



Early Resolution



The Canadian Human Rights Commission deals with allegations of discrimination against federally regulated employers, unions and service providers. When possible, the Commission encourages parties to try to resolve such allegations through alternative dispute resolution (ADR). The Commission can help parties resolve disputes informally, as soon as they are brought to its attention, or after a formal complaint has been filed. If the parties cannot resolve the matter themselves, the Commission may investigate the allegations and ask the Canadian Human Rights Tribunal to hold hearings.

What is alternative dispute resolution?

“Alternative dispute resolution” refers to a wide range of processes designed to help parties discuss and resolve their problems. ADR includes informal and formal processes, such as mediation and conciliation. Increasingly, courts, tribunals and other organizations use these processes to help resolve a variety of disputes.

What is early resolution?

Early resolution is an informal ADR process. Parties can use it as soon as someone raises allegations with the Commission, before filing a formal complaint. It is a voluntary, on-the-record process of facilitated discussion.

Early resolution advisors carry out this process. It is more focussed and quicker than the Commission’s other ADR services, because it is done by telephone rather than face to face.

What are the advantages of early resolution?

Early resolution allows the parties to better understand each other’s point of view and to work together to find practical solutions. Because it takes place right away and without the need to file a complaint, early resolution has special advantages: it gives the parties a chance to solve the problem before it gets worse; it can be less threatening than filing a complaint; and it makes the process less formal, increasing the likelihood of resolution.

How does early resolution work?

- The early resolution advisor speaks to the party alleging discrimination as soon as that person contacts the Commission. They discuss the situation and how it might be resolved.
- Then the advisor speaks to the employer or service provider that is the subject of the allegations and encouraged to participate in early resolution.
- The advisor then carries out early resolution by speaking with each party separately over the telephone. This process is sometimes called “shuttle mediation.” The advisor acts as a go-between to provide information, and to communicate offers and counteroffers.
- When appropriate, early resolution may also involve telephone conferences with both parties.
- Parties are expected to negotiate quickly and in good faith.

Discussions in early resolution are “without prejudice.” This means that the parties do not give up their right to launch further legal proceedings or to take other steps. It also means that anything discussed during early resolution cannot be used in a later court case. Further, participating in early resolution does not mean that one party accepts the other party’s version of events.

Who are the early resolution advisors and what do they do?

Early resolution advisors work for the Commission. They have training and experience in ADR and human rights. They encourage discussion and help the parties find solutions, but they cannot make decisions about the dispute.

- Early resolution advisors guide discussions impartially and give the parties feedback on their ideas.
- They encourage parties to look at the pros and cons of the different options for resolving the dispute.
- They provide information on the *Canadian Human Rights Act*, Commission policy and legal precedents.
- They tell the parties about the “public interest”—that is, they point out what is appropriate from a human rights perspective. For example, if a party claims that a discriminatory practice or policy affects other people, advisors will ensure that any settlement also corrects the practice or policy.
- If the parties reach a settlement, advisors help them prepare an agreement to sign.

What might a settlement include?

The purpose of the *Canadian Human Rights Act* is not to punish people. Instead, it is designed to resolve human rights disputes and prevent them from happening again. If parties reach a settlement, they can agree to whatever solutions seem appropriate to them, as long as the public interest is considered. Solutions might include apologies, training, replacement of lost wages, reinstatement in a position, or financial compensation. If the case involves a discriminatory policy, the terms of the settlement could include changing the policy or putting new procedures in place.

What happens when the parties reach a settlement?

In most cases, the parties will prepare a written agreement that outlines what each party has agreed to do to resolve the matter. The early resolution advisor can help prepare this agreement.

Once the matter is settled, the file is closed. In most cases, because there is no formal complaint, the settlement will be between the parties only.

In some cases, however, the parties may wish to have the commissioners approve the agreement. The case is then registered as a formal complaint and submitted to the commissioners for review. The Commission monitors all approved settlements to ensure the parties meet the terms. If required, the Commission or the parties can enforce the terms through the courts.

What happens if there is no settlement?

If the parties are prepared to look at solutions but find it impractical to do so by telephone, the advisor will refer the case to a mediator. Mediators are trained professionals with expertise in human rights. They can arrange a confidential, face-to-face meeting between the parties to look at settlement options in greater detail. This process is called “preventive mediation.” It can happen as soon as the parties are available to meet.

If there is no settlement after early resolution and preventive mediation, the person raising the allegations may decide to file a formal complaint. If that happens, the case will usually go to an investigator. However, the parties can still use mediation while the investigation is underway.

FURTHER INFORMATION

For information on all aspects of the dispute resolution process, please visit the Commission’s website at www.chrc-ccdp.gc.ca, or contact the following.

The Commission’s regional offices:
Halifax, Montréal, Toronto, Edmonton and Vancouver, toll free, at 1-800-999-6899.

The Commission’s national office:
344 Slater Street, 8th floor
Ottawa, Ontario K1A 1E1
Telephone: (613) 995-1151
Toll free: 1-888-214-1090; TTY: 1-888-643-3304.

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