

Options for Settling Your Complaint

Before you file a complaint that starts our formal complaint process, you may want to consider the option called settlement initiatives. A settlement initiative, such as mediation, can be used both before you file a formal complaint and at any time during the complaint process. This option can allow you more privacy and more control of the end settlement than the formal complaint process will.

Our formal complaint process includes an investigation. We gather evidence to help us understand both sides of the complaint. If the complaint cannot be settled, it goes to a Board of Inquiry for a hearing. Board of Inquiry hearings and findings are public. This formal complaint process can take up to a year to complete.

If both sides agree to try a settlement initiative such as mediation, we co-ordinate the process. We invite both parties to participate, and we provide an impartial mediator. The parties in a settlement initiative are the “complainants” (anyone who makes a complaint to the Human Rights Commission) and “respondents” (any person, group, or organization that the complaint is against). If the complaint is against a company, the company should involve someone who has the authority to negotiate on its behalf. The settlement initiatives process can be stopped at any time, by any of the parties or by the commission.

What are the advantages to a settlement initiative?

- Settlement meetings can resolve complaints more quickly than a formal investigation.
- All parties talk about the actions that led to the complaint and the issues surrounding them.
- The meeting can bring about a better understanding between the parties, even if they do not agree on exactly what happened. The process promotes respect and compromise.

- The parties find their own solution that is fair to all sides, rather than having someone else decide it for them.
- While information from a Human Rights Board of Inquiry hearing is made public, information exchanged during settlement initiatives is kept confidential. This allows participants of settlement initiatives to discuss their situation openly and candidly without fear of repercussion.

How Does a Settlement Initiative Work?

Participation is voluntary

Participation in a settlement initiative is voluntary and based on informed consent. Parties must understand that a decision not to participate will have no impact on their right to have the complaint investigated.

Information exchanged is kept confidential

Information exchanged during settlement initiatives is kept confidential, but any information exchanged before a settlement initiative is not confidential. To encourage parties to be open in their settlement discussions, the discussions take place “without prejudice.” “Without prejudice” is a special legal term. Here it means that things said during the settlement meetings cannot be used as evidence later. For example, if a respondent were to admit during settlement discussions that discrimination occurred, that admission cannot be used by the complainant later in the process in order to prove that discrimination occurred.

The complainant and respondent can speak for themselves

The parties do not have to be represented by a lawyer. Any party may hire a lawyer at their own cost. However, the focus of the settlement process is to find a solution rather than to argue the law or decide whether there was discrimination. Parties to a settlement initiative can bring a support person.

The parties do not have to meet face to face

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.

All suggestions are considered

Each side tells their story, and all parties discuss the issues that come up. The person making the complaint should come to the meeting with suggestions for settling the complaint. These are discussed, along with all suggestions made during the meeting. A settlement may include many different remedies, such as, but not limited to

- 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

The mediator does not impose a solution

The mediator's role is to encourage the parties to talk openly about the complaint, circumstances, and consequences. The mediator may give examples of similar cases and how they were resolved. Anyone can call for a break during a settlement meeting, to allow time to consider the issues and possible solutions.

The mediator looks for a balance in the negotiations

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.

Most complaints are resolved with a fair settlement offer

About 70 per cent of mediated complaints are resolved with a fair settlement offer. A settlement may include many different remedies, such as an apology, money to compensate for lost wages or loss of dignity, or training. Parties that cannot reach an agreement can go on to the formal complaint process.

Public Interest

Sometimes a case has a broader public interest that goes beyond the particular conflict. For example, if a person complains that a building is inaccessible, there may be a broader public interest in making the building accessible to the public at large and not just to the individual complainant. In such cases, the mediator will give information about the types of remedies the commission may look for to resolve the complaint. If the parties are unaware of the public interest component, the mediator will bring the matter to their attention.

For more information on mediation see also *A Guide to Mediation*.

Getting in touch

Contact the Human Rights Commission for more information on resources and programs, and for help dealing with human rights issues.

Visit our web site at www.gov.ns.ca/humanrights/ for more information, fact sheets, and guides to our programs.

Call
424-4111
or toll-free 1-877-269-7699

For TTY dial 424-3139
or toll free 1-866-811-3732

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Introduction to **Settlement Initiatives**