



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

Human Rights

Preliminary Issues Information Sheet

SECTION 41(1) OF THE CANADIAN HUMAN RIGHTS ACT
COMPLAINTS SERVICES BRANCH

Introduction

The Canadian Human Rights Act (the Act) does **not** require the Canadian Human Rights Commission (Commission) to deal with all complaints. Section 41(1) of the Act lists the situations when the Commission can decide not to deal with a complaint. These are called **preliminary issues**. You can read section 41(1) of the Act here: <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-4.html#docCont>

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The Complainant has access to a grievance process or other review procedure

- Or -

The Complainant failed to complete an available grievance process or other review procedure

The Commission may decide not to deal with a complaint filed by a Complainant that has a grievance or other review procedure that is reasonably available to them and can deal with the allegations in their complaint. [s. 41(1)(a) of the Act].

This means that the Commission may refuse to deal with a complaint, if it determines that:

- there is another process (e.g. grievance, harassment complaint, etc.), and
- that the other process is “reasonably available.”

If the Commission decides that a Complainant should complete (“exhaust”) another grievance process or other review procedure; the Complainant should raise all of their human rights allegations and try to get a final decision in the other process.

After a final decision is made in the other process, the Complainant can ask the Commission to consider their complaint if they believe that the other process did not address the human rights issues in it. At that time, the Commission will decide whether the allegations in the complaint were dealt with through the grievance or other review procedure. [s.41(1)(d) of the Act]

If the Complainant believes that the other process is no longer reasonably available to them, they can ask the Commission to consider their complaint. The Commission will determine if the other process is no longer available. If the Commission decides that the other process is still available, it can require the Complainant to continue to use that process. If the Commission decides that the other process is not available, it will decide what role, if any, the Complainant had in that outcome.

If the other process is no longer available because the Complainant failed to use or complete the other process, including choosing to withdraw their grievance, the Commission may decide not deal with the complaint. [s. 42(2) of the Act].

The Commission can also refuse to deal with a complaint if a Complainant uses another process, but does not raise their human rights allegations. [s. 42(2) of the Act].

Please provide your position regarding whether or not another grievance or review procedure is available to the Complainant. Answer the following questions and provide the requested documents as part of your position.

1. Is there another process available to the Complainant that could address the allegations raised in this complaint? Identify what the process is.

2. If the Complainant is using the other process, attach a copy of the document used to start the process and any decisions that have already been made (e.g. the grievance).
3. If the Complainant is not using the other process, explain why not?
 - a. Is the other process still available to the Complainant?
 - b. Respondent: Do you confirm that you will not oppose the Complainant using the other process, even if they are beyond the time limit?
4. Explain the other process:
 - a. Who are the decision-makers?
 - b. What are the different levels / steps?
 - c. If the decision-maker is an employee of the Respondent, are they at arm's-length or removed from the situation the Complainant is complaining about?
 - d. Does the decision-maker have any training or expertise in the area of human rights?
 - e. Does the decision-maker have the authority to decide human rights issues? Please include a copy of the relevant section(s) of the collective agreement or policy that prohibits discrimination and harassment, and the section that defines these terms.
 - f. Does the other process have a "no-retaliation" clause? If so, please provide a copy of the relevant section(s) of the collective agreement or policy that prohibits retaliation for using the other process.
5. If the other process cannot deal with all of the issues raised in this complaint, please explain why and what issues cannot be dealt with (for example, systemic discrimination)?
6. List the types of remedies the other process can provide that would resolve the issues raised in this complaint:
 - a. If the complaint alleges systemic discrimination, could the potential remedies address these issues?
 - b. If the complaint alleges a discriminatory policy or practice, could the potential remedies address this issue?
 - c. Please include a copy of the relevant section(s) of the collective agreement, policy, and/or legislation that outlines the remedies available via the grievance or other review procedure.

Is the other process no longer available?

7. Was there another process available to the Complainant that could have addressed the allegations raised in this complaint but was either not used or not finished?

- a. What was the other process?
 - b. What allegations were not raised in the other process?
 - c. Why is the other process no longer available?
 - d. Could the other process have provided a remedy that would have resolved the allegations raised in this complaint, if warranted?
8. Is there evidence that demonstrates that the Complainant was aware of the other process?
 9. Is the Complainant solely responsible for not using or finishing the other process?
 10. Complainant: Why did you not use or complete the other process?

The Complainant has access to a process provided for under another Act of Parliament

In many cases, people can resolve their human rights disputes under a federal law other than the Act. The Commission may decide not to deal with a complaint, if Parliament has created another review process under a different federal law that is more appropriate to review the allegations raised in the complaint. [s. 41(1)(b) of the Act]

The Commission must consider whether or not the other process is “more appropriate” to deal with the allegations raised in the complaint.

If the Commission decides another process is more appropriate, the Complainant should raise all of their human rights allegations and try to get a final decision in the other process.

Once a final decision is received in the other process, if the Complainant believes that the process did not address their human rights allegations, they can ask the Commission to consider their complaint. At that time, the Commission will decide whether the human rights issues were already dealt with through the other process. [s.41(1)(d) of the Act]

Please provide your position regarding whether or not a process under another federal law (Act of Parliament) is available to deal with this complaint. Answer the following questions and provide the requested documents as part of your position.

1. Is there another process available to the Complainant that could address the allegations raised in this complaint? Identify what the process is.
 - a. What federal law or Act of Parliament is involved?
2. If the Complainant is using the other process, attach a copy of the document used to start the process and any decisions that have already been made.
3. If the Complainant is not using the other process, explain why not?
 - a. Is the other process still available to the Complainant?
 - b. Respondent: Do you confirm that you will not oppose the Complainant using the other process, even if they are beyond the time limit?
4. Explain the other process:
 - a. Who are the decision-makers?
 - b. What are the different levels / steps?
 - c. If the decision-maker is an employee of the Respondent, are they at arm’s-length or removed from the situation the Complainant is complaining about?
 - d. Does the decision-maker have any training or expertise in the area of human rights?

- e. Does the decision-maker have the authority to decide human rights issues? If so, please explain.
5. If the other process cannot deal with all of the issues raised in this complaint, please explain why and what issues cannot be dealt with (for example, systemic discrimination)?
6. List the types of remedies the other process can provide that would resolve the issues raised in this complaint:
 - a. If the complaint alleges systemic discrimination, could the potential remedies address these issues?
 - b. If the complaint alleges a discriminatory policy or practice, could the potential remedies address this issue?
 - c. What remedies, if any, would directly benefit the Complainant?
7. Explain why the other process is, or is not, more appropriate to deal with this complaint than a complaint under the Canadian Human Rights Act?

The Respondent is provincially or territorially regulated

Canada splits jurisdiction (legal authority) between the federal and provincial and territorial governments based on the Constitution Act, 1867. According to section 2 of the Act, the Commission only has jurisdiction over federal matters.

The Commission cannot deal with a complaint if the Respondent is not federally regulated (under federal jurisdiction) [s. 41(1)(c) of the Act].

Examples of employers and service providers under federal jurisdiction include:

- federal government departments, agencies and Crown corporations
- chartered banks
- airports and air transportation
- shipping and navigation (including loading and unloading vessels)
- television and radio stations
- telecommunications
- interprovincial and international transportation of goods or passengers by road, railway or ferry
- uranium mining and processing
- grain storage and handling

To know if the Commission has the authority to deal with a complaint, the Commission must determine if the Respondent is under federal or provincial/territorial jurisdiction. This means looking at the nature, operations and regular daily activities of the Respondent.

Normally, labour and employment relations (including human rights) are provincially regulated. If the normal, every day activities of the Respondent fall under federal jurisdiction, the human rights issues related to employment would fall under federal jurisdiction. For example, if the Respondent's employees or equipment regularly cross provincial or national borders, then the Respondent will most likely be federally regulated. The Commission will also have jurisdiction over a complaint if the Respondent's activities are essential to the operations of a federal employer or federal service provider.

In some cases, a provincially or territorially regulated employer or organization will have a specific work unit or division that carries out activities essential to the operations of a federal employer or federal service provider. In these cases, that unit could be subject to federal jurisdiction

The Commission will only refuse to deal with a complaint if it is plain and obvious that it is provincially or territorially regulated.

Complaints related to First Nation Governments and First Nation Organizations

In general, First Nation Governments fall under federal jurisdiction. Some self-governing First Nations have an agreement with the federal government that changes whether their actions fall under federal jurisdiction.

Organizations run by First Nation Governments (e.g., schools, health care, etc) can fall under federal or provincial/territorial jurisdiction. It does not matter if the First Nation Government is federally regulated. To decide if federal or provincial/territorial human rights law applies, the Commission must look at the nature, operations and regular daily activities of the organization. The source of authority for the organization's activity will help determine whether the activity is federal or provincial/territorial jurisdiction. If the Indian Act or a treaty is the source of authority, the complaint will be under federal jurisdiction.

Complaints related to Banking

Only the federal government has jurisdiction over “banking” and “the incorporation of banks.” Activities that are related to banking, but are not considered banking, like credit cards, insurance and securities are not federally regulated.

The Commission only has the jurisdiction to accept complaints against financial institutions that are listed in Schedules I, II or III of the Bank Act.

- Click to review Schedule I: <https://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-98.html#h-1286182>.
- Click to review Schedule II: <https://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-99.html#h-1286191>.
- Click to review Schedule III: <https://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-100.html#h-1286200>.

Please provide your position regarding whether or not this complaint falls under provincial or territorial law. Answer the following questions and provide the requested documents as part of your position.

1. Is the Respondent a single entity (e.g. a private interprovincial trucking company) or is it a discrete unit of a larger organization (e.g. a city-owned transit system that operates inter-provincially)?
2. What are the regular day-to-day activities of the Respondent?
3. If the Respondent is a First Nation Government or Indigenous organization, where does it get its authority to operate the activity listed in the complaint? For example, if the First Nation Government is running a school, does it get its authority from the Indian Act?
4. If the Respondent is a transportation business, do its employees or equipment regularly travel between provinces and/or territories, or outside of Canada?
5. If the activities of the Respondent are integral or essential to a federally regulated employer or service provider, then the Respondent, or a functionally discrete unit of the Respondent, will be under federal jurisdiction.
 - a. What is the nature of the relationship between the Respondent and the federal employer or service provider it serves?

- b. How important is the work done by the Respondent for the federal entity? For example, is the Respondent providing a service that is essential to the federal entity?
 - c. How important is the work done on behalf of the federal entity for the Respondent?
6. Has the Complainant filed essentially the same complaint against the Respondent with the provincial or territorial human rights agency (the other human rights agency)?

Complaints related to banking

Is the Respondent listed as a bank in Schedule I or II of the Bank Act or as an authorized foreign bank in Schedule III of the Bank Act?

The Complainant was not lawfully present in Canada

- or -

The discrimination occurred outside Canada and the person who experienced it was not a Canadian citizen or permanent resident

If at the time of the discrimination:

- the Complainant was not lawfully present in Canada [s. 40(5) of the Act], or
- it occurred outside of Canada and the Complainant was not a citizen or permanent resident [s. 40(5) of the Act],

the Commission does not have authority (“jurisdiction”) over the complaint. [s. 41(1)(c) of the Act]

Please provide your position regarding if the Complainant was lawfully present in Canada or if the discrimination occurred outside of Canada and the person who experienced it was not a Canadian citizen or permanent resident. Answer the following questions and provide the requested documents as part of your position.

1. What was the Complainant’s legal status in Canada at the time of the alleged discrimination?
 - a. For example, is the Complainant a Canadian Citizen, a permanent resident, a foreign national, etc.?
2. If the alleged discrimination occurred outside Canada, was the person who experienced the alleged discrimination a Canadian citizen or a person granted permanent resident status in Canada?
3. If the alleged discrimination occurred in Canada and was a discriminatory practice, is an individual identifiable as the victim within the meaning of section 5, 8, 10 or 12?

The wrong Respondent is named in the complaint

For the Commission to have jurisdiction over an employment or service complaint, the Respondent must be either an employer or a service provider within the meaning of the Act. If it is plain and obvious that the Respondent does not employ or did not provide a service to the Complainant, the Commission does not have authority (“jurisdiction”) to deal with the complaint. [s. 41(1)(d) of the Act]

Depending on the allegations in the complaint and the available information, this preliminary issue is raised because:

- It is not clear that the Respondent named in this complaint was in an “employment relationship” with the Complainant, **or**,
- it is not clear that they were the service provider. It is also possible that the available information suggests that another employer or organization might be the proper Respondent.

Please provide your position regarding whether the Respondent named by the Complainant is the proper Respondent to the allegations in this complaint. Answer the following questions and provide the requested documents as part of your position.

1. Respondent: If not already identified, please provide the name of the organization that you believe the complaint should be against (the Third Party). Explain why you believe that the complaint should be against this Third Party.
2. If the allegations are true, could the Respondent named in the complaint be held responsible for the alleged discrimination? Please explain.
3. Is the Respondent named in the complaint in a position to remedy the complaint? Is the Third Party in a position to remedy the complaint? Please explain.
4. Is it necessary that the Respondent named in the complaint participate in the complaint process in order to remedy the complaint, if proven?

Employment related Complaints

1. What formal reporting relationships are in place between the Complainant and the named Respondent and/or the Third Party?
 - a. For example, who hired the Complainant or refused the Complainant’s employment? Who set the hiring standards against which the Complainant was judged?
2. Who controls the Complainant’s work environment, workload, labour or employment relationship, and otherwise directs the Complainant’s activities?
 - a. For example, who sets work hours, work conditions, manages job expectations and implements workplace policies? Who can be said to “call the shots”? Who signs the Complainant’s pay cheques and oversees issues surrounding remuneration and benefits?

3. Does the Respondent or the Third Party derive the benefit of the Complainant's efforts (e.g., work product)?

Non-Employment related Complaints

1. Who provided the service the Complainant requested? Who did the Complainant expect to be dealing with when the service was requested?
2. What was the nature of the relationship between the Respondent and the Third Party? For example, was there a contract between the Respondent and the Third Party in relation to the services requested by the Complainant?

Did the Respondent maintain any control over the service delivery by the Third Party, or did the Third Party act in its own capacity? For example, did the Respondent maintain control over billing, scheduling or by requiring the use of certain tools or techniques?

The discrimination is not serious enough or the Act offers little or no useful remedy

The Commission and the Act cannot always address conduct that causes injury, distress or upset. The Act is intended to protect individual rights of vital importance. It does not apply to every situation in which someone feels unfairly treated. Even if the alleged discrimination is covered by the Act, the Commission can refuse to deal with it. The Act calls these complaints “trivial.” [s. 41(1)(d) of the Act]

Not every breach of the Act will result in a referral to the Canadian Human Rights Tribunal (Tribunal). Sometimes, the discrimination is not serious enough for the Commission to deal with the complaint. For example, the discrimination may have occurred, but it resulted in only a minor inconvenience (e.g. the Complainant was slightly delayed in receiving, but was not denied, a service).

In other cases, the Act offers little or no useful remedy. For example, even if the allegations are true, the Tribunal cannot order a remedy to resolve the issue (e.g. issue an immigration visa).

The Act has rules about the kinds of remedies that the Tribunal can order. The Tribunal can order the Respondent to:

- Provide the rights, opportunities or privileges that a Complainant was denied because of the discrimination (example: promotion).
- Pay a Complainant some or all of their lost wages, or expenses that they had, because of the discrimination. This does not include legal fees.
- Pay a Complainant for pain and suffering up to a maximum of \$20,000.
- Pay a Complainant up to a maximum of \$20,000 if the Respondent behaved in a willful or reckless way.
- Pay interest on any financial awards.
- Consult with the Commission to make changes to their policies or practices.
- Take actions to end a discriminatory practice.
- Take actions to prevent a discriminatory practice in the future.

The Tribunal cannot order the Respondent to:

- Pay for a Complainant's legal fees.
- Apologize.
- Fire another person.

Complaints related to international air travel

In Canada, the Carriage by Air Act limits the liability of airlines for incidents that happen during international air travel. This law only allows passengers to receive monetary damages for incidents that happen during international air travel that cause death or bodily injury. Airline passengers cannot receive monetary compensation for pain, suffering, hardship, inconvenience or discrimination under the Act.

Please provide your position regarding what remedies may be available to the Complainant and/or whether the alleged discrimination is serious. Answer the following questions as part of your position.

1. Do the concerns raised in this complaint affect more than just the Complainant?
 - a. Does the complaint raise concerns that are of importance to the general public (public interest)?
 - b. Did the Respondent's policies or practices mean they treated other people (who were the same race, sex, or disability, etc. as the Complainant) the same way?
2. Did the alleged discrimination occur over a period of time or was it one incident?
3. What harm did you experience because of the alleged discrimination?
4. Has the Respondent done anything to address or remedy the issues in the complaint? Please explain.
5. What remedies are you seeking from the Respondent?

Complaints related to international air travel

6. What remedies, other than money, are you seeking? Why?

The complaint does not describe a discriminatory practice

- or -

There is no link to a ground of discrimination in the Act

The Commission cannot always deal with actions that causes injury, distress or upset. The Act is meant to protect some individual rights. It does not apply to every unfair situation. Even if the discrimination in a complaint is covered by the Act, the Commission can refuse to deal with it.

The Commission can only consider complaints that occur in certain situations [s. 5 to 14.1 of the Act] **and** are linked to a ground of discrimination in the Act [s. 3 of the Act].

If a complaint does not meet both of these requirements, the Commission does not have the authority to deal with it. The Act calls these complaints “frivolous.” [s. 41(1)(d) of the Act] This is a legal term. In this case, it means that the complaint has not met the minimum requirements for the Commission to have the authority to deal with it.

Please provide your position regarding whether complaint fails to identify a link to a ground or does not describe a discriminatory practice. Answer one or both of the following questions as part of your position.

1. Explain why you believe that the alleged behaviour is or is not covered by one or more of the discriminatory practices described in sections 5 to 14.1 of the Act. What are the facts supporting your belief?
2. Explain why you believe that the alleged discrimination is **or** is not linked to one or more of the grounds of discrimination listed in section 3 of the Act. What are the facts supporting your belief?
3. Is there a reasonable basis to believe that the negative treatment could be linked to one of the grounds of discrimination? Please explain.

NOTE 1: A “reasonable basis to believe” requires that there be sufficient information to persuade the Commission that there is a link between the action complained of in the complaint and a ground. This requires more than just a statement that the action was discriminatory.

NOTE 2: The link to a ground can often only be determined following an assessment of the details of the complaint. This is particularly true for complaints involving a Complainant’s race, colour, and/or national or ethnic origin. It must be plain and obvious that there is no link or no practice for the Commission to decide not to deal with a complaint.

Complaints related to legislation (a law)

1. Please describe the law (the legislation) that the Respondent’s employees were applying in the situation involving the alleged discrimination. Please identify the specific sections of the law.

2. Explain how this complaint is or is not about the non-discretionary application of a federal law (legislation).
3. Explain how the Respondent's employees applied the law. What, if any, discretion does the Respondent have in the application of the specific section of the law?

The allegations in the complaint were already dealt with through another process

The Commission can refuse to deal with a complaint if the allegations in it have been, or could have been, addressed in another complaint or grievance process. [s. 41(1)(d) of the Act]

The Commission considers such complaints to be “vexatious” within the meaning of section 41(1)(d) of the Act. This is a legal interpretation and is not related to the everyday use of the word “vexatious”.

The Commission has the authority (“jurisdiction”) to apply the Act. As do many other decision-makers. Often, there is more than one process that can deal with human rights issues. For example, a Complainant could file a union grievance and a human rights complaint on the same allegations. In some cases, it would be unfair for a Respondent to have to answer to the same allegations in more than one process.

Please provide your position regarding whether another process has already dealt with the human rights allegations in the complaint. Answer the following questions and provide the requested documents as part of your position.

1. Was a final decision made in another process?
 - a. Identify the other process.
 - b. Attach a copy of the document used to start the other process and a copy of all of the decisions made in that process. For example, if there is more than one level, please provide a copy of the decision made at each level.
2. Has the Complainant finished all available reviews or appeals of the decision?
3. If the complaint alleges systemic discrimination, how did the remedy address these issues?
4. If the complaint alleges a discriminatory policy or practice, how did the remedy address this issue?
5. Questions about the process and the decision-maker(s):
 - a. What were the different levels / steps of the process?
 - b. Were there different decision-makers at each level / step of the process? Who were the decision-makers?
 - c. Was the decision-maker(s) an employee of the Respondent, and if so, were they at arm’s-length or removed from the situation the Complainant is complaining about?
 - d. Did the decision-maker(s) have any training or expertise in the area of human rights?
 - e. Where does the decision-maker get their authority to decide human rights issues from? Please explain.

The Complainant already settled the allegations in their complaint

The Act cannot be used to avoid a valid legal obligation.

The Commission can refuse to deal with a complaint where the issues raised in the complaint have been dealt with through another process. This includes complaints that have been settled and where releases have been signed. Depending on the circumstances, section 41(1)(d) of the Act calls such complaints “vexatious” or “made in bad faith”.

Please provide your position regarding whether there is a signed agreement between the parties that settles the allegations in the complaint. Answer the following questions and provide the requested documents as part of your position.

1. Was a settlement negotiated on the same issues that are raised in this complaint?
 - a. What issues were settled? If any issues were not settled, could the Complainant have raised those issues for consideration during the settlement negotiation? Why were they not raised and/or considered?
 - b. Does the human rights complaint include allegations that occurred after the settlement? Please provide details and dates.
2. Did the parties sign a release as part of the settlement?
 - a. Please provide a copy of the release. If the release is in the settlement itself, please redact all other aspects of the settlement.
 - b. Does the release relate to, or contemplate, the same or similar facts and issues as those alleged in the complaint, including potential human rights issues?
3. Did the Complainant have legal representation (a lawyer or paralegal), the opportunity to seek independent advice, or the advice of a union representative when negotiating the settlement and/or signing the release?
4. Does it appear that the Complainant freely consented to the negotiation of the settlement and the signing of the release? On what basis are you making this assertion?
Complainant: If you are alleging that you were coerced or pressured to sign the settlement or release, on what basis are you making this statement?
5. Does the Complainant have a disability related issue that impacted their ability to freely consent to the settlement?

If the complaint alleges systemic discrimination, did the settlement remedy these issues?

The complaint is made to harass or intimidate the Respondent or for another improper purpose

The Act cannot be used to avoid a valid legal obligation or to harm or harass an organization or individual.

The Commission may refuse to deal with complaints where it is plain and obvious that they were filed for improper or dishonest purposes. The Act refers to these complaints as “bad faith” complaints. [s. 41(1)(d) of the Act]

Please provide your position regarding whether this complaint was filed in bad faith. Answer the following questions as part of your position.

1. Is it plain and obvious that the complaint was filed in a deliberate attempt to avoid, delay, or frustrate a contract or some other legal obligation? If so, please provide facts to support your answer.
2. Is it plain and obvious that the Complainant engaged in improper or dishonest conduct (e.g., fraud or misrepresentation) to deliberately deceive or mislead the Respondent or the Commission? If so, please provide facts to support your answer.
3. Is it plain and obvious that the complaint was filed out of malice or vindictiveness (for example, out of spite, ill will, hostility, or revenge) in order to harm the Respondent financially or in some other way? If so, please provide facts to support your answer.
4. Is there any information that the Complainant filed this complaint to annoy, embarrass or harass the Respondent? If so, please provide facts to support your answer.

NOTE: The threshold to demonstrate bad faith is very high. It requires indisputable evidence of mal-intent to annoy, harass, embarrass, or otherwise harm the Respondent.

The complaint was filed after the one year time limit

- or -

Part(s) of the complaint were filed after the one year time limit

The Commission may decide not to deal with a complaint if it was filed more than one year after the last alleged act of discrimination. The Commission can also decide not to deal with specific allegations that occurred more than one year ago. This can happen when these allegations are separate and independent of the allegations that occurred less than one year ago. [s. 41(1)(e) of the Act]

A complaint is only considered to be filed once the Commission receives a complaint in an acceptable form. This means that if a Complainant contacts the Commission before the one year deadline, but does not provide enough information to allow the Commission to accept the complaint, the Commission can decide not to deal with it.

There are two circumstances where the Commission can decide to deal with a complaint even though it was filed more than one year after the last alleged act of discrimination.

The first is if the Complainant was prevented from filing the complaint within the one year deadline for reasons beyond their control. In this situation, the Complainant needs to explain:

- i. The situation that prevented them from filing within one year.
- ii. Why the situation was out of their control and what steps they took to reduce the impact?
- iii. How the circumstance prevented them from filing within one year?
- iv. What actions they took since the last date of discrimination until they filed the complaint, to show that they always intended to file a complaint?

The second is if the Complainant was prevented from filing the complaint within the one year deadline, because they did not find out about the discrimination until later. In this situation, the Complainant would have to file the complaint within one year of learning that the negative treatment may have been discriminatory.

NOTE 1: Choosing not to file a complaint until you receive “all of the evidence” (e.g. An ATIP request) is **not** a valid reason to file a complaint more than one year after the last date of discrimination.

NOTE 2: Choosing not to file a complaint until another process (e.g. a grievance process) is finished is **not** a valid reason to file a complaint more than one year after the last date of discrimination.

Please provide your position regarding whether this complaint was filed more than one year after the last date of discrimination or why the Commission should exercise its discretion to accept it anyway. Answer the following questions as part of your position.

1. What is the last date of alleged discrimination?

2. If the Complainant says there was more than one act of discrimination, are the earlier acts linked to the last act? Are the acts separate and independent from one another, or are they part of a continuous pattern?
3. Complainant: On what date did you first contact the Commission about the allegations in your complaint?
4. Do the allegations in this complaint raise an issue of importance to the general public (public interest)? If so, what is the issue of importance? Please provide details. For example, does the complaint raise a new legal issue or does the alleged discrimination impact a large number of people?
5. Did a lawyer, paralegal, or union represent the Complainant at the time the alleged discrimination happened or during the year after? When did the Complainant become represented?
6. Will the Respondent's ability to defend the complaint be seriously prejudiced, for example, because documents were destroyed or key witnesses died, if the complaint proceeds? If so, what are the documents or who are the witnesses, and how would they be key in responding to the complaint?
7. If there was more than one year between the last alleged act of discrimination and the filing of the complaint, what are the reasons for the delay (i.e. Please explain the reasons the complaint was filed past the one year deadline)?

If the delay is related to a situation outside of the Complainant's control

- a. Complainant: What is the reason you were prevented from filing this complaint within one year? Please provide details.
- b. Complainant: How was the reason you were prevented from filing out of your control? What steps did you take to reduce the impact on your ability to file a complaint?
- c. Complainant: What was the overall impact of these circumstances on your day to day activities? For example, were you able to participate in other activities during the year like going to work, playing sports, attending appointments, and/or going on vacation?
- d. Did the Complainant pursue their complaint in another process in the time between the last date of alleged discrimination and filing this complaint?
- e. Complainant: Do you have any documentation or other evidence to support that the delay was related to a situation outside of your control? If so, please provide this documentation. Please note: This documentation should explain why you could not file your complaint in the one year after the last alleged act of discrimination.

If the delay is related to the Complainant's disability

- f. How was the Complainant's disability a factor in the delay in filing? Please provide details.

- g. Did the Complainant's disability prevent the Complainant from filing a complaint with the Commission in the one year after the last alleged act of discrimination?
- h. Was the Complainant incapable of living independently, working and/or managing their affairs in the one year after the last alleged act of discrimination?
- i. Did the Complainant pursue their complaint in another process in the one year after the last alleged act of discrimination; or were they incapable of doing so for disability related reasons?
- j. Complainant: Do you have any documents or other evidence to support that the delay was related to your disability? For example, a doctor's note or letter from a counsellor. If so, please provide this documentation. Please note: This documentation should explain why you could not file your complaint in the one year after the last alleged act of discrimination.

If the delay is related to a recent discovery

Was the delay because the Complainant recently discovered that the Respondent's actions were discriminatory? If so, please provide details of when the Complainant discovered that the Respondent's actions were discriminatory. Also explain why the Complainant did not suspect that the acts were discriminatory at the time.