

The Yukon Human Rights Complaint Process: A Respondent's Guide for Dealing with a Complaint

Introduction

This is a step-by-step guide to the human rights complaint process of the Yukon Human Rights Commission (YHRC) if you or your organization have had a complaint filed against you or you want to have more information about your rights and responsibilities. This guide will walk you through the various stages of the complaint process.

The Yukon *Human Rights Act* (the "Act") gives responsibility and powers to the YHRC to protect the human rights and dignity of people in the Yukon by preventing and eliminating discrimination.

The Yukon Human Rights Commission is separate from the Government. The Commission includes three to five Commission members as decision-makers, who are appointed by the Legislature. The Commission also employs staff members to deal with complaints, educate the public, and assist the Commission members.

What is Discrimination?

The *Act* defines discrimination as unfavourable treatment (including harassment) that is based on one or more of the following characteristics or "grounds":

- ancestry, including colour or race
- national origin
- ethnic or linguistic background/origin
- religion or creed
- age
- sex, including pregnancy
- sexual orientation
- physical or mental disability
- criminal charges or criminal record
- political belief, association or activity
- marital or family status
- source of income
- actual or presumed association with any of the grounds listed above.

Harassment is a kind of discrimination. Harassment is unwelcome behaviour or comments that put down, insult, make fun of, or belittle another person because of one of the "grounds" of discrimination such as sex, ancestry or disability.

A failure to reasonably *accommodate* the needs of people that are based on a characteristic or "ground" protected under the *Act*, such as a disability or family status or religion, is also considered discrimination.

Retaliation or threatening to retaliate against any person who has filed a human rights complaint, has been a witness to a complaint or helped someone with a complaint is

also illegal under the *Act*. For example, an employer cannot retaliate by firing an employee who has filed a complaint.

What areas of life are protected?

The *Act* protects people from discrimination in the following areas:

- employment – including the hiring process, denial of benefits, accommodation of needs, or dismissal
- services to the public – including government programs or services, food services like restaurants, hotel accommodations, or retail stores
- housing and property – buying, renting, leasing and eviction, including the sale of public land
- membership in unions and other occupational groups
- public contracts – negotiating them or carrying them out.

Under sec. 35 of the *Act*, employers are responsible for the discriminatory behaviour of their employees unless it can be established that the employer did not support the behaviour, and took care to prevent it, or after learning of it, tried to correct the situation and stop it.

Getting information and advice: “Inquiries”

You can get information about your rights and responsibilities under the *Act*, or the specific duties of an employer or business by calling or emailing the Commission or dropping into the office. The information discussed during any inquiry is kept confidential.

At the outset, Commission staff will help you determine your options for dealing with your situation. If your situation cannot be handled by the Commission, staff can refer you to another organization or service that can help you. (For example, staff can tell you how to contact a lawyer or the Canadian Human Rights Commission or Labour Services).

Who is Involved in a Complaint

If you receive a complaint against you or your organization, you are the “Respondent”. A Respondent can be an individual, corporation or organization. There can be more than one Respondent in a human rights complaint.

The “Complainant” is the person who files a complaint. “Parties” refers to both the Complainant and the Respondent(s).

Both the Respondent and Complainant have rights to a fair process.

What happens when the Commission receives a complaint?

The complaint may go through the following steps:

1. Inquiry/Intake

A staff person will listen to and record the Complainant's information. If it appears to fit within the *Act*, the next step is an "intake", where the Complainant will be asked to meet again with Commission staff, who can help to organize his or her information and identify any additional information needed. At intake the Complainant will fill out the complaint form and then date and sign it. This starts the complaint process.

2. Review by Director

Next the Director of the Commission will review the complaint to decide whether the Commission will investigate.

To do so, the Director will decide if the complaint:

- falls within the power of the *Act* – does it fall within a protected area such as employment and also a prohibited "ground" such as ancestry, religion, disability, sex, etc.?
- is not "frivolous" or "vexatious"
- happened within the last 18 months
- has not been dealt with or could not be dealt with by another proceeding such as a grievance or another process.

If the complaint meets these conditions, the Director will refer it to investigation and may also try to informally resolve it if both parties are willing.

If the Director is satisfied a complaint requires investigation, the Commission will send a copy to you as the Respondent for response.

However, if the complaint does not meet the conditions above, the Director will effectively dismiss the complaint and provide the Complainant with written reasons for that decision. The Complainant will have an opportunity to have input before the Director makes any decision on his or her complaint. The complainant can also appeal the Director's decision – see below.

3. Appeal

If the Complainant disagrees with the Director's decision, the Complainant can appeal it to the Commission members, who will review the Director's decision and can overturn it. Commission staff will give the Complainant information about how to appeal.

4. *The Commission may ask a Board of Adjudication to decide the complaint in certain circumstances without an investigation.*

For example:

- where a speedy resolution is needed because of urgent circumstances; or
- where there is agreement on the facts but not on how the law applies to the facts; or
- where there are no witnesses to the alleged discrimination other than the Complainant and Respondent and they do not agree on what happened.

5. *The Commission may also decide not to investigate or not to continue investigating a complaint in certain cases.*

Some examples are:

- the Complainant declines a settlement offer from the Respondent, that the Commission thinks is fair and reasonable; or
- the Complainant has used or could first use another process such as internal grievance or review procedures, which are available from the employer or organization the Complainant is dealing with; or if
- the Complainant abandons his or her complaint; or
- the Complainant fails to cooperate with the investigation.

6. *Informal Resolution (Settlement)*

The *Human Rights Act* is focused on helping people find remedies, not on punishment. So the Commission makes every effort to help people settle complaints upon acceptance of it, if both parties are willing. The Director can help the Complainant as well as the Respondent and can recommend ways to settle the complaint in keeping with the purposes of the *Act*. In many situations both parties can find a satisfactory solution (settlement) with the help of the Commission staff. If this happens, then the complaint stops.

About one-quarter to one-third of complaints are informally solved with the help of Commission staff. This often avoids costly procedures and delays. These settlements are confidential. The goal of settlement is to solve the complaint, not to find fault or lay blame.

7. *Your Response to Complaint*

If an informal solution is not possible, the Commission will ask you, as the Respondent to provide a response to the complaint. There are generally two types of responses you can provide:

- You may deny that the discrimination occurred. That is, you can provide evidence that shows that the Complainant did not receive unfavourable treatment based on the definition outlined above in the section titled "What is Discrimination?" or
- You may provide a "reasonable explanation" for what, at first glance, appears to be discrimination. The *Act* says that it is not discrimination to treat someone unfavourably if there is a "reasonable cause" for doing so.

Some examples of "reasonable cause" include:

- reasonable requirements or qualifications for employment such as age requirement for jobs serving alcohol;
- a criminal record or criminal charges relevant to employment such as criminal record check for jobs dealing with children; and
- sex, where the privacy of the person receiving services or accommodation is a factor, such as a female personal care attendant for a woman with a disability.

The Commission staff can help you put together a response to the complaint. The Commission is neutral at this stage and will help both parties provide information and will explain the process and answer questions. You have 45 calendar days to provide a response to the complaint.

You can choose to hire a lawyer to assist you, although it is not necessary to have a lawyer at this stage. You may also consult your human resources department or Board of Directors, if applicable.

8. Investigation

If parties are unwilling or unable to informally solve the complaint with the Commission's help, the Commission will investigate it. An investigator gathers information from both sides and remains neutral. At the start of the investigation, the investigator will ask you for a response to the complaint about you or your organization. This response will be shared with the Complainant and the Complainant can also respond to it. This is called a "rebuttal".

You can help the Commission investigate by providing:

- current contact information for yourself and by cooperating in the investigation process;
- the names and contact information of potential witnesses or those who have information about what happened;
- records or letters or other documents of the events relating to the complaint; and
- any other information that you believe may be helpful in clearly explaining your overall position in response to the Complainant's allegations.

It is important that you stay in contact with the Commission throughout. If you do not reply to the Commission's request for a response to the complaint, the investigation report will not have the benefit of your evidence and point of view.

The investigator will gather the relevant evidence, interview witnesses and provide an analysis of this information for you, as the Respondent, and for the Complainant, and the Commission members in a written investigation report. Then you and the Complainant will have an opportunity to provide your comments in response to the report. Next, the Commission staff sends the report and the comments of both parties to the Commission members for their decision.

At any time in the process the Complainant may ask the Commission to stop the investigation; and then the Commission must do so. This is called *withdrawing a complaint*. If the Complainant does this, the Commission will tell you that the Complainant has withdrawn the complaint.

9. *Decision*

The Commission members usually meet monthly to review investigation reports as well as the comments provided by both parties. They decide whether there is enough evidence to go on to the next stage, meaning:

- Requesting the Commission lawyer to attempt to settle the complaint on terms agreed on by both parties; or,
- if it is not possible to settle the complaint, asking the Board of Adjudication to decide in a public hearing if discrimination has occurred.

If Commission members decide there is not enough evidence, they will dismiss the complaint and provide you with written reasons for their decision. If the Commission members dismiss the complaint, and the Complainant disagrees with their decision, the Complainant may be able to apply for a

judge to review that decision in the Supreme Court of Yukon. This is called "judicial review".

If on the other hand, the Commission members refer the complaint to the Yukon Human Rights Panel of Adjudicators and you as the Respondent disagree with this decision, you may be able to apply to a judge for review of the decision to the Supreme Court of the Yukon.

10. Settlement

The next stage, if the complaint is not dismissed, is settlement with a deadline, which can be extended. If the settlement process fails, then the complaint must be referred to the Yukon Human Rights Panel of Adjudicators for a public hearing.

If the Commission members refer the complaint for settlement, the Commission's lawyer will help you and the Complainant by:

- recommending terms of settlement
- acting as a mediator, and
- drafting the necessary written documents (settlement agreement and release of liability) for your review and decision.

The settlement process is a voluntary one. No one can impose a settlement to a complaint. The Commission and both parties must agree to any settlement. You can find out more about what is involved from Commission staff who can explain the process and answer your questions.

11. Board of Adjudication Hearing

The Panel of Adjudicators which conducts hearings is independent and separate from the Yukon Human Rights Commission. If the Commission members ask the Panel of Adjudicators to decide the complaint, because the parties are unable to settle it, the complaint must be heard by a Board of Adjudication.

Hearings are normally open to the public. Final decisions are normally published on the Commission website. During a hearing, the Board can order witnesses to come and give evidence and to produce relevant evidence such as documents. After considering the evidence presented at the hearing, the Board may decide to dismiss the complaint. The Board provides written reasons for the people involved for its decision.

If the Board finds that there was discrimination, it can also order you as the Respondent to:

- stop the discrimination;
- pay the Complainant money for any financial loss caused by the discrimination;
- pay the Complainant money for injury to his/her dignity, feelings, or self-respect;
- pay the Complainant what is called "exemplary damages" if the discrimination was "malicious" (meant to cause the Complainant hurt or distress);
- pay the Complainant's costs, for example lawyer fees to represent the Complainant.

12. *Appeal to the Supreme Court of Yukon*

If any party (you, the Complainant or the Commission) disagrees with the decision of the Board of Adjudication, he or she can appeal the decision to the Supreme Court of Yukon. The notice of appeal must be filed with the Court **within 30 days** of the Board's written decision.

In an appeal, the Court can only consider mistakes of law (not facts) the Board of Adjudication made. The Court can agree with or set aside a decision of the Board. It can also order another hearing.

Can the Commission investigate any type of complaint?

The Commission can only investigate complaints dealing with discrimination as defined in the *Act*. See the definition of discrimination in the section "What is discrimination?"

There are some kinds of complaints that the Commission cannot investigate:

1. Complaints of discrimination that fall outside the power of our Territory's Commission because they involve:
 - federal government services or employers,
 - inter-provincial businesses such as trucking companies as well as airlines, telecommunications, banks and other federally regulated activities.

The Yukon Commission can help you contact the Canadian Human Rights Commission for information in these cases.

Power to deal with human rights involving aboriginal governments and organizations, depending on the circumstances, can be the responsibility of the federal Commission. You may need help from our Commission and the Canadian Human Rights Commission (CHRC) in order to find out whether your human rights concerns fall under federal or territorial authority.

Under Canada's constitution, authority over what is called "Indians and lands reserved for Indians" is given to the federal Parliament. Therefore, if there is a complaint against a First Nations government which is a band council, or about the administration of reserve lands, you will need to contact the CHRC. But for other First Nations governments under self-governing agreements, the answer may not be as simple. Also, if the complaint is against a corporation owned by a First Nation, ask for advice from the Commission on where to go to deal with it

2. "Frivolous or Vexatious" Complaints

The Commission cannot investigate complaints that are clearly without substance or are intended merely to cause harm to another person.

3. Investigation Stopped

A person making a complaint ("Complainant") can stop the investigation and withdraw his or her complaint in writing at any time.

4. Referred to Board Without Investigation

The Commission may refer complaints to the Board of Adjudication for hearing without investigation in certain cases such as where:

- a speedy resolution is needed because of urgent circumstances; or
- there is agreement on the facts but not on how the law applies to the facts.

5. Director Tries to Settle the Complaint

The Commission may ask the Director to try to settle the complaint on terms agreed to by the parties prior to or during investigation.

6. Complainant Abandons Complaint or Fails to Cooperate

If the Complainant abandons the complaint or fails to cooperate with the investigation, the Commission may stop the investigation.

7. Complainant Declines Fair and Reasonable Settlement

The Commission can stop an investigation if the Complainant at any time prior to the conclusion of the investigation declines a settlement offer that the Commission considers fair and reasonable.

8. Grievance or Review Procedures Available

The Commission can suspend or stop the investigation of a human rights complaint if the Complainant has not used grievance or review procedures which are otherwise reasonably available in an organization or procedures provided for under another Act.

9. Complaint Dealt with in Another Proceeding.

The Commission can suspend or stop the investigation of a human rights complaint if the human rights complaint has been satisfactorily addressed in another proceeding such as arbitration under a collective agreement that has ways to address human rights matters.

Is there a time limit for making a complaint?

Yes. Complainants must make a complaint to the Commission within *18 months* of when the discrimination happened. The Commission may extend the time limit in certain cases, if the delay was in good faith and does not prejudice you or others involved.

How much does it cost?

There is no charge for any service the Commission provides to you.

How long does it take?

Some complaints are resolved very quickly with the Commission's help in a few weeks or months depending on the existing workload of the Commission, the availability of information and witnesses, and the amount of information needed. However, the process can take up to two years or more, especially if a full investigation and public hearing are involved. But in some circumstances, the Commission can speed up handling the complaint. You can ask the staff about this possibility.

You can find out more about these situations from any Commission staff member who will answer your questions and give you the information you need. You do not need to hire a lawyer to deal with a complaint but you can hire one if you wish.

For More Information on the Complaint Process:

Contact: Yukon Human Rights Commission, 101-9010 Quartz Rd., Whitehorse YT, (867) 667-6226 OR 1-800-661-0535 E-mail: humanrights@yhrc.yk.ca