} \times \text{35 hours per week} \times \text{10 weeks} = \text{\$3,500}$$

If a landlord refused to rent an apartment to you for a discriminatory reason, and as a result, you had to rent a more expensive apartment, you can ask for the difference in rent for a reasonable period of time. If you were evicted for a discriminatory reason, you could also claim your moving costs.

If the difference in rent is \$200 per month, you could ask for:

\$200 X 4 months = \$800

Moving truck costs = \$840.00

What are non-financial remedies?

For example, in an employment situation, an Adjudicator could order:

- reinstatement to your job
- a promotion
- an offer of employment
- the removal of a harasser from your immediate work environment
- letters of assurance of future compliance with the Human Rights Act
- a letter of reference

What are public interest remedies?

Public interest remedies are meant to have an impact on the broader community, including other people who could have been affected by the discrimination.

Public interest remedies can have an educational impact, giving other potential respondents and the general public a greater understanding of discrimination. Public interest remedies are often intended to prevent similar discrimination from happening in the future. Some possible public interest remedies include:

- new hiring practices
- non-discriminatory policies and procedures
- internal human rights complaint procedures
- pro-active measures (such as a recruitment policy aimed at eliminating barriers for racial minorities)
- education and training programs (such as having all staff receive training on a human rights policy)

- publishing an extract of the decision in the corporate newsletter
- posting the Human Rights Act in the workplace
- requiring a property management company to send a memo to all superintendents/agents
- making a donation to charity

What is the duty to mitigate?

The duty to mitigate means that you have try to limit the harm of discrimination and/or harassment. For example, if you get fired, you have to make reasonable efforts to try to find another job so that you reduce your financial losses. This may mean taking lesser-paid work or expanding the job search area. You will need to prove this by providing income tax returns and information about the efforts you made to find other work.

What happens after the Informal Hearing?

The Adjudicator must give written reasons for their decision. This process is often time-consuming, as the Adjudicator needs to review each piece of evidence to determine its relevance and what weight or “probative value” it should be given.

Once the Adjudicator has finished reviewing all the evidence, they will make their decision on the allegations contained in the complaint. An adjudicator can either dismiss the complaint (no discrimination or harassment) or make one of the following orders:

- to stop the behaviour complained of
- to refrain in the future from committing the same or similar behaviour that violated the Human Rights Act
- to make available to the Complainant the rights, opportunities or privileges they were denied contrary to the Human Rights Act
- to provide compensation to the Complainant, including compensation for all lost wages, lost income, or expenses incurred due to the violation of the Human Rights Act; and

- any other order the Board of Inquiry may consider appropriate in the circumstances.

Depending upon how complicated the case is, the parties should be prepared to wait several months to receive a written decision. The following table sets out an estimate of how long it will take an Adjudicator to make their decision:

Length of Hearing	Estimated Timeline
Written hearing	2-3 months
2 days or less	4-6 months
More than 2 days	6 months or longer

The Commission’s lawyer will send the parties a copy of the Adjudicator’s written decision.

How do you Appeal the Decision of a Board of Inquiry?

If either of the parties disagrees with the decision of the Adjudicator, they may appeal the decision to the Supreme Court of Newfoundland and Labrador (General Division). Section 42 of the Human Rights Act states that an appeal must be filed within 30 days of receiving the Board of Inquiry’s written decision. Contact the Supreme Court (General Division) [Court’s website](#) for more information on how to file an appeal.