



Conciliation

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 conciliation?

Conciliation is an ADR process led by a trained, impartial conciliator. *The Canadian Human Rights Act* allows the Commission to appoint a conciliator and require the parties to negotiate. Conciliation takes place after an investigation has been completed.

In some cases, the Commission appoints a conciliator on the understanding that the complaint will be returned to the Commission at the end of the conciliation.

In other cases, the Commission appoints a conciliator on the understanding that the complaint will be sent to the Canadian Human Rights Tribunal at the end of the conciliation if there is no settlement. The parties are given a short period of time (usually 90 days) in which to try to settle the matter. At the end of this period, the case must either be resolved or sent on to the Tribunal.

How does conciliation work?

- First, the conciliator speaks to the parties individually about the situation and possible solutions. The conciliator also explains how he or she will run the conciliation 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 conciliation session with the conciliator. They are expected to negotiate effectively and in good faith, to treat each other with respect, and to keep discussions confidential.

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

How does conciliation differ from mediation?

Unlike mediation, conciliation is a mandatory process. Mediation takes place before an investigation, while conciliation generally takes place after an investigation is finished and the commissioners have reviewed the findings. The roles of mediators and conciliators are quite similar. However, unlike mediators, conciliators can use the investigation findings to give direct feedback to the parties on the strengths and weaknesses of their arguments and proposals.

Who are the conciliators and what do they do?

Conciliators work for the Commission. They have training and experience in dispute resolution and human rights. They create a safe environment, encourage discussion, and help the parties realistically evaluate their positions and find solutions. They cannot make decisions about the dispute.

- The conciliators discuss how the conciliation process will unfold, the location of negotiations and similar matters with the parties.
- They guide discussions, providing feedback to parties on the strengths and weaknesses of their positions.
- 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, conciliators will ensure that any settlement also corrects the practice or policy.
- If the parties reach a settlement, conciliators help them prepare an agreement to sign.

Conciliators cannot be called as witnesses if the matter is not settled and the case is referred to the Canadian Human Rights Tribunal for hearings.

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 conciliator helps them prepare a written agreement. This document outlines what each party has agreed to do to resolve the matter. The commissioners review the signed 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.

What happens when there is no settlement?

In cases where the Commission had asked to see the complaint again at the end of the conciliation, the Commission will take a second look at the case. It decides whether to dismiss the case or to refer the matter to the Canadian Human Rights Tribunal for hearings. The parties are allowed to tell the Commission what offers they made during conciliation, and may keep their offers open for 10 days after the Commission has made its final decision.

In the cases where the Commission decided to refer the complaint to the Tribunal if it could not be settled, the complaint is sent directly to the Tribunal.

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.

This document is available in alternative formats on request.