

Does Mediation Cost Anything?

The commission will cover the cost of the mediator selected from our list of eligible mediators. If people decide to select their own mediator, they must cover the cost themselves. Mediation usually takes about six hours, with meetings held within one day.

If Mediation Is Successful, What Happens?

If mediation leads to an agreement between the parties before a formal complaint is filed, the mediator will draft a letter, Memorandum of Agreement, or other document agreeable to the parties. Both parties must sign the agreement, usually before leaving the meeting. The settlement agreement reached before a formal complaint is not subject to the approval of the commissioners.

Agreements reached after a formal complaint has been filed must be completed on a prescribed form by the mediator. These agreements are submitted to the commissioners for their review and approval. The form must be signed by the parties to the mediation before its conclusion.

If the complaint is resolved, all issues that are related to or arising from the complaint are "closed."

An agreement reached and signed through mediation is a legally binding contract.

If Mediation Is Not Successful, What Happens?

When no agreement has been reached between the parties, the mediator submits a record of the mediation to the commission, stating that mediation was attempted but not successful. The mediation file remains confidential. The Human Rights officer assigned to the complaint will not know why mediation did not succeed or anything about the discussions that took place during the mediation. Information on the mediation will be kept separate from the investigation file.

If everyone is agreeable, it is still possible to attempt to settle through mediation or another process at a later time.

What Can I Do If I Have A Concern with the Mediation Process?

You can choose to end mediation at any time if you are uncomfortable with the process. If you have questions or concerns, you can raise these with the mediator. At the end of the mediation you will be asked to complete a feedback form. The forms are submitted, along with any necessary reports, to the person coordinating the service. The results of this feedback will help us determine the effectiveness of the service and make improvements.

If you are not satisfied with the service you received, you can also write the Director and CEO of the Nova Scotia Human Rights Commission at P.O. Box 2221, 1690 Hollis Street, 6th Floor, Joseph Howe Bldg., Halifax, NS B3J 3C4.

For More Information

To find out more about mediation or other programs and resources of the Nova Scotia Human Rights Commission:

Contact the
Nova Scotia Human Rights Commission Offices

Halifax Office

Main Office 424-4111
Toll Free 1 877 269-7699
Toll Free TTY 1 866 811-3732

New Glasgow Office

Main Office 752-3086
Toll Free 1-866 852-3690

Sydney Office

Main Office 563-2140
Toll Free 1-866 852-3691

Digby Office

Main Office 245-4791
Toll Free 1-866 852-3692

Visit our web site at:
www.gov.ns.ca/humanrights/

A scent reduced environment.

A guide to Mediation

One option for settling complaints

About This Guide

This guide has been prepared by the Nova Scotia Human Rights Commission to provide you with information about the mediation services we offer under our mandate to try to resolve complaints through settlement initiatives (under section 29 of the *Human Rights Act*). We offer mediation services as a fast, effective way to resolve disputes at any stage of the complaint process.

If you have filed a complaint with us, or if a complaint has been filed against you, you may want to look more closely at the advantages of mediation and how it works. This guide can help you.

What Is Mediation?

Mediation is a practical way to help both sides to a complaint understand each other's point of view and work towards a mutually agreeable settlement. With the help of a mediator each party tells their story, and they discuss the issues that come up. The suggestions people bring for settling the complaint are discussed, along with all suggestions made during the meeting. Anyone can call for a break during a settlement meeting, to allow time to consider the issues and possible solutions. When an agreement is reached a written document is produced for people to sign. This agreement is a legally binding document.

What Are the Advantages of Mediation?

- Mediation can resolve complaints more quickly than a formal and often lengthy investigation process.
- Mediation allows people to be directly involved in the process by talking about the actions that led to the complaint and the issues surrounding them.
- The mediation process can bring about a better understanding of the conflict between the parties, even if they do not agree on exactly what happened.
- The mediation process is less adversarial than the investigation process and promotes respect and compromise.
- Mediation allows people to find their own solution that is fair to all sides, rather than having someone else decide it for them.
- The information from a mediation is kept confidential if it affects the privacy of either party. On the other hand, information from a Human Rights Board of Inquiry hearing is made public.

How Does Mediation Work?

The commission staff coordinate the mediation process. Staff will assess whether mediation is appropriate in your case. If both the complainant and respondent are interested in trying to settle the complaint without going to investigation, the staff person will arrange for a mediator.

Both the complainant and any respondent must agree to be involved. If the complaint is against a company, the company must send someone who has the authority to negotiate on its behalf.

In some cases the parties do not meet face to face, due to long distance or a request not to be in the same room. If meeting with the other party is a problem for anyone, the mediator uses "shuttle negotiation." Each party is given a separate room. The mediator takes information and suggestions back and forth between the parties. The parties may also exchange information and suggestions through the mediator by telephone or in writing.

Will It Look Bad If I Choose Not to Go to Mediation?

No. Mediation is a voluntary process. If you decide not to participate it will have no impact on your right to have the complaint investigated.

What Is the Role of the Mediator?

The mediator's role is to encourage the parties to talk openly about the complaint, the surrounding circumstances, and the consequences. The mediator may give examples of similar cases and how they were resolved. The mediator encourages all parties to be involved in the settlement discussion. They help everyone understand what each other is saying about the issues and suggestions for settling the complaint. They are aware that differences in culture and language may need to be considered when balancing the discussions.

Who Are the Mediators?

Mediators are professionals who have received training through a recognized mediation program.

The mediator is drawn from the list of mediators selected by the Human Rights Commission or may be a Human Rights officer with a specialty in mediation. All of our mediators have received training in mediating human rights complaints. We select a mediator based on the mediator's expertise and availability. The mediator must be acceptable to all parties to the mediation.

The role and conduct of the mediator must comply with the Nova Scotia Human Rights Commission *Code of Conduct for Mediators* (adapted from the Nova Scotia Barristers' Society Civil Mediation Roster Model *Code of Conduct*, June 2003).

What Is the Commission's Role?

The commission's role in the mediation process is to ensure that you receive qualified assistance from a neutral professional in the resolution of a complaint and to ensure that the broader public interest is protected.

Usually, the parties' interests in resolving a complaint and the broader public interest will coincide, but sometimes they do not. Sometimes a broader public interest goes beyond the particular conflict. For example, if a person complains that a building is inaccessible, there may be a broader public interest in having the building owner modify or retrofit the entrance of the building, up to a point of undue hardship for the owner, to ensure that it is accessible to the public at large and not just to the individual complainant.

To assist the parties to negotiate an agreement that deals with this type of public interest in human rights matters, the mediator will provide information about the types of remedies the commission will look for to resolve the complaint.

Before finalizing the settlement agreement, the mediator will consult with a senior staff member of the commission. If a formal complaint has been made, the agreement must be approved by the commissioners.

What Are the Chances of Settling through Mediation?

About 70 per cent of mediated complaints are resolved with a fair settlement agreement. A settlement may include many different remedies, such as:

- an apology
- a positive reference from an employer
- financial compensation—for lost wages, out-of-pocket expenses such as medical bills, or to compensate for humiliation or loss of dignity
- sensitivity training for staff in an organization
- the development of anti-discrimination policies

Parties who cannot reach an agreement can go on to the formal complaint process.

When Does Mediation Work Best?

Mediation is most likely to succeed in the following circumstances:

- the relationship between the parties is important to both of them
- both parties want a measure of control over the outcome
- neither party wants investigation or litigation
- speed is important
- both parties need the opportunity to be heard in a non-threatening environment with a neutral third party present
- the parties have the authority to settle the matter. For example, the person attending on behalf of a corporate respondent is authorized to sign a settlement agreement at a mediation meeting

Is Mediation Confidential?

Yes, information exchanged during mediation is kept confidential. This allows the parties to discuss their situation openly and candidly without fear of repercussion. However, information exchanged prior to mediation is not confidential. To encourage parties to be open in their settlement discussions the discussions take place "without prejudice." "Without prejudice" means that things said during the settlement meetings cannot be used in evidence later. For example, if a respondent were to admit during settlement discussions that discrimination occurred, that admission could not be used by the complainant later in the process to prove that discrimination occurred.

Where Will Mediation Meetings Take Place?

Face-to-face mediation meetings take place in a neutral location where there is no advantage offered to either party, such as the commission's office or the mediator's office. If long distances make it impossible to meet, telephone conference calls can be used. If the parties do not want to meet in the same room together, the mediator will work with the parties in separate rooms (shuttle mediation).

Can a Lawyer or Support Person Attend with Me?

You can bring your lawyer, representative, or any other person with you to the mediation. However, lawyers or other representatives are not a necessary part of mediation. The complainant and respondent can speak for themselves. Any party may hire a lawyer at their own cost, but the focus of the settlement process is to find a solution rather than to argue the law or decide whether there was discrimination. If there are numerous complainants and respondents involved in the same mediation, specific persons should be identified as the spokesperson and members of the negotiating team.