



The Complaint Process

The Canadian Human Rights Commission tries to resolve complaints of discrimination filed against federally regulated employers, unions and service providers. If a complaint cannot be resolved, the Commission may investigate the case further, and may ultimately request the appointment of a Tribunal.

A complaint moves through a number of different stages depending on the case.

What happens when somebody contacts the Commission?

When the Commission receives an inquiry, an officer determines whether the matter is one the Commission can deal with. The officer considers the following questions:

- Does the person have the right to file the complaint? A complaint may be filed by a Canadian citizen or by a person who is legally present in Canada. In most cases, a complaint is filed by the person who has suffered from the discrimination but, in certain cases, it may be filed by a third party.
- Ordinarily, a complaint must be filed within one year of the alleged events. Complaints that are filed later than that are presented to the Commission. The Commission considers the reason for the delay and its length, and whether the delay has made it difficult for the employer, union or service provider (called “the respondent”) to defend itself. The Commission may decide to pursue a complaint more than one year old in extenuating circumstances.
- Does the employer, union or service provider fall under federal jurisdiction?
- Is the situation described considered a discriminatory practice under the *Canadian Human Rights Act*?
- Is the discrimination based on one of the eleven prohibited grounds listed in the *Canadian Human Rights Act*: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction?

If the answer to any of these questions is “no,” staff will try to suggest an organization that can help. If the answer is “yes,” the officer sends a kit to the complainant so that a complaint form can be filed.

What happens when the complaint is filed?

A signed copy of the complaint is sent as soon as possible to the respondent. The next stage of the complaint process depends on the circumstances of the case.

The officer will send the file directly to the Commissioners if the complaint was filed more than one year after the incident or if the complaint appears to be beyond the Commission's jurisdiction. In these cases, the Commissioners can decide not to deal with the complaint at all. Similarly, the Commissioners will also not deal with a complaint they find trivial or made in bad faith.

In some cases, the Commission may ask the complainant to first try another redress procedure. For example, the complainant may be able to file a grievance under a collective agreement or may be able to appeal a decision by a government department or agency under another Act of Parliament.

The remaining cases will usually be referred to the Alternative Dispute Resolution Services Branch to consider the possibility of mediation.

What is mediation?

Mediation is a process in which a mediator helps the complainant and the respondent reach a fair settlement. Usually, the parties will meet face-to-face, and the mediator will work with the parties to identify possible solutions.

If the mediation is successful, the Commissioners review the settlement to ensure that it satisfies the public interest.

Mediation is voluntary and confidential. If either side chooses not to participate, or if the mediation does not work, the file is assigned to an investigator.

For some cases, the Commission may appoint a conciliator.

How does conciliation work?

Conciliation is one form of dispute resolution provided by the Commission. In addition to mediation, which is a voluntary process, the Commission can appoint a conciliator when it believes that the complaint is potentially resolvable. A conciliator guides discussions between the complainant and the respondent as they try to reach a resolution that satisfies both sides.

What does the investigator do?

The investigator gathers the information and evidence needed to prepare a report and makes a recommendation to the Commissioners. The investigator gives the respondent an opportunity to reply to the allegations. The investigator may interview witnesses or ask the respondent and complainant for documents or information.

Both sides have a chance to review the investigator's report and make submissions before the investigator presents the report to the Commissioners. Of course, the complainant and respondent may also reach a settlement during the investigation.

What does the Commission do when it gets the investigator's report?

When the investigator's report is presented at a Commission meeting, the Commissioners also consider any submissions from either side. They will dismiss a complaint if they find it is not supported by the evidence.

If the Commissioners find that there is evidence to support the complaint, they may request the appointment of a Human Rights Tribunal.

What happens at the Canadian Human Rights Tribunal?

The Canadian Human Rights Tribunal is independent of the Commission. It holds public hearings at which both sides can present their arguments and call witnesses. The Tribunal determines whether or not there has been discrimination on a prohibited ground. If appropriate, it orders a remedy.

Will the Commission represent the complainant at the Tribunal?

The Commission represents neither the complainant nor the respondent. Its role is to represent the public interest in an impartial and objective manner at all stages in the complaint process - mediation, investigation, or before tribunal. In some complaints, the role of representing the public interest will mean that Commission counsel will appear at the tribunal. However, this does not happen in all cases, and the role of the Commission's lawyer at the tribunal may vary from one complaint to another.

Can I appeal?

The complainant or the respondent can ask the Federal Court of Canada to review decisions made by the Commissioners or by the Canadian Human Rights Tribunal. In some cases, complaints can be appealed all the way to the Supreme Court of Canada.

Other leaflets in this series:

- Filing a Complaint
- Mediation
- Conciliation
- Investigation
- Other Redress Procedures.

For further information

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