



Guide to Mediation

The Manitoba Human Rights Commission (“Commission”) encourages parties to resolve complaints through mediation. We offer mediation at various stages in the complaint process. The mediators at the Commission also facilitate Commission-Directed Mediation (CDM) which follows a different process. If your matter is assigned to Commission Directed Mediation, please refer to the *Guide to Commission Directed Mediation*.

What is mediation?

Mediation is a voluntary dispute resolution process. Our mediators facilitate discussion about the issues in the complaint and how to resolve them so that parties can reach a settlement agreement instead of continuing through the complaint process. Mediation allows parties to resolve complaints more quickly and on their own terms. The mediator will be focused on the human rights issues raised in the complaint.

What is the mediator’s role?

Our mediators are specifically trained in dispute resolution techniques. They use their knowledge of *The Human Rights Code* and its principles as well as their experience in resolving human rights complaints to help parties reach an agreement. The mediator cannot provide legal advice but will provide guidance based on human rights law and standards, including settlement examples and remedies ordered in other cases.

Will we meet in-person?

The mediator leads the process and will decide what format is most appropriate or comfortable for the parties. The mediator will gather information from the parties by telephone and email, and may also meet with the parties in-person (either separately or together). In many cases, the mediator will simply share each party’s settlement position with the other so meeting in person may not be necessary. Mediators will only arrange face-to-face meetings between parties if both parties agree to it.

How long will the mediation take?

The Commission generally allows parties **up to 60 days** to try and resolve the complaint. The mediator may terminate the mediation process earlier if the parties remain very far apart in terms of their settlement interests or if the parties are not engaging in discussions in a productive way. The mediator can also extend the time to resolve a complaint if appropriate.

What can I do to prepare?

The parties can review our *Guide to Remedies* which gives an overview of the things normally included in a settlement. There are also examples of settlements on our website. The parties should keep any records or documents that can be used to

calculate lost income as a result of the alleged discrimination (i.e. record of income earned, hours worked, ROE, etc.). You may have a lawyer or someone else assist you in the mediation process, but it is not required.

Does a settlement always involve payment to the Complainant?

In the early stages of the complaint process, a settlement may simply involve the exchange of information, an apology and an agreement to review or develop a policy to address the issue in the complaint. There is often some payment of compensation for injury to the complainant's dignity, feelings and self respect and payment to address any financial loss, such as lost income or wages.

Do we need to sign a legal document?

Our mediators will help prepare a Settlement Agreement for the parties to sign that outlines all of the terms they have agreed to, including the dates by which each party must do certain things. The Complainant will usually be asked to sign a Release in order to conclude a Human Rights Complaint, with the terms being agreed upon by the parties.

What if we can't come to an agreement?

If the parties are unable to reach an agreement after a reasonable period of time, the matter will proceed to the next stage of the complaint process. The Complainant may also choose to withdraw their complaint at any point in the process.

Can information I share in mediation be used against me?

Mediation discussions are "without prejudice", which means that the information shared cannot be used against you or prejudice you in an investigation or at an adjudication hearing. The mediator will discuss your settlement proposal and rationale with you before sharing it with the other party.

I made a settlement offer to the complainant which I believe was fair, but they refused the offer. What options do I have?

If a complainant refused your settlement offer, you may ask the Executive Director of the Commission to review your settlement offer to assess if it reasonably resolves the complaint. In deciding whether an offer is reasonable, the Executive Director will consider whether your offer is similar to what an adjudicator would award if the complaint was proven true at a hearing. If it is reasonable, the Commission will provide the complainant with one final opportunity to accept the offer – if the complainant does not accept the offer, the Executive Director will terminate the complaint process and the file will be closed. For more information on the Reasonable Offer Process, see our *Guide to Reasonable Offer Process* or speak with your Mediator.

Does the Commission have to approve the settlement?

The Commission does not approve settlements. The mediator helps the parties think about settlement terms from a human rights perspective. The mediator also assists with

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drafting the settlement forms. If the parties reach a settlement, the Commission must terminate the complaint process and close the file.

Is the settlement confidential?

The parties may agree to keep all or some of the settlement terms confidential. If the settlement involves making a change that will affect a large group of people or the public in general, it may be important to make sure that the public can know about the change. Often the parties agree that they can still talk about the fact that a human rights complaint was filed and what it was about. The Commission can talk about any complaint or settlement for education purposes but will not identify the involved parties.