



An Introduction to Mediation at the Canadian Human Rights Tribunal: Questions and Answers

Introduction – who are the parties?

The complainant: the person or group who filed a human rights' complaint.

The respondent: the person or organization against whom the complaint of discrimination was made and who is to respond to the complaint.

The Canadian Human Rights Commission (“the Commission”): the organization that referred the complaint to the Canadian Human Rights Tribunal (“Tribunal”) to institute an inquiry into the complaint. In some cases, the Commission chooses not to participate in the mediation.

What is mediation and why try it?

Mediation is a voluntary and confidential option for parties who want to try and resolve the complaint before it goes to a public hearing. Mediation is a negotiation between the parties where you will work with a Tribunal mediator to try and settle the complaint. If no agreement is reached, there will still be a hearing. Mediation can only happen if all the parties agree to it.

Mediations can be conducted in person, by videoconference or by telephone. They are usually scheduled for one day, but you may not need the whole day.

Settling a complaint in mediation is faster than going to a hearing. The parties control the process and can decide the outcome. At a hearing, a member of the Tribunal will decide the outcome. Mediation can also save you a lot of money in legal fees if you choose to have a lawyer.

Do I need a lawyer? Can I bring someone else with me to my mediation?

It is not necessary for you to have a lawyer or paralegal represent you at the mediation. Many parties successfully participate in mediation at the Tribunal without a lawyer. You can bring a lawyer if you wish. You may also bring a support person or a representative with you. You must let everyone know in advance who is going to be present at the mediation.

What will the mediator do?

A member of the Tribunal will be assigned to work with you and the other parties as a mediator.

A mediator's job is to facilitate discussions between the parties. They are not there to decide who is right or wrong, or to decide whether there was discrimination. They also make sure that mediations happen in an atmosphere of respect, honesty, and trust. The mediator cannot force you to agree to a solution or impose a settlement agreement.

Mediators are not on anyone's side. They are independent and neutral. They may also share their thoughts about the strengths and weaknesses of your case and help you understand what might

happen through the hearing process if you do not settle. You can consider creative solutions in an informal environment in a mediation. If the parties agree, the participants will work together to put a settlement agreement into words.

Will I be with the other parties during the mediation?

Mediators may start the mediation with everyone together and introduce the mediation process to everyone at once. The mediator may also create virtual breakout rooms, allowing parties to be in their own private room with their representative and support person, should everyone be more comfortable that way.

Even if you started in the same room you may separate into breakout rooms for the duration of the mediation. This can help people have frank discussions with the mediator and with each other.

The mediator can always shuttle between parties, whether the mediation is by videoconference or conducted by telephone.

What do I need to do before the mediation?

You should think about what you want to achieve at mediation and what is important to you. The goal of mediation is to resolve the complaint without a hearing. To do that, you must be willing to compromise to come to an agreement that is acceptable to all parties. This means that in most cases neither party will get everything they would ideally like to achieve. You should think about what your “best case” and “worst case” scenarios would be if you do not settle in mediation.

These best and worst case scenarios should help you to consider options and the range of what you might be able to accept, or give up, to settle the complaint. You should also fill out the attached Mediation Form (the “Form”). The Form will give the mediator and the other parties information that might help resolve the complaint. Please also include what you are hoping to achieve in trying to settle the complaint—instead of going to a hearing— and any possible solutions you can propose.

All parties should ensure that they have the authority to agree to a final settlement of all or part of the complaint.

What not to include?

The mediation is not a hearing. You will not be calling witnesses. You will not be pleading your case or making legal argument. **DO NOT** include copies of cases, the *Canadian Human Rights Act* or other legislation or present written legal arguments.

We will also ask the Commission to send us a copy of the Complaint form, their Investigation Report as well as its Record of Decision. You do not need to send these to us again. These documents allow the mediator to have some background information about what happened before the complaint was referred to the Tribunal. They do not determine what will happen at the mediation or what would happen at a hearing if you do not settle the complaint.

The mediator will read the Forms completed by the parties and the Commission’s materials but will not have access to anything else about your case. Make sure to tell the mediator in the Form what you think is important for the mediation.

What happens if we reach an agreement at settlement? Is my file closed?

When the parties reach an agreement, the Commission or the mediator will help the parties draft the terms of the settlement (“Minutes of Settlement”). Once the settlement is signed by all the parties, the mediator or the Commission’s representative will send the Minutes of Settlement for the Commission’s approval, as required by the *Canadian Human Rights Act* (“CHRA”). Should the Commission approve the settlement, there will be no hearing and the file will be closed.

If you are not represented by a lawyer, you will also have a 7-day cooling off period from the time you sign the minutes of settlement. After those 7 days, the settlement will be final and binding. During that 7-day period, you can seek independent legal advice. If you wish to set aside the settlement in that period, you can do so. In that case, the matter will proceed forward to case management and to a hearing.

What happens if the mediation does not lead to a settlement?

If you do not resolve the complaint at mediation, there will still be a hearing. You will receive a letter from the Tribunal explaining what to do to start preparing for a hearing, including deadlines for filing and exchanging documents. The mediator can also explain the hearing process to you and answer any questions you may have.

In most cases, a new member of the Tribunal will hear your case unless all the parties agree to having the mediator also preside over the case at a hearing.

If everyone agrees, you are always free to try and settle the complaint at any time during the proceedings. Please note that the *Canadian Human Rights Act* requires the Commission to approve any settlement agreement if the hearing has not yet started.

Pre-mediation conference call or test session

In some cases, the mediator may ask all the parties to participate in a pre-mediation conference call or may reach out to the parties individually if there are questions that the mediator believes need to be answered before the mediation. In most cases though, you will not have to do anything else and will have the chance to discuss all your questions with your mediator at your scheduled mediation.

If your mediation is proceeding by video, the mediator can do a demonstration of the videoconference platform, or to do a test of the system. This will also give you a chance to ask your mediator questions about how the online mediation will work and make you feel more comfortable about using the videoconference platform. Mediations can also be conducted by telephone

Confidentiality

The information you include in the Form is confidential and any documents you share will not be used for any other purpose. You are not allowed to share the other parties’ Forms, or any of the information you receive from them, with anyone.

Anyone who participates in the mediation, including a friend or support person you may bring, must sign a Mediation Agreement, and agree to keep everything they hear or see in the mediation confidential.

If the complaint settles at mediation, the terms of the settlement will also be confidential, unless the parties agree otherwise.

What is the role of the Canadian Human Rights Commission?

The Canadian Human Rights Commission referred your complaint to the Tribunal. The Commission will provide a copy of the complaint form, Investigation Report and Record of Decision to help the mediator understand the case.

If the complaint goes to a hearing, the Commission is a separate party in front of the Tribunal. The Commission does not represent the complainant.

If the Commission has decided to participate in this case, it will send a representative to the mediation. If so, the Commission may request any public interest solutions it hopes will be addressed at the mediation, or that it would be seeking if the complaint moves forward to a hearing.

If the Commission is at the mediation, it will also help prepare Minutes of Settlement if the parties agree to settle the complaint.

Should you have any questions or comments to the Tribunal so that this Questions & Answers can be adapted and improved where necessary, please send your questions or comments to the Tribunal by e-mail at: Registrar.Greffier@chrt-tcdp.gc.ca.