



Mediation



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 mediation?

Mediation is a voluntary, confidential ADR process led by a trained, impartial mediator. Parties can use it as soon as someone raises allegations with the Commission, or right after someone files a formal complaint.

What are the advantages of mediation?

Mediation helps parties better understand each other’s point of view. It can improve communication and future relations between the parties. Because it is flexible, mediation allows parties to deal with both the immediate problem and its possible causes. It also allows them to craft creative solutions together. Mediating a dispute as soon as possible can help parties solve the problem quickly and keep it from getting worse.

How does mediation work?

- First, the mediator speaks to the parties individually about the situation and possible solutions. The mediator also explains how he or she will run the mediation session.
- Then the parties decide whether to meet in person or make other arrangements, such as participating in a telephone conference.
- Finally, the parties participate in the mediation session with the mediator. They are expected to negotiate quickly and in good faith, to treat each other with respect, and to keep discussions confidential.

Discussions in mediation 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 mediation cannot be used in a later court case. Further, participating in mediation does not mean that one party accepts the other party’s version of events.

Who are the mediators and what do they do?

Mediators work for the Commission. They have training and experience in mediation and human rights. They create a safe environment, encourage discussion and help the parties find solutions. They cannot make decisions about the dispute.

- The mediators discuss the ground rules for mediation, the location of the mediation session and similar matters with the parties.
- They guide discussions impartially and give the parties feedback on their ideas.
- They provide information on the *Canadian Human Rights Act*, Commission policy and legal precedents.
- They encourage parties to look at the pros and cons of the different options for resolving the dispute.
- They tell the parties about the “public interest”—that is, they point out what is appropriate from a human rights perspective. For example, if one party claims that a discriminatory practice or policy affects other people, mediators will ensure that any settlement also corrects the practice or policy.
- If the parties reach a settlement, mediators 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?

If the parties reach a settlement, the mediator helps them prepare a written agreement. This document outlines what each party has agreed to do to resolve the matter. If one of the parties has filed a formal complaint, the commissioners review the agreement to ensure it is fair and in the public interest. Normally, the Commission will approve settlements in a few days. It later monitors settlements to ensure the parties meet the terms. If required, the Commission or the parties can enforce the terms through the courts.

In some cases, the parties settle the dispute between themselves, without asking the Commission to approve the agreement. The Commission does not monitor these settlements.

What happens if there is no settlement?

If there is no settlement, the mediation process ends. The person raising the allegations may then file a complaint, if he or she has not already done so. The Commission then investigates the complaint and decides whether to dismiss it or to refer it to the Canadian Human Rights Tribunal for hearings.

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.

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