



CANADIAN
HUMAN RIGHTS
COMMISSION

Human Rights Handbook for First Nations

Rights - Responsibility - Respect



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This Guide is not intended as legal advice. Consultation with legal advisors is recommended when developing human rights protection policies or responding to discrimination complaints.



TABLE OF CONTENTS

1. Introduction.....	3
1.1 Who this Handbook is for	3
1.2 Purpose of this Handbook.....	3
1.3 Legislation	3
1.4 Jurisdiction	4
1.5 The Commission and the Tribunal	5
2. Discrimination and Human Rights Law	6
2.1 What is Discrimination?.....	6
2.2 Grounds of Discrimination.....	6
2.3 Discriminatory Practices.....	8
2.4 Elements of a Discrimination Complaint	9
2.5 Responses to a Discrimination Complaint.....	9
2.6 Duty to Accommodate.....	10
2.7 Undue Hardship.....	11
3. Ways to Prevent Discrimination and Respect Human Rights	13
3.1 Encourage Leadership Commitment	13
3.2 Review the Human Rights Aspects of Your Organization's Operations.....	13
3.3 Develop Human Rights Protection Policies	15
3.4 Examine Your Infrastructure (Physical Assets)	16
3.5 Provide Human Rights Training.....	17
3.6 Talk to the Community about Human Rights	17
3.7 Deal with Discrimination Informally.....	18
4. The Commission's Dispute Resolution Process	19
4.1 Stage One: Before a Formal Complaint is Filed	20
4.2 Stage Two: After a Formal Complaint is Filed.....	21
4.3 Stage Three: After the Commission's Decision	23
4.4 Judicial Review.....	24

1

2

3

4

5

6

APPENDICES



5. Preparing a Response to a Discrimination Complaint.....	25
5.1 Planning Your Response.....	25
5.2 Steps for Preparing a Response.....	26
5.3 Making First Nation Legal Traditions and Customary Laws Part of the Process.....	31
5.4 Aboriginal and Treaty Rights.....	32
6. Community-based Dispute Resolution Processes	33
6.1 What is a Community-based Dispute Resolution Process?.....	33
6.2 Why should First Nations have their own Community-based Dispute Resolution Processes?.....	33
6.3 Approaches to Community-based Dispute Resolution.....	34
6.4 Guiding Principles for Developing Community-based Dispute Resolution Processes.....	35
6.5 Developing a Community-based Dispute Resolution Process	38
6.6 Financing a Community-based Dispute Resolution Process	40
6.7 The Commission's Role.....	40
Appendix A:	
Glossary	43
Appendix B:	
Human Rights Readings and Resources	49
Appendix C:	
The Repeal of section 67 of the <i>Canadian Human Rights Act</i>	51
Appendix D:	
Checklist to Prevent Discrimination and Respect Human Rights	53
Appendix E:	
Provincial and Territorial Human Rights Agencies.....	57
Appendix F:	
Checklist for Responding to a Discrimination Complaint	58



1. Introduction

This handbook complements *Your Guide to Understanding the Canadian Human Rights Act*, available at http://www.chrc-ccdp.gc.ca/publications/naichract_loicdpina/toc_tdm-eng.aspx

1.1 Who this Handbook is for

This handbook is for people who work for First Nations governing bodies responsible for providing service to First Nations communities. This includes, but is not limited to:

- Chief and Council members
- band managers, officers and administrators
- accountants, financial and human resource officers

1.2 Purpose of this Handbook

This handbook is intended to help you, as a First Nation's manager, understand and address human rights issues in your organization and community. For a list of related readings and resources see Appendix B.

1.3 Legislation

The **Canadian Human Rights Act** (the **Act**) is a federal law. The Act protects all people legally allowed to be in Canada from discrimination. Under the Act, people who feel they have experienced discrimination by a federally regulated service provider or employer can make a complaint to the **Canadian Human Rights Commission** (the **Commission**). Information about changes to the Act that affected First Nations can be found in Appendix C.

*Terms in **bold** are explained in the glossary in Appendix A of this handbook.*

Aboriginal and treaty rights have constitutional protection under section 35(1) of the *Constitution Act, 1982*. A **non-derogation clause** has been included in the *Canadian Human Rights Act*. The purpose of the non-derogation clause is to ensure that the application of the Act does not affect the constitutionally protected rights of Aboriginal peoples.



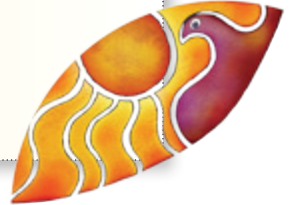
There is also an **interpretive provision** that requires anyone applying the Act to consider First Nations legal traditions and customary laws. This is subject to certain limits such as gender equality.

Other Laws that Protect Human Rights

The Commission is responsible for administering the *Canadian Human Rights Act*. However, there are other laws that protect Aboriginal peoples' human rights as well.

They include:

- provincial and territorial human rights laws
- the *Canadian Charter of Rights and Freedoms*
- section 35 of the *Constitution Act, 1982*
- the *United Nations Declaration on the Rights of Indigenous Peoples*
- *First Nations human rights processes and laws*



1.4 Jurisdiction

Canada's Constitution splits legal responsibility, or jurisdiction, between the federal and provincial or territorial governments. Self-governing First Nations also have responsibilities, as negotiated between the First Nation and the federal government. As a result, jurisdiction may vary from one First Nation to another.

The federal government regulates some employers and service providers. These include:

- federal government departments, agencies and Crown corporations
- chartered banks
- airlines
- television and radio stations
- interprovincial communications and telephone companies
- interprovincial transportation companies, like buses and railways that travel between provinces
- First Nations governments and some other First Nations organizations
- other federally regulated industries, like some mining companies



However, not every organization run by First Nations people or located in a First Nations community is **federally regulated**. Provinces and territories regulate other businesses and service providers, like restaurants and grocery stores. They also have their own human rights laws.

1.5 The Commission and the Tribunal

The Act created both the Canadian Human Rights Commission and the Canadian Human Rights Tribunal. These organizations operate independently of each other and of the federal government.

The Commission promotes the principle of equal opportunity and works to prevent discrimination by:

- Promoting an understanding of and respect for human rights among federally regulated organizations.
- Ensuring that employers promote workplace equality for the four groups named in the *Employment Equity Act*: women, Aboriginal people, people with disabilities, and members of visible minorities.
- Dealing with **discrimination complaints** made against federally regulated employers or service providers. This includes sending them to the Tribunal for further examination.
- Representing the **public interest** to advance human rights for all Canadians. A matter is in the public interest when the decision has the potential to clarify, influence, shape or define human rights law.

The Tribunal:

- Holds public hearings and decides on cases that the Commission refers to it.
- Makes orders to resolve discrimination. In these roles, the Tribunal is like a court.



2. Discrimination and Human Rights Law

2.1 What is Discrimination?

Discrimination is an action or decision that treats a person or a group differently and negatively for reasons like race, age or disability. Discrimination happens when someone is denied an opportunity, benefit or advantage, such as a job, promotion, service or housing, because of race, age, disability or another **ground of discrimination**.

*Terms in **bold** are explained in the glossary in Appendix A of this handbook.*

It is important to note that you do not have to intend to treat someone unfairly to cause discrimination. What matters is the effect on the person making the complaint, even if the impact was not intentional.

EXAMPLE: Trevor is an Aboriginal employee that wants to travel to the funeral of his second cousin who was like a brother to him. He asks his supervisor for bereavement leave to go to his cousin's funeral. Trevor's supervisor tells him that he cannot take the time off, because the organization's bereavement policy only gives employees leave when an immediate family member dies. Trevor tells his supervisor that he feels this is discrimination, because the policy's definition of immediate family does not reflect his Aboriginal values. His supervisor says that she cannot make an exception to the policy for him, because if she did, she would have to make exceptions for everyone. Trevor decides to file a discrimination complaint with the Commission because his employer did not accommodate him.

2.2 Grounds of Discrimination

Grounds of discrimination are *reasons* a person may experience discrimination. There are 11 reasons or 'grounds' that are protected under the **Canadian Human Rights Act** (the **Act**). This means that **federally regulated** employers and service providers cannot discriminate against people for these reasons.



The 11 grounds of discrimination protected under the Act are:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status
- family status
- disability
- a conviction for which a pardon has been granted

Examples of discrimination based on these reasons or 'grounds':

- **Race, national or ethnic origin:** A bank will not give someone a loan because they are Aboriginal.
- **Colour:** A man is not allowed to get on a plane because he is black.
- **Religion:** An employee is told that they cannot smudge in the workplace, even though no one in the office has allergies or sensitivities.
- **Age:** An election code requires candidates for leadership to be over 45.
- **Sex:** A woman is fired because she is pregnant.
- **Sexual orientation and marital status:** A policy provides benefits to married couples but not to same-sex couples or common law couples.
- **Family status:** A man is not given a promotion because his boss does not like his brother.
- **Disability:** A recreation centre is not wheelchair accessible.
- **Pardoned conviction:** Although they have already been granted a pardon, someone is told that they are not allowed to run for election to the Band Council because of a past conviction.

Political affiliation and off reserve residency on their own are not prohibited grounds of discrimination under the Canadian Human Rights Act. However, the Commission may be able to deal with allegations of discrimination related to political affiliation or off reserve residency, if they are linked to one of the 11 grounds of discrimination listed in the Act, such as sex, family status or disability.

Under the Act a "disability" can be physical, psychological or intellectual. This includes past or existing drug or alcohol addiction.





2.3 Discriminatory Practices

The Act forbids **discriminatory practices**, if they are based on one of the grounds of discrimination. Discriminatory practices cover the following areas:

Employment

- hiring, termination, discipline and promotion decisions and policies
- maternity or parental leave, sick leave and bereavement leave decisions and policies
- job ads and interviews
- workplace policies that deny people opportunities
- different pay for work of equal value

Services Available to the Public

- access to federal government programs, projects and services
- access to First Nations programs, projects and services
- physical accessibility to government buildings and premises
- other services offered by federally regulated private sector companies that are generally available to people, like a bank loan or an airline ticket

Rental and Housing

- access to government programs for housing for Aboriginal people
- access to housing or rental space administered by a First Nation

Public Advertisements and Messages

- public signs
- hate messaging over the phone or on Canadian websites

Harassment (in the workplace or provision of services)

- offending or humiliating someone physically or verbally
- threatening or intimidating someone
- making unwelcome jokes or comments about another person's race, religion, sex, age, disability or another ground of discrimination
- making unnecessary physical contact with someone (for example, touching, patting, pinching or punching) – this can also be assault



As an employer, you are responsible for providing a harassment-free workplace. You must take appropriate action against any employee who harasses someone else. You can be held responsible for harassment committed by your employees. Have an anti-harassment policy and provide anti-harassment training to supervisors and staff to avoid this.

Retaliation

- threatening, intimidating or treating another person badly because that person filed a discrimination complaint
- **retaliation** is a serious violation of the Act, with fines up to \$50,000

2.4 Elements of a Discrimination Complaint

To file a discrimination complaint with the Commission, someone must reasonably believe all of the following things:

- A discriminatory practice happened.
- What happened was based on a ground of discrimination.
- The effect of what happened was negative.

2.5 Responses to a Discrimination Complaint

There are ways to show that alleged discrimination did not occur or was justified under the Act.

Reasonable Explanation

Sometimes, people feel they experienced discrimination, but there is a reasonable explanation for what happened.

Justification

Treating people differently is not considered discrimination if it is an unavoidable part of how you do business. Sometimes discrimination can be explained if it is an occupational requirement or a requirement of how a service is provided.



Special Programs

The Act allows special programs to prevent, eliminate or reduce disadvantages for groups when those disadvantages would be based on, or related to, one of the grounds of discrimination or the *Employment Equity Act*.

The Commission has a Policy on Special Programs to help employers make sure their special programs meet the requirements set out in either the *Canadian Human Rights Act* or the *Employment Equity Act*. For information on where to find the Commission's Policy on Special Programs see Appendix B.

As an Aboriginal employer, your organization may want to justify hiring Aboriginal people, instead of non-Aboriginal people, to serve your community. Your organization may be able to do so by adopting an Aboriginal employment preference policy. An Aboriginal employment preference policy can protect hiring and promotion criteria that give preference to Aboriginal people.

Aboriginal employment preference policies are intended to help First Nations who want to govern themselves, and develop their own culture and economy. For example, this could mean hiring Aboriginal people to work in your First Nation's government or school(s).

2.6 Duty to Accommodate

The **duty to accommodate** is an employer and/or service provider's obligation to take steps to eliminate the different and negative treatment of individuals, or groups, protected by the Act.

Sometimes people need to be treated differently to prevent or reduce discrimination. For example, asking all job applicants to pass a written test may not be fair to a person with a visual disability. In such cases, the duty to accommodate may require that **alternative arrangements** be made to ensure full participation of a person or group. In other words, it may be necessary to treat someone differently in order to be fair.

The duty to accommodate has limits. Sometimes accommodation is not possible because it would cause the employer or service provider **undue hardship**.



EXAMPLE: Gina's job requires that she wear a uniform. The uniform is supplied and paid for by her employer. Gina is pregnant and requires a new uniform to meet her changing physical needs. She tells her employer about her needs. The employer agrees that she can have a new uniform, to be altered as needed throughout her pregnancy, at the employer's expense.

2.7 Undue Hardship

Under the Act, an employer or service provider can claim undue hardship when adjustments to a policy, practice, by-law or building would cost too much, or create risks to health or safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually.

It is not enough to claim undue hardship based on an assumption or opinion, or by simply saying there is some cost. To prove undue hardship, evidence must be provided as to the nature and extent of the hardship.

EXAMPLE: A First Nation adopts a drug policy requiring all its commercial fishers to be drug free. To ensure this, the commercial fishers must take drug tests regularly. An employee who uses marijuana for medical purposes alleges that this is discrimination based on disability. The drug policy is based on safety concerns and may be justified because fishing under the influence of drugs could cause danger to the fisher and/or other people.



Glen's Story

Glen works as the Band Manager for the Spruce Tree First Nation. One of his employees, Andrea, is a member of the First Nation and has worked for the Band Council as a bookkeeper and administrator for seven years. Glen is concerned that Andrea's work performance deteriorates every fall.

The Band Council recently told Andrea that if her work does not improve, the Band Council will fire her. Andrea started crying and said she felt the Band was discriminating against her. When Andrea spoke to Glen, he suggested that Andrea talk with someone, like a doctor, and talk to him again in a week.

The Band Council and Glen do not know that Andrea suffers from depression every September. It is the anniversary of her daughter's death five years ago. During that time, she drinks because she gets depressed.

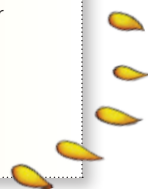
The doctor agreed that Andrea's depression and drinking were disabling conditions. The doctor referred her to a therapist for counselling and helped her find an alcohol treatment program away from her community. The doctor also prescribed anti-depressants.

The next week, Andrea talked to Glen again, and told him that she really wanted to attend the treatment program. She gave him:

- A formal request for a leave of absence due to medical disability.
- A letter from her doctor confirming her medical disability.
- A letter from her therapist saying that she is taking counselling.
- A work plan showing how her work will be covered while she is away.

Glen spoke with the Band's human rights advisor before responding to Andrea's request. The advisor explained that Andrea's depression and associated behaviours are a disability, and that the Band has a duty to accommodate Andrea. The advisor also told Glen that if Andrea relapses, the Band would have a duty to accommodate her again as long as she got help.

Glen accepted Andrea's work plan and told her the Band is looking forward to her return to work.





3. Ways to Prevent Discrimination and Respect Human Rights

A good prevention strategy involves identifying and addressing **discrimination** at the earliest opportunity. In part, this means changing, refining and clarifying policies and practices to eliminate barriers to service or employment.

*Terms in **bold** are explained in the glossary in Appendix A of this handbook.*

Discrimination, even unintentionally, can arise from policies, practices, and ways that people deal with each other in your organization and community. Using effective prevention tools can build your organization's capacity to avoid discrimination and resolve human rights issues before they ever reach the **Commission**.

The checklists in Appendix D will help everyone in your organization or community play a part in preventing discrimination. Use the checklists to develop organizational practices that promote a respect for human rights. This will help prevent **discrimination complaints**.

3.1 Encourage Leadership Commitment

Leadership makes a difference. Having all of the leaders in your organization and/or community publicly commit to human rights is the first step.

Appointing a human rights officer or having a human rights portfolio assigned to one of your Band Councillors can help bring attention to human rights issues.

3.2 Review the Human Rights Aspects of Your Organization's Operations

Reviewing your organization's operations can show you where situations may be unfair or give someone a reason for a discrimination complaint. You can prevent discrimination complaints by reviewing your policies, practices and by-laws to make sure they respect human rights.

Managers do not always have time to review every aspect of their operations. Having an employee or a legal advisor to do the review for you will help relieve this pressure.



RESOURCE TIP: The person doing the review should have training in human rights and the **Canadian Human Rights Act (the Act)**. To get the review process started, consider hiring a post-secondary summer student who has technical knowledge of human rights or the law.

The information you gather during the review will help your organization decide if changes are needed to reduce or eliminate discrimination. This kind of documentation can also help if a complaint is ever filed about one of your policies, practices or by-laws.

Use the questions below to review the human rights aspects of your by-laws, policies, and practices.

Ask yourself:

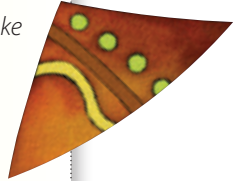
1. What is the goal?
2. Is it as inclusive as possible?
3. Does it create barriers for any person or group(s) based on the 11 **grounds of discrimination**? **If not, go to question 5.**
4. Is there a way to eliminate the barrier?
5. Have you talked to the person or group(s) being excluded about possible **alternative arrangements**?
6. Have you fully documented any related health, safety and/or cost issues?
7. Is there an appeal process included if someone disagrees with it?
8. Based on your review do human rights principles need to be added to it?



WHAT TO DO IF: *A federal government department has set eligibility criteria for programs or services that your First Nation government administers and concerns are raised about potential discrimination.*

You cannot change criteria set by a federal government department, but you can take steps to have them deal with the potential discrimination:

- 1. Make notes about your concerns and keep them in a file.*
- 2. Make notes about any complaints you receive from members and residents of the community.*
- 3. Write to the department sector overseeing the administration of the program or service to tell them about your concerns and any complaints you have received.*



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3.3 Develop Human Rights Protection Policies

Having policies that protect your organization from discrimination complaints is not only good for your organization – it is the right thing to do. It can take a lot of time, money and human resources to participate in the Commission's dispute resolution process. **Human rights protection policies** like these will help you prevent discrimination complaints:

- an anti-harassment policy
- an anti-discrimination policy
- a duty to accommodate policy
- a pregnancy and parental leave policy
- a community-based dispute resolution policy

Include aspects of your First Nation's culture in your human rights protection policies as well. This can lead to a greater awareness of your culture in your community.

Besides preventing discrimination complaints there are other benefits to having human rights protection policies. They:

- foster an environment of respect for human rights
- let people know about their rights, roles and responsibilities
- show that your First Nation took appropriate steps to avoid discrimination



RESOURCE TIP: Pool resources with neighbouring First Nations, or those represented in your Tribal Council, to develop model human rights protection policies that your community can adapt to suit its own needs.

3.4 Examine Your Infrastructure (Physical Assets)

Look at your organization's physical assets as part of the review process. This includes any buildings, facilities and vehicles owned by the First Nation. Decide if people with disabilities can easily use them. You may need to adapt buildings by adding or renovating ramps, door access, taps, elevators, stairways, roads or lighting. Creating safety policies that prevent the obstruction of hallways and identify emergency exits can also improve the accessibility of your physical assets.

Any construction that is needed to make your physical assets more accessible can be set out in a multi-year plan. You can make this plan part of the regular maintenance cost cycles for your First Nation's physical assets. Using this approach can lead to savings and the ability to phase in expenses over time.

The Commission will not fund the changes that your First Nation may need to make to meet the requirements of the Act. However, either the Commission or your provincial/territorial human rights commission may be able to help set up human rights training at little or no cost. Contact information for these other human rights agencies is in Appendix E.



3.5 Provide Human Rights Training

After you (or your staff) have completed the review process, provide human rights training to your leadership, managers and employees. Making everyone aware of the potential human rights implications of your organization's policies, practices and by-laws, better prepares them to prevent discrimination.

RESOURCE TIP: Use a “train the trainer” model in your community to keep costs down. “Train the trainer,” means a small number of people get human rights training. After, they use what they have learned to train other people in your community.

Share training costs with a neighbouring community or Tribal Council to help reduce expenses.

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3.6 Talk to the Community about Human Rights

During the review process you should start to plan how you will educate and inform your community about human rights. This can help you explain policy, practice or by-law changes that you may need to propose to reduce any discriminatory effects. Planning will help you decide how and when to share information to make everyone aware of their rights and responsibilities as community members. Always use clear language, and, where appropriate, the language of your community.

You can give people information by:

- print
- electronic and social media, like e-mail, websites, blogs and Facebook
- door-to-door visits
- community radio or television
- DVDs
- any other way that is appropriate and effective for your community



Use community-wide information meetings, family meetings, Elders' forums and/or focus groups to talk to community members on and off reserve. This gives everyone in the community the chance to be included in the process. When you hold meetings try to make it as easy as possible for Elders and other community members to attend.

RESOURCE TIP: Hold community meetings if you decide to change or create a policy, practice or by-law that the community voted on in the past, like an election code or membership code.

3.7 Deal with Discrimination Informally

Sometimes even with careful planning people may experience discrimination. Procedures that provide instruction to staff and community members on how to deal with discrimination issues that come up will reduce the chance of issues turning into complaints. They will also help you build a response if someone ever makes a discrimination complaint to the Commission. You can make these procedures an appendix of the policy that they are related to.

Fully document any attempts to resolve the issue.

- Start a file.
- Get information from any documents that relate to the issue, such as a policy, interview notes or minutes of Council meetings.
- Talk to the people involved and any witnesses. Find out each person's side of the story. Take notes when you talk to people and put them in the file.
- Keep copies of everything related to the issue.
- Write down any decisions that are made about the issue.
- You can build on this by planning and developing a **community-based dispute resolution process**.



4. The Commission's Dispute Resolution Process

The **Commission's** dispute resolution process is designed to resolve human rights complaints at the earliest opportunity. How a **discrimination**

complaint goes through the Commission's process depends on the details of the case. This chapter is intended to provide guidance on what your organization can expect if it participates in the Commission's dispute resolution process. Information about how to respond to a discrimination complaint can be found in Chapter 5.

*Terms in **bold** are explained in the glossary in Appendix A of this handbook.*

The process has three main stages. Depending on the details and the parties involved, a discrimination complaint may only go through one stage, or it may go through all three stages before it is resolved. Although the process is described here in a linear fashion, it is important to know that a complaint does not necessarily go through the process this way. Depending on the details of the complaint, it might skip over steps or stages.

*The person who files a discrimination complaint is called a **complainant**.*

*The **respondent** is usually the business or organization that is the employer or service provider, not an individual person.*

An individual person can be named as a respondent to a discrimination complaint when they are alleged to have harassed the complainant. In these situations there would be two discrimination complaints: one against the organization and another against the individual who is alleged to have harassed the complainant.

*The person designated by the respondent to be their representative and handle the discrimination complaint is the **respondent's representative**. This person is the main contact for the Commission and responsible for finding out the respondent's side of the story. The representative should not be named in the complaint.*

*An **allegation** is an assertion of **discrimination** made by a complainant in a complaint form. The complainant will be asked to provide evidence to prove there was discrimination.*



4.1 Stage One: Before a Formal Complaint is Filed

Inquiry and Screening

Every potential discrimination complaint starts with a phone call or a letter to the Commission. The potential complainant would explain why they want to file a discrimination complaint. After the Commission has the complainant's side of the story, you would be contacted and told that an inquiry has been made. At this point the Commission might offer you and the potential complainant early resolution or preventive mediation.

Early Resolution and Preventive Mediation

In the early resolution process, a **human rights officer** would work with you (as the respondent's representative) and the complainant. This is usually done over the telephone.

If early resolution is not appropriate or unsuccessful face-to-face preventive mediation could be offered. During preventive mediation a Commission human rights officer will work with you and the complainant to try to resolve the issue.

Early resolution and preventive mediation are voluntary, and focus on the main issue of the complaint and any practical solutions that might be possible. Early resolution is 'on-the-record', which means that information shared by both the complainant and the respondent is recorded and kept in a file. Preventive mediation is confidential. Both processes are intended to move quickly and are often complete within one to two months of the first inquiry.

If you settle the issue at this stage, no discrimination complaint is made and the file is closed.

If the dispute cannot be resolved the Commission will send a **complaint kit** to the person who made the inquiry. The complaint kit contains the required forms and instructions for filing a complaint. The complainant is responsible for preparing the complaint kit and returning it to the Commission.



4.2 Stage Two: After a Formal Complaint is Filed

Notification

As the respondent, your organization will be notified, in writing, as soon as possible when the Commission receives a discrimination complaint.

If during the screening process the Commission finds that there might be a reason the Commission should not deal with the complaint your organization will also be sent a sheet listing factors to be considered by the Commission. This sheet also has questions you can answer. This is your opportunity (as the respondent's representative) to say whether you think the Commission should deal with the complaint, or not deal with it, and why.

At this time you should tell the Commission as soon as possible if:

- The issue does not fall under the Commission's jurisdiction.
- The issue is not linked to one of the grounds of discrimination.
- The issue is not based on a discriminatory practice in the Act.
- There is a community-based dispute resolution process that could be used instead.
- There is another process already dealing with the complaint.
- The complaint is trivial, frivolous, vexatious, or made in bad faith.
- The complaint has not been filed within one year of the alleged discrimination occurring.

Once your position is received, a report is prepared for the Commission members. The report and any submissions to the report from your organization and the complainant are then given to the Commission members for a decision.

If the Commission decides to deal with the complaint, mediation could be offered. If early resolution and/or preventive mediation were already attempted without success, the Commission may send the discrimination complaint directly to investigation.

Mediation

The mediation process is voluntary and confidential. It gives people the opportunity to explain their sides of the issue and try to resolve the concerns that led to the complaint.



Mediators are impartial. This means they will not represent your organization or the complainant. If the mediation works then both parties must sign a **settlement** agreement. This agreement would outline what each party agreed to do to resolve the dispute. This is called “reaching a settlement.”

If mediation does not work, the discrimination complaint is investigated. Whatever you discussed in mediation cannot be used against you during the investigation.

Investigation

During the investigation process the Commission will consider the case on its merits. This means that the investigator will:

- Speak with you (as the respondent’s representative) and the complainant.
- Interview any witnesses.
- Review any supporting documents.
- Decide whether there is evidence to support the allegation(s) in the complaint.

During the investigation, the investigator will normally ask you to provide your response, or supporting information, in writing, but the Commission is open to other ways of doing things. For example, you could ask the investigator to discuss your position by phone. See Chapter 5 for more information about responding to a discrimination complaint.

After the investigation, the investigator prepares a report. The report will recommend that the complaint be dismissed, sent to conciliation or referred to the **Tribunal** for further examination.

The investigation report will be shared with you and the complainant. You will both be given the chance to make written comments on the report.

The Commission’s Decision

After the investigation, the Commission members will read the investigation report and any comments made by you and the complainant before making a decision.

The Commission members will decide if the complaint should be dismissed, sent to conciliation, or referred to the Tribunal for further examination.

Commission decisions are final, so the **human rights officer** cannot ask the Commission members to change their decision once it is made.



4.3 Stage Three: After the Commission's Decision

Conciliation

Conciliation is similar to mediation. However, it is mandatory for both you and the complainant to participate in conciliation as a final attempt to deal with the conflict.

You would normally be given a window of three to four months to try to settle the discrimination complaint. If you cannot reach a settlement, the case could be sent back to the Commission members for a decision.

The Tribunal

If a complaint is referred to the Tribunal, the Commission no longer controls the complaint.

The Tribunal will hold a hearing. It will ask both you and the complainant to hand in any documents and call witnesses for support.

In some cases, the Commission will also attend the Tribunal hearing to represent the **public interest**. A matter is in the public interest when the decision has the potential to clarify, influence, shape or define human rights law. If this happens, the Commission may also hand in documents and call witnesses.

After the hearing, the Tribunal will decide whether there has been **discrimination**. The Tribunal will either dismiss the complaint or find that there has been discrimination. If the Tribunal finds there has been discrimination it can order **corrective measures** for your organization to resolve the discrimination.

Corrective measures can include making your organization:

- change its policies, practices or by-laws, or create **human rights protection policies**
- pay the complainant lost wages or give them their job back
- take human rights awareness training
- pay for the complainant's pain and suffering, and any losses caused by the discrimination



4.4 Judicial Review

If you or the complainant disagrees with a decision made by the Commission or by the Tribunal, you can ask the **Federal Court** to review the decision. This is called a **judicial review**. If the Federal Court agrees with the person who made the request, it will send the case back to the Commission or the Tribunal. The Commission or Tribunal will be required to review the case again.



5. Preparing a Response to a Discrimination Complaint

When the **Commission** notifies your organization that a **discrimination complaint** has been made against it, you can prepare a **response** to the complaint. A response is your organization's side of the story.

*Terms in **bold** are explained in the glossary in Appendix A of this handbook.*

It is important to tell the Commission your side of the story. Tell Commission staff if you need help to explain your organization's side of what happened. The Commission has an obligation to deal with the complaint, whether or not your organization decides to participate in the dispute resolution process. The Commission will make its decision based on whatever information can be obtained. If your First Nation does not participate, the complaint could be sent to the Tribunal for further inquiry, even if you have a valid defence.

The Commission will be impartial throughout the dispute resolution process. This means that it will not take your side or the complainant's. In some cases, however, the Commission will represent the **public interest**, if the complaint is referred to the **Tribunal**. More information on what to expect if you participate in the Commission's dispute resolution process can be found in Chapter 4 of this handbook.

5.1 Planning Your Response

Before taking any action it is important to plan how you will prepare your response. You can use the checklist in Appendix F to help you prepare your response.

Ask yourself:

- Who should be responsible for preparing the response?
- Who are the other parties to the discrimination complaint?
- When do I consider settling the complaint?



Who should be responsible for preparing the response?

The respondent should designate one person to be their representative and handle the complaint. This person is the main contact for the Commission and responsible for finding out and presenting the respondent's side of the story.

The **respondent's representative** should not be named in the complaint. This avoids bias or the appearance of bias and makes it easier to resolve the complaint.

***Bias** occurs when a person who handles a dispute has, or appears to have, some reason – personal, political, business, or otherwise – to favour one party over the other. For example, a person who is alleged to have harassed a complainant should not be the person representing the respondent, because they could appear biased.*

Who are the other parties to the discrimination complaint?

Sometimes there are other people or organizations that are not named in a complaint, but need to be included to better understand the situation. If the discrimination complaint cannot be resolved without another party, for example, Indian and Northern Affairs Canada, then you should tell the Commission as soon as possible. Depending on what the human rights issues are, the complainant may need to file a second complaint.

When do I consider settling the complaint?

From the beginning you (as the respondent's representative) and the respondent (for example, Chief and Council) will have to decide how you think the complaint could be resolved. Once you have thought about possible solutions, write them down and share them with the Commission. You can do this at any time throughout the Commission's dispute resolution process.

5.2 Steps for Preparing a Response

1. Gather information related to the complaint.

Being informed about all of the details related to a discrimination complaint will help you explain the respondent's side of the story.



Start a file. Keep copies of everything related to the complaint. This includes writing down any decisions that are made about the complaint.

Ask yourself:

- What kind of discrimination is being alleged?
- Is there a community-based dispute resolution process that could be used instead?
- Is there any reason why the Commission should not deal with the complaint?
- What do you know about the events that led to the discrimination complaint?

What kind of discrimination is being alleged?

Understanding what kind of discrimination is being alleged is an important part of resolving the issues effectively. This means understanding what **ground of discrimination** is being alleged, as well as the **discriminatory practice** that it is being linked to. Refer to Chapter 2 for more information about the elements of a discrimination complaint.

Is there a community-based dispute resolution process that could be used instead?

The Commission supports the use of **community-based dispute resolution processes** that are fair, flexible, effective and efficient. The Commission's practice is to refer discrimination complaints back to community-based dispute resolution processes, when they are available. You should notify the Commission as soon as possible, if your community has a dispute resolution process that meets the criteria discussed in Chapter 6 of this handbook.

Is there any reason why the Commission should not deal with the complaint?

Tell the Commission as soon as possible if you believe:

- The issue does not fall under the Commission's jurisdiction.
- The issue is not linked to one of the grounds of discrimination.
- The issue is not based on a discriminatory practice in the *Canadian Human Rights Act* (the Act).
- There is a community-based dispute resolution process that could be used instead.
- The complaint is trivial, frivolous, vexatious, or made in bad faith.
- The complaint has not been filed within one year of the alleged discrimination occurring.



What do you know about the events that led to the discrimination complaint?

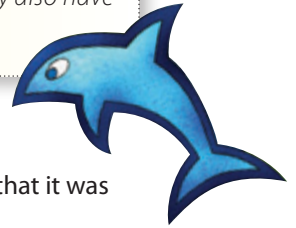
Learn more about the events that led to the complaint to make sure you understand the respondent's side of the story.

Make a list of the people you need to talk to about the complaint and what documents will need to be reviewed.

Talk to the people involved in the complaint to learn their side of the story. Ask as many questions as you need to, to understand what the complaint is about.

Carefully review any documents that are relevant to the complaint.

Remember to respect confidentiality. Remind the people involved that they also have a responsibility to keep the complaint private.



2. Examine the discrimination allegation(s).

There are three ways to show that the discrimination did not happen or that it was allowed by the Act:

- No discrimination occurred; there is a reasonable explanation for what happened.
- The discrimination is necessary, because avoiding it would cause undue hardship.
- The discrimination is part of a special program or policy.

No discrimination occurred; there is a reasonable explanation for what happened.

Review the **allegations** in the complaint, any records related to the allegations and anything you learned from talking to people. If there is a reasonable explanation that can be supported with evidence, the discrimination may be justified. Using evidence, explain your side of the story to the **Commission** representative and the complainant.



The discrimination is necessary, because avoiding it would cause undue hardship.

Even a decision that is discriminatory may be justified, if there is good reason or it could not be avoided. If this is the case you (as the respondent's representative) must be able to explain the reason.

Ask yourself three questions to decide if the discrimination is necessary:

- Was the action or decision based on a legitimate reason?
- Was the action or decision carried out in good faith?
- Was the action or decision reasonably necessary?

Was the action or decision based on a legitimate reason?

There must be a legitimate reason for the discrimination based on job or service requirements.

Was the action or decision carried out in good faith?

Unintentional discrimination sometimes happens. If it happens, it is important to show that there was an honest, or good faith, belief that the particular action or decision was necessary.

Was the discrimination reasonably necessary?

Decide if the discrimination could have been avoided or minimized, by asking yourself:

- Are there ways to include more people?
- Are there options that would not be discriminatory?

Once you have considered these questions, decide if changes can be made to the policy, practice, by-law or building that caused the complaint, to make it less discriminatory. As an employer and/or service provider it is your responsibility to provide alternative arrangements for people whenever possible. If changes would cost too much, or create risks to health or safety your organization may be able to claim undue hardship. However, it is not enough to claim undue hardship based on an assumption or opinion, or by simply saying there is some cost. To prove undue hardship, evidence must be provided as to the nature and extent of the hardship.



The discrimination is part of a special program or policy.

A special program is any plan, arrangement, rule, policy or legislative provision designed to advance the equality of disadvantaged groups. It is not a discriminatory practice to adopt or carry out a special program. Any **federally regulated** organization can have one.

The reason for the group's disadvantage must be related to one of the grounds of discrimination or membership in any of the designated groups defined in the *Employment Equity Act* (women, members of visible minorities, people with disabilities and Aboriginal people).

The courts have determined specific criteria and principles that ensure special programs are consistent with human rights principles. The basic rules set out by the courts are as follows:

- A special program must advance equality.
- A special program must address genuine disadvantage.
- A special program must be tailored to meet the actual needs of the disadvantaged group.
- The impact of the special program on third parties must be considered.
- Special programs must be proportional to the degree of under-representation or disadvantage.
- The special program should be temporary.

More information about responses to a discrimination complaint can be found in Chapter 2 of this handbook.



5.3 Making First Nation Legal Traditions and Customary Laws Part of the Process

There are steps that your organization can take to make sure that the Commission considers your First Nation's legal traditions and customary laws when it deals with a discrimination complaint.

Ask yourself:

- Is there a First Nation legal tradition or customary law that affects how the complaint should be understood?

The Interpretive Provision of the *Canadian Human Rights Act*

The *Canadian Human Rights Act* includes a provision that requires the Commission, the Tribunal and the courts to consider First Nations legal traditions and customary laws when applying the Act. This rule has certain limits. The First Nation legal tradition or customary law must respect gender equality.

The interpretive provision states:

In relation to a complaint made under the Canadian Human Rights Act against a First Nation government, including a band council, tribal council or governing authority operating or administering programs or services under the Indian Act, this Act shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and collective rights and interests, to the extent that they are consistent with the principle of gender equality.





Is there a legal tradition or customary law that affects how the complaint should be understood?

If your organization has identified a legal tradition or customary law that may affect your response to a discrimination complaint, you should:

1. Identify the legal tradition or customary law, and how it relates to the action or decision that led to the complaint.
2. Document how the legal tradition or customary law forms part of your First Nation's culture. This includes explaining the purpose, or goal, of the legal tradition or customary law, and what it means to follow it.
3. Determine who and how many people in your community follow the legal tradition or customary law.
4. Determine how long your community has been following the legal tradition or customary law.
5. Consider if the legal tradition or customary law can be followed in a less discriminatory way.

Document this process!

It will really help your organization to tell its story if you can show that you gave careful thought to the impact and consequences of your legal traditions and customary laws on peoples' human rights.

5.4 Aboriginal and Treaty Rights

The Commission cannot decide issues related to Aboriginal and treaty rights. If the complaint is referred to the Tribunal for a hearing, the Tribunal will consider any issues related to Aboriginal and treaty rights.



6. Community-based Dispute Resolution Processes

The **Commission** encourages people to try to solve their human rights disputes informally, before the Commission gets involved. The Commission's practice is to refer potential **discrimination complaints** back to **community-based dispute resolution processes**, when they are available.

*Terms in **bold** are explained in the glossary in Appendix A of this handbook.*

With this in mind, some First Nations have begun to develop or improve community-based dispute resolution processes that can deal with human rights issues at the community level.

6.1 What is a Community-based Dispute Resolution Process?

A community-based dispute resolution process is a procedure (or set of procedures) that an employer or service provider develops to deal with **allegations** of discrimination. If an individual raises a human rights concern, the process explains how that concern will be addressed and potentially resolved.

No one-size-fits-all model exists for community-based dispute resolution.

6.2 Why should First Nations have their own Community-based Dispute Resolution Processes?

Having a community-based dispute resolution process that is fair, flexible, efficient and effective means that the Commission will be less involved in your community. This will increase the autonomy and accountability of your First Nation.

Creating your own dispute resolution process allows you to control how your community's unique culture, identity, traditions, language and institutions are included in the process.



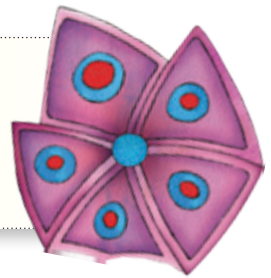
The Chiefs in Assembly affirmed that the Canadian Human Rights Act "...is imposed on our Nations and is only applicable until such time as First Nations have developed and implemented their own Human Rights models according to their traditions and inherent authority, consistent with the United Nations Declaration on the Rights of Indigenous Peoples."

Assembly of First Nations Annual General Assembly Resolution no. 19/2010, July 22, 2010

Some advantages of having a community-based dispute resolution process are:

- You can resolve disputes before they get out of control.
- It can help the parties involved feel they have played an active role in designing a solution to resolve the dispute. This can create 'ownership' and increase the commitment of the people involved.
- A community-based dispute resolution process is generally easier and faster. This may save legal fees and/or court costs for your First Nation.

A First Nation's community-based dispute resolution process does not have to be limited to handling only human rights complaints against a First Nation organization. It could deal with other complaints from community members that do not involve human rights.



6.3 Approaches to Community-based Dispute Resolution

Generally, First Nations' community-based dispute resolution processes will use one of the following approaches:

- **Traditional Approach** – based on traditions and customs passed down from generation to generation

EXAMPLE: A community could use their traditional practice of holding community meetings and seeking consensus on questions of higher importance, including human rights decisions.



- **Contemporary Approach** – uses contemporary ways of resolving disputes, such as mediation and arbitration.

EXAMPLE: The *Agreement for the Recognition of the Qalipu Mi'kmaq Band* states: "In the event of a dispute between Council and Membership in respect of this By-Law, the dispute may be resolved by either mediation or arbitration if both Council and the members mutually agree to submit to mediation and arbitration."

- **Hybrid Approach** – blends contemporary and traditional approaches.

EXAMPLE: A community may rely heavily on oral tradition but decide to record their dispute resolution process in writing.

6.4 Guiding Principles for Developing Community-based Dispute Resolution Processes

The following principles are based on legal rules about what is fair. They were developed based on case law and provide guidance to communities and organizations that want to handle their disputes independently.

1. Make the process accessible.

A process is accessible when members of the community can easily use it. It does not have barriers, like the need for a lawyer. All documents that explain the process should be in clear language, and, if appropriate, in the language of the community. To prevent frustrations set reasonable timelines for each step of the process.

2. Obtain community input about the process.

Community acceptance is important if you want your process to be successful and accountable. Encourage input from all community members, including Elders, women, people with disabilities, youth and members living off reserve.



3. Make sure the decision-maker knows about human rights.

The decision-maker should be trained in human rights principles and laws; or be able to easily access human rights advice from someone who is trained in human rights principles and laws. The decision-maker may also need to be familiar with your First Nation's values, traditions, customs and laws.

Examples of potential decision-makers include:

- a committee made up of one off-reserve member, one Elder, two people living on reserve, one youth and one person from a neighbouring community
- an Elders' Council
- an Aboriginal lawyer or judge
- a judicial council made up of people from outside the community, but appointed by an Elders' Council under a First Nation's Constitution
- a regional commission, made up of representatives from different First Nations in the region

4. Ensure impartiality and independence.

The decision-maker must not be **biased**. This means they should have no personal, political, business or other reason to favour one party over the other. The decision-maker should be able to make an independent decision. This means they should not be influenced improperly by anyone involved in the dispute. Everyone involved should approve the choice of the decision-maker.

When a complaint is made against a First Nation government, the Chief and Council should not be the decision-maker, because they might appear biased.

5. Allow people to bring a representative.

In some instances, mediation or a similar option may be offered. When this happens, the parties involved should be allowed to bring a person of their choice, including a family member, a friend, or lawyer.

6. Give people the opportunity to be heard.

All of the people involved in the dispute should be allowed to have their say and tell their side of the story. This can be done orally, or in writing, as long as both parties have enough time to prepare and present their case.



7. Encourage people involved to share information.

The people involved in the dispute should share information with each other. They must understand each other's side of the story to be able to respond effectively.

8. Keep information confidential.

Always keep information that is shared confidential. This shows that everyone involved respects the process and the other people involved.

9. Give reasons for decisions.

The decision-maker should give detailed reasons for their decision, either orally or in writing.

10. Ensure the process is acceptable to everyone involved in the dispute.

Remember to consider your process from a human rights perspective. This means making sure the dispute resolution process treats everyone involved with equality, dignity and respect.

Make your process fair by ensuring that there are ways to balance the power of the people involved. Find ways to provide support to people who might be intimidated by the process or afraid of **retaliation** from the other party. If a **settlement** is reached all of the parties involved in the dispute should agree to the terms.

11. No retaliation.

A community-based dispute resolution process should clearly forbid any form of retaliation for filing a complaint, being a witness, or accompanying or representing an individual.

Your dispute resolution process does not have to give the same solutions that the Commission's dispute resolution process might provide. The important thing is that solutions appropriately address the human rights issues and are fair to everyone involved. The Commission supports solutions and settlements that reflect your First Nation's legal traditions and/or customary laws.



6.5 Developing a Community-based Dispute Resolution Process

If you want to develop a community-based dispute resolution process, the following tips can help you plan and implement it effectively.

1. Identify the needs of your community.

You must know the needs of your community to develop an effective community-based dispute resolution process. Factors that will help you decide what kind of process makes sense for your community and how long it will take to develop include:

- Your community's history, and cultural values and beliefs.
- The resources you have available.
- Input from community members.

Public support from your community's leadership will also help build a successful community-based dispute resolution process.

2. Make the process simple, informal and flexible.

If the process is simple there will be less delays and costs. Community-based dispute resolution processes should be less formal than law courts and offer participants different ways to resolve disputes.

3. Be inclusive from the start.

Make sure you consider all of the members of your community from the very beginning. Try to include people from diverse backgrounds in the development of your process. This includes Elders, women, people with disabilities and community members who live off reserve.

If your process includes mediation; ensure that your list of mediators includes people from diverse backgrounds themselves.



4. Train the people who will be involved.

Training should be provided to all persons involved in managing or advising about dispute resolution. This can include your First Nation's leadership, managers, directors, human resources and legal staff, and community members. Training should include information about human rights and how the community-based dispute resolution process will work.

5. Communicate with your community.

People need to know your community has a dispute resolution process available. Tell people about the process at a special launch, put information on your website, write about it in your newsletter and post information in places where people get together. Make sure you also include information about the process in your daily operations.

You could include information about the process as part of the training and orientation your organization offers new employees.

6. Monitor and evaluate how the process is working.

Monitor and evaluate the process to see if people are having problems accessing or using it. Evaluation processes should be voluntary and confidential.

Evaluation helps you identify how confident people are that the process will help resolve disputes. It also tells you how satisfied people are with the results.

You can evaluate your process by asking questions like:

- Was the process implemented as designed?
- What are the results? (For example, number of complaints and whether issues were resolved)
- Was the whole process fair?
- What do people involved have to say about the process?
- Are there changes that would improve how the process works?

7. Adjust the process as needed.

Include instructions about how to make changes to the process if evaluations reveal that it is not meeting your community's needs.



6.6 Financing a Community-based Dispute Resolution Process

Your First Nation will have to finance its own process. This could include seeking financial help from Indian and Northern Affairs Canada or other government or private grants. The Commission cannot pay to develop your community-based dispute resolution process.

If your First Nation does not have the money, or is too small to set up a process on its own, consider partnering with other First Nations communities nearby. Pool your resources to establish a complaints process that could serve all of the First Nations involved.

Similarly, if your First Nation is represented by a Tribal Council, consider having the Tribal Council establish a dispute resolution process that could serve all First Nation communities that are Tribal Council members.

*If developing a community-based dispute resolution process costs too much, create an **ombudsperson** position to provide information and act as a liaison between community members with human rights complaints and your First Nation organization. An ombudsperson is an impartial person who investigates and attempts to resolve complaints and disputes. For example, the ombudsperson could be a respected community Elder.*

6.7 The Commission's Role

The Commission encourages employers and service providers to set up their own dispute resolution processes to address human rights complaints. In most cases when a discrimination complaint is filed, the Commission will ask people to go through their community-based dispute resolution process first, if there is one.

The Commission looks for three things in a community-based dispute resolution process before referring a discrimination complaint to it:

1. Can the process respond to discrimination complaints?
2. Can the process provide appropriate solutions? (For example, compensation or job reinstatement)
3. Is the process "reasonably available" to people? The Commission considers a process "reasonably available" if it is fair, flexible, efficient and effective.



Some First Nations communities already have community-based dispute resolution processes that deal with discrimination complaints.

The goal of a dispute resolution process is to obtain an outcome that satisfies all the parties in the dispute.

If either party is not happy with the result, they can ask the Commission to deal with the discrimination complaint.

See Chapter 4 of this handbook for more information about the Commission's dispute resolution process.

Chief Pine's Story

Chief Gayle Pine is the Chief of the Pine Tree First Nation.

The Smith family lives on the Pine Tree First Nation. Chief Pine knows Gerry and Marian Smith, as well as their son Mike. Mike has a progressively disabling condition that affects his mobility. Mike uses crutches to get around and his health care specialists have said that he will soon need a wheelchair. The school Mike attends is not accessible for people with disabilities.

One day, Gerry and Marian ask to meet with Chief Pine to talk about making the school and other reserve facilities wheelchair accessible. Gerry and Marian explain that getting around the school is becoming more difficult for Mike.

There is no washroom on the main floor, so Mike must drag himself up a flight of stairs when he needs the washroom. When he gets there, he must yell for the janitor to help him open the door. Gerry also has to carry Mike in and out of the school every day, because there are stairs at the entrance. Marian says that there are similar problems at the health unit and the recreation centre.



Chief Pine is very concerned by Mike's situation, but the First Nation does not have the money to pay for the ramps, elevators, washroom renovations and other costs to make the community's facilities accessible to people with disabilities.

The Smith family decides to contact the Commission about filing a discrimination complaint against the Band and Indian and Northern Affairs Canada.

Chief Pine receives a phone call from a Commission human rights officer. The officer advises Chief Pine that the Smiths want to file discrimination complaints against the Pine Tree First Nation and Indian and Northern Affairs Canada. The Smiths allege that the Band discriminated against their son, Mike, by not providing wheelchair accessible facilities. The human rights officer invites Chief Pine to participate in a mediation process.

Chief Pine tells the human rights officer that Pine Tree is piloting a new community-based dispute resolution process. She asked if the Smiths would participate in the Pine Tree First Nation's Conflict Resolution Circle to resolve the issue.

The Conflict Resolution Circle has different tiers or levels, depending on the kind of conflict and what the parties hope to achieve. The goal is to bring everyone affected by the dispute together to share their views and resolve the issue.

An Elder acts as an independent third party. There is also a Committee consisting of:

- a member living off the reserve
- two members living on the reserve
- a youth representative
- a second Elder who helps people that find the process difficult or scary.

Within a week, Chief Pine and the Smiths meet with the Elder and the Committee. The Elder gives the Smiths a chance to tell their story first. Chief Pine speaks next.

They also have a discussion about the cost of the renovations and the benefits these changes would have for the community. Chief Pine and the Smiths agree to work together to inspect the school and create an action plan to make the school more accessible. The action plan will identify what needs to be done immediately and what can be done as part of regular maintenance over time. They also agree to do the same thing at the health unit and the recreation centre.

The Smiths decide not to take the discrimination complaint any further. They notify the Commission that they have come to an agreement with Chief Pine and want to withdraw their complaint. The Commission agrees and closes the file.





Appendix A: Glossary

allegations (of discrimination)	An assertion of discrimination made by a complainant in a complaint form.
alternative arrangements	Special arrangements meant to reduce or mitigate barriers that single out and treat an individual, or group, differently and negatively because of one of the 11 grounds of discrimination.
bias	When a person who handles a complaint has, or appears to have, some reason – personal, political, business, or otherwise – to favour one party over the other.
Canadian Human Rights Act (the Act)	A federal law. The Act protects all people legally allowed to be in Canada. It prohibits discrimination by federally regulated employers and service providers.
Canadian Human Rights Commission (the Commission)	An organization that was created by the <i>Canadian Human Rights Act</i> . It is separate and independent from the Government of Canada and the Tribunal.
Canadian Human Rights Tribunal (the Tribunal)	An organization that was created by the <i>Canadian Human Rights Act</i> . It is separate and independent from the Government of Canada and the Commission.
community-based dispute resolution process	A procedure (or set of procedures) that an employer, service provider or government institution develops to deal with allegations of discrimination. If an individual raises a human rights concern, the process explains how that concern will be addressed and potentially resolved.
complainant	A person who files a discrimination complaint with the Commission.
complaint kit	The complaint kit contains the required forms and instructions for filing a complaint.



corrective measures

An order made by the Tribunal when it finds your organization has been discriminatory. Corrective measures can include making your organization:

- Change its rules and policies or create human rights protection policies.
- Pay the complainant lost wages or give them their job back.
- Take human rights awareness training.
- Pay for the complainant's pain and suffering and any losses caused by the discrimination.

discrimination

An action or decision that treats a person or a group differently and negatively for reasons like race, age, sex or disability. Discrimination happens when someone is denied an opportunity, benefit or advantage, such as a job, promotion, service or housing, because of their race, age, sex etc.

discrimination complaint

A discrimination complaint under the *Canadian Human Rights Act*.

discriminatory practice

The following are examples of discriminatory practices when they are based on one of the grounds of discrimination:

- Denying someone goods, services, facilities or accommodation.
- Refusing to employ or continue to employ someone or treating them unfairly in the workplace.
- Paying men and women differently when they are doing work of the same value.
- Following policies or practices that deprive people of employment opportunities.
- Communicating hate messages on the telephone or through the Internet.
- Harassing someone.
- Retaliating against a person who has filed a discrimination complaint with the Commission, acted as a witness or represented the complainant.



**duty to
accommodate**

The duty to accommodate is an employer or service provider's obligation to take steps to eliminate the different and negative treatment of individuals or groups, protected under the *Canadian Human Rights Act*.

Federal Court

The Federal Court is Canada's national trial court that hears and decides legal disputes arising in the federal jurisdiction. This includes claims against the Government of Canada, civil suits in federally regulated areas and challenges to the decisions of federal tribunals.

**federally
regulated**

The Act applies to federally regulated employers and service providers. These include:

- federal departments, agencies and Crown corporations
- chartered banks
- airlines
- television and radio stations
- interprovincial communications and telephone companies
- interprovincial transportation companies, like buses and railways that travel between provinces
- First Nations governments and some other First Nations organizations
- other federally regulated industries, like some mining companies



grounds of discrimination

Grounds of discrimination are reasons a person may experience discrimination. There are 11 reasons or 'grounds' that are protected under the *Canadian Human Rights Act*. This means that federally regulated employers and service providers cannot discriminate against people for these reasons. The 11 grounds of discrimination protected under the Act are:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status
- family status
- disability
- a conviction for which a pardon has been granted

human rights officer

A Commission employee who has expertise in human rights and dispute resolution.

human rights protection policies

Policies that protect human rights. They set guidelines for respectful behaviour and explain how an organization meets their responsibility to respect human rights.



interpretive provision

The *Canadian Human Rights Act* includes a provision that requires the Commission, the Tribunal and the courts to consider First Nations legal traditions and customary laws when applying the Act. This rule has certain limits. The First Nations' legal tradition or customary law must respect gender equality.

The interpretive provision states:

In relation to a complaint made under the Canadian Human Rights Act against a First Nation government, including a band council, tribal council or governing authority operating or administering programs or services under the Indian Act, this Act shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and collective rights and interests, to the extent that they are consistent with the principle of gender equality.

judicial review

If you or the complainant disagrees with a decision made by the Commission or by the Tribunal, you can ask the Federal Court to review the decision. This is called a judicial review.

non-derogation clause

A condition that has been included in the *Canadian Human Rights Act*. It means that the Act cannot take away from the Aboriginal and treaty rights granted to First Nations in the Canadian Constitution.

ombudsperson

An impartial person who investigates and attempts to resolve complaints and disputes.

public interest

A matter is in the public interest when the decision has the potential to clarify, influence, shape or define human rights law.



response	Your organization's side of the story in a discrimination complaint.
respondent	The person or organization that a discrimination complaint is filed against.
respondent's representative	The person designated by the respondent to be their representative and handle the discrimination complaint. This person is the main contact for the Commission and responsible for finding out the respondent's side of the story. The representative should not be named in the complaint.
retaliate or retaliation	Threatening, intimidating or treating another person badly because that person filed a discrimination complaint.
settlement	An agreement that outlines what each party involved in a discrimination complaint agreed to do to resolve the dispute.
undue hardship	Under the <i>Canadian Human Rights Act</i> , an employer or service provider can claim undue hardship when adjustments to a policy, practice, by-law or building would cost too much, or create risks to health or safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually.



Appendix B:

Human Rights Readings and Resources

Commission Resources

- Your Guide to Understanding the Canadian Human Rights Act
(http://www.chrc-ccdp.gc.ca/publications/naichract_loicdpina/toc_tdm-eng.aspx)
- A Place for All: A Guide to Creating an Inclusive Workplace
(http://www.chrc.gc.ca/discrimination/apfa_uppt/toc_tdm-eng.aspx)
- Duty to Accommodate Fact Sheet
(http://www.chrc.gc.ca/preventing_discrimination/duty_obligation-eng.aspx)
- Duty to Accommodate Frequently Asked Questions & Answers
(http://www.chrc.gc.ca/preventing_discrimination/toc_tdm-eng.aspx)
- Guide for Managing the Return to Work
(http://www.chrc.gc.ca/publications/gmrw_ggrt/toc_tdm-eng.aspx)
- Anti-Harassment Policies for the Workplace: An Employer's Guide
(http://www.chrc.gc.ca/publications/anti_harassment_toc-eng.aspx)
- Harassment and the *Canadian Human Rights Act*
(<http://www.chrc.gc.ca/publications/harassmentchra-eng.aspx>)
- Harassment: What it is and What to do about it
(http://www.chrc.gc.ca/publications/what_is_it-eng.aspx)
- Pregnancy and Human Rights in the Workplace – A Guide for Employers
(http://www.chrc-ccdp.ca/policies_guides_politiques/guides-eng.aspx)



Commission Policies

- Policy and Procedures on the Accommodation of Mental Illness
(http://www.chrc.gc.ca/legislation_policies/ami_mmm/toc_tdm-eng.aspx)
- Policy on Alcohol and Drug Testing
(http://www.chrc.gc.ca/legislation_policies/padt_pdda/toc_tdm-eng.aspx)
- Policy on Special Programs
(http://www.chrc.gc.ca/legislation_policies/special_programs-eng.aspx)
- Aboriginal Employment Preferences Policy
(http://www.chrc.gc.ca/legislation_policies/aboriginal_employment-eng.aspx)
- Pregnancy and Human Rights in the Workplace – Policy and Best Practices
(http://www.chrc-ccdp.ca/policies_guides_politiques/guides-eng.aspx)

International

- Universal Declaration of Human Rights
(http://www.chrc.gc.ca/publications/universal_declaration-eng.aspx)
- United Nations Declaration on the Rights of Indigenous Peoples
(<http://www.un.org/esa/socdev/unpfii/en/drip.html>)
- United Nations Convention on the Rights of Persons with Disabilities
(<http://www.un.org/disabilities/convention/conventionfull.shtml>)
- United Nations Declaration on the Rights of the Child
(<http://www2.ohchr.org/english/law/crc.htm>)



Appendix C:

The Repeal of section 67 of the *Canadian Human Rights Act*

For more than 30 years, section 67 of the *Canadian Human Rights Act* prevented people from filing discrimination complaints resulting from the application of the *Indian Act*. During this time, discrimination complaints could not be brought against the Government of Canada or First Nations governments.

When section 67 was repealed, or cancelled, in 2008, the *Canadian Human Rights Act* was immediately applicable to the Government of Canada. First Nations governments were given a three-year transition period that ended June 18, 2011.

To make a discrimination complaint on one of the areas no longer protected by section 67, a complainant must be able to:

- Identify how they were negatively affected by a clause of the *Indian Act*.
- Explain how it relates to one of the grounds of discrimination protected by the *Canadian Human Rights Act*.
- Respond to issues raised by the government of Canada, or the First Nations government that the complaint is filed against.

Areas affected by the repeal of section 67

Indian and Northern Affairs Canada

- Primary and secondary education decisions under sections 114–118 of the *Indian Act*.
- Registration provisions under section 6 of the *Indian Act*.
- Election provisions under sections 74–80 of the *Indian Act*.
- Land allocations under section 20 of the *Indian Act*.
- Wills and estates under the *Indian Act* and the Indian Estates Regulations.
- Mental competency and guardianship decisions under the *Indian Act*.



First Nations Governments

- Land allocations under section 20 of the *Indian Act*.
- Election codes approved under the *Indian Act*.
- Membership codes approved under the *Indian Act*.
- Decisions based on section 81 by-laws under the *Indian Act*.



Appendix D:

Checklist to Prevent Discrimination and Respect Human Rights

Leadership (for example, Chief and Council)

- ☐ I have learned about the *Canadian Human Rights Act* and recent changes to it.
- ☐ I have learned about human rights (through specific training).
- ☐ I have learned how to prevent discrimination.
- ☐ I have considered ways to make community-based dispute resolution processes culturally relevant.
- ☐ I have learned how to respond to a discrimination complaint.
- ☐ I have appointed a manager or senior staff person to plan and oversee human rights issues.
- ☐ I have identified a champion to help integrate human rights into my First Nation's values and traditions.
- ☐ I have talked to and asked for the support of Elders and other community leaders.
- ☐ I have created a strategy to review the human rights aspects of my organization's by-laws, policies, practices and physical assets.
- ☐ I have created a human rights strategy (including policy development plans).
- ☐ I have identified areas for human rights improvement and putting together an action plan to implement any changes (if applicable).
- ☐ I have created a strategy to train people in my organization about human rights and preventing discrimination.
- ☐ I have adopted human rights protection policies.
- ☐ I have educated community members about the organization's human rights strategy and policies.
- ☐ I support people who feel that their human rights have been violated.
- ☐ I support the development of a community-based dispute resolution process.
- ☐ I promote a human rights culture in the workplace.
- ☐ I treat others with equality, dignity and respect.



Checklist to Prevent Discrimination and Respect Human Rights

Managers

- ☐ I have learned about the *Canadian Human Rights Act* and recent changes to it.
- ☐ I have learned about human rights (through specific training).
- ☐ I have learned how to prevent discrimination.
- ☐ I have considered ways to make community-based dispute resolution processes culturally relevant.
- ☐ I have learned how to file a discrimination complaint.
- ☐ I have learned how to respond to a discrimination complaint.
- ☐ I have encouraged my leadership to learn about the *Canadian Human Rights Act*, human rights and the prevention of discrimination.
- ☐ I have encouraged my leadership to adopt a strategy to prevent human rights complaints.
- ☐ I have reviewed the human rights aspects of my organization's by-laws, policies, practices and physical assets.
- ☐ I have identified areas for human rights improvement and put together an action plan to implement any changes (if applicable).
- ☐ I have revised the human rights aspects of my organization's by-laws, policies and practices (if applicable).
- ☐ I have drafted human rights protection policies.
- ☐ I have created a work plan to develop a community-based dispute resolution process.
- ☐ I have persuaded my leadership to adopt human rights protection policies.
- ☐ I have educated staff and community members about my organization's human rights strategy and policies.
- ☐ I support people who feel that their human rights have been violated.
- ☐ I promote a human rights culture in the workplace.
- ☐ I treat others with equality, dignity and respect.



Checklist to Prevent Discrimination and Respect Human Rights

Staff

- ☐ I have learned about the Canadian Human Rights Act and recent changes to it.
- ☐ I have learned about human rights (through specific training).
- ☐ I have learned how to prevent discrimination.
- ☐ I have learned about my First Nation's human rights policies.
- ☐ I know what the duty to accommodate means.
- ☐ I have learned how to file a discrimination complaint.
- ☐ I have worked with management to review the human rights aspects of my organization's policies, practices, by-laws and physical assets.
- ☐ I have worked with management to draft human rights protection policies.
- ☐ I support people who feel that their human rights have been violated.
- ☐ I treat others with equality, dignity and respect.



Checklist to Prevent Discrimination and Respect Human Rights

Community Members

- ☐ I have learned about the Canadian Human Rights Act and recent changes to it.
- ☐ I have learned about the role of the Canadian Human Rights Commission.
- ☐ I am aware of my First Nation's community-based dispute resolution process (if there is one).
- ☐ I know how to file a discrimination complaint.
- ☐ I provided input on the development of a community-based dispute resolution process in my community.
- ☐ I provided input on human rights protection policies for my community.
- ☐ I support people who feel that their human rights have been violated.
- ☐ I treat others with equality, dignity and respect.



Appendix E:

Provincial and Territorial Human Rights Agencies

Alberta Human Rights Commission www.albertahumanrights.ab.ca

British Columbia Human Rights Tribunal www.bchrt.bc.ca

Manitoba Human Rights Commission www.gov.mb.ca/hrc

New Brunswick Human Rights Commission www.gnb.ca/hrc-cdp

Newfoundland and Labrador Human Rights Commission www.justice.gov.nl.ca/hrc

Northwest Territories Human Rights Commission www.nwthumanrights.ca

Nova Scotia Human Rights Commission www.gov.ns.ca/humanrights

Nunavut Human Rights Tribunal www.nhrt.ca

Ontario Human Rights Commission www.ohrc.on.ca

(Ontario) Human Rights Tribunal of Ontario www.hrto.ca

(Ontario) Human Rights Legal Support Centre www.hrlsc.on.ca

Prince Edward Island Human Rights Commission www.gov.pe.ca/humanrights

(Québec) Commission des droits de la personne et des droits de la jeunesse
www2.cdpcj.qc.ca/en

Saskatchewan Human Rights Commission www.shrc.gov.sk.ca

Yukon Human Rights Commission www.yhrc.yk.ca



Appendix F:

Checklist for Responding to a Discrimination Complaint

Plan Your Response

- ☐ A person has been chosen to prepare the response.
- ☐ Other parties to the complaint have been identified (if applicable).
- ☐ Other parties to the complaint have been notified (if applicable).
- ☐ I have thought about settling the complaint.

Prepare Your Response

- ☐ I have talked to people who have information related to the complaint.
- ☐ I have documented all of the information related to the complaint.
- ☐ I have considered whether there are any reasons why the Commission should not deal with the complaint.
- ☐ I have looked at the complaint and determined whether there is a reasonable explanation for the allegation (if applicable).
- ☐ I have looked at the complaint and determined that the discrimination was necessary (if applicable).
- ☐ I have considered whether accommodating the complainant would cause undue hardship.
- ☐ I have written down the explanation of how the discrimination was justified (if applicable).
- ☐ I have considered if the complaint affects my First Nation's legal traditions and/or customary laws.
- ☐ I have developed an explanation about how the complaint affects my First Nation's legal traditions and/or customary laws (if applicable).
- ☐ I have considered if the complaint impacts Aboriginal or treaty rights.
- ☐ I have developed an explanation about how the complaint impacts Aboriginal or treaty rights (if applicable).
- ☐ I have briefed my leadership on the response to the complaint, options to settle it, and what might happen if the complaint goes to the Tribunal.



