

SECTION: Interpretation

Effective date: December 11, 2013

**SUBJECT: ASSESSING WHETHER A RESPONDENT OFFER OF SETTLEMENT IS
REASONABLE – s.24.1(4)**

Purpose:

This policy is intended to assist in the understanding and application of subsection 24.1(4) of *The Human Rights Code* (“*The Code*”). Where there is any conflict between this policy and *The Code*, *The Code* will be followed.

Context:

Subsection 24.1(4) of *The Code* requires the Commission to terminate complaint proceedings if, before an adjudicator is appointed to hear the complaint, a complainant rejects a settlement offer made by the respondent that the Board of Commissioners considers to be reasonable.

The Code is remedial and is not punitive. Human rights legislation must be interpreted broadly and in accordance with this purpose. [*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 at paras. 27-29]

When assessing whether a respondent’s offer is reasonable, the Board will assume the allegations in the complaint are true. [*Metaser v. Jewish Community Campus of Winnipeg Inc.*, 2013 MHRBAD 6 and *Mancusi v. 5811725 Manitoba Inc. o/a Grace Cafe City Hall*, 2012 MHRBAD 4]

If the offer is made after the complaint has been investigated, the Board will review the evidence in the Investigation Assessment Report (“IAR”). The Board will also review any other evidence submitted by either party in their response to the IAR.

The Board will rely on case law from Manitoba and other jurisdictions. The Board will specifically consider the various remedies that may be awarded by an adjudicator under subsection 43(2) of *The Code*, to determine:

1. Whether the offer “approximates” or is “the same or nearly the same” as what an adjudicator would award if the complaint was proven true at an adjudication hearing.
 - a. When assessing an offer to refrain from doing something or to comply with *The Code* or make amends the Board will consider the respondent’s actions

following the alleged contravention and whether those actions increased or decreased the impact of the discrimination.

- b. When assessing an offer to compensate for financial losses, expenses incurred, or benefits lost relating to the loss of employment, the Board will consider if the losses were caused by, or arose as a result of, the contravention of *The Code*. If so, the Board will determine whether the amount offered puts the complainant reasonably in the position he or she would have been in had the discrimination not occurred. The Board will not rely strictly on Employment Standards legislative minimums or the common law of wrongful dismissal but will be guided by relevant human rights case law. [*Piazza v. Airport Taxicab (Malton) Assn.* (1989) 10 C.H.R.R. D/6347 (Ont. C.A.) and *Vanton v. British Columbia (Council of Human Rights)* (1994), 21 C.H.R.R. D/492 (B.C.S.C.)] Compensation for financial loss is also subject to the complainant making reasonable efforts to limit additional losses. [*Torres v. Royalty Kitchenware Ltd.* (1982), 3 C.H.R.R. D/858 (Ont. Bd. of Inq.)]
- c. When assessing an offer to compensate for injury to dignity, feelings or self respect, the Board will consider the specific nature of the contravention of *The Code*, including how often and what type of conduct is alleged and the reasonable impact that such conduct would have on the complainant in the circumstances.
- d. When assessing an offer of compensation in the form of a penalty or exemplary damages or the adoption of an affirmative action program, the Board will consider what an adjudicator at a public hearing would likely determine to be fair and appropriate in the circumstances.

2. Whether the offer of settlement appropriately addresses the public's interest in ensuring it remedies the impact of the discrimination and promotes future compliance with *The Code*.

If the offer is made before an investigation is completed, the Board will consider the above factors. However, the Board will assume the allegations in the complaint are true and will not assess the evidence supporting each of the parties' positions.

The Board acknowledges that its assessment may result in a termination of the complaint proceedings and will therefore proceed cautiously.

APPROVED BY:

"Yvonne Peters"
Chairperson

December 11, 2013
Date