



## Guide to Commission Directed Mediation

This document will provide you with general information about what to expect when a complaint is referred to Commission Directed Mediation (“CDM”) after an investigation.

### What is Commission Directed Mediation?

CDM is a voluntary dispute resolution or settlement negotiation process undertaken before a complaint is referred to a public adjudication hearing. A Commission Mediator acts as a neutral facilitator and assists the parties to resolve the issues raised in the complaint. CDM is different from mediation at other stages in the complaint process because it takes place after the Executive Director has determined, based on the investigation of the complaint, that there is enough evidence to warrant a public hearing of the complaint. For more information on the adjudication process, please see the *Guide to an Adjudication Hearing*.

### How does Commission Directed Mediation work?

Once a file is assigned to CDM, a Commission mediator will contact both the respondent and complainant and ask each of them to consider what they are willing to offer or accept in settlement of the complaint. The Mediator will use their knowledge of *The Human Rights Code* and its principles and experience in resolving human rights complaints to guide the parties on how they can reach an agreement. The mediator cannot provide legal advice but will provide guidance based on human rights law, including settlement examples and remedies ordered in other cases.

Usually the Mediator will conduct “shuttle negotiations”, by taking offers and positions back and forth between the parties, while trying to help them in reaching a settlement. Where both parties prefer to meet to work out a settlement, face-to-face negotiations can also be facilitated by the Mediator.

If the parties are able to voluntarily resolve the complaint through mediation, the mediator may draft a Memorandum of Agreement that outlines all of the settlement terms. The complainant often signs a Release that says that they give up the right to complain against the Respondent about the specific issue raised in the complaint, in the future. Each party signs the Memorandum of Agreement and the signed copies are provided to each party.

### What are the possible benefits of negotiating a settlement at this point?

Going through a public adjudication hearing can be difficult and may leave both parties feeling unsatisfied. There is also no guarantee that either party will be successful in proving their position if the complaint goes to an adjudication hearing. Mediation is not

adversarial and gives the parties the chance to work together toward a meaningful resolution. Parties can also keep their issues confidential in mediation.

At CDM, the Mediator can help the parties identify the strengths and weaknesses of the evidence based on the investigation of the complaint, as well as possible orders of remedy that an adjudicator can make if a human rights complaint is successful at hearing, to work towards achieving a reasonable settlement of the complaint that would be similar to what an adjudicator may award. .

### **How do the parties arrive at a reasonable settlement offer?**

Settlement negotiations are intended for the parties to reach a settlement of a complaint that repairs the harm caused by the discrimination and prevents future discrimination.

To arrive at a reasonable offer of settlement, it is important to consider the types of remedies that are provided for under *The Human Rights Code*. They include compensation for financial losses or expenses caused by the discrimination, and compensation for injury to dignity, feelings or self-respect. They also include remedies that will ensure that the discrimination does not occur again, such as changes to a policies or practices, or participation in human rights training. For more information on remedies, see the *Guide to Remedies*.

### **Can what a party says in the settlement negotiation discussions be used against them if the complaint goes to an adjudication hearing?**

No. CDM negotiations are on a “without prejudice” basis. This means that information provided by the Complainant or Respondent during the settlement negotiations cannot be used against them or prejudice them at an adjudication hearing without their permission.

However, once a settlement offer is put before the Executive Director to determine if it is reasonable, that offer and the complainant’s response to it will **not** be without prejudice. This is because the Executive Director will be making a decision based on that information which could result in the complaint proceedings being terminated (for example, if the respondent’s offer is found to be unreasonable or if the complainant does not accept a reasonable offer within the allowable time limit). For more information on the reasonable offer process, please see our *Guide to Reasonable Offer Process*.

### **How long do the parties have to reach a settlement agreement?**

The Commission usually gives the parties **60** days to try and resolve the complaint. If you do not accept the other party’s settlement offer during this period, you can make a counter-offer that the other party can accept, reject or modify. If the parties need more time, they can ask the Commission to extend the CDM period.

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*Ce guide est disponible en français.*

## **What happens if the Complainant and the Respondent have not reached a voluntary settlement agreement?**

If the parties are unable to reach a voluntary settlement agreement, the Respondent may choose to have an offer they consider reasonable to be assessed by the Executive Director. For information on the Reasonable Offer process, please refer to our *Guide to Reasonable Offers*. If the respondent does not put an offer before the Board to assess its reasonableness, the complaint will generally proceed to a public adjudication hearing.

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