



**Alberta Human Rights
and Citizenship Commission**

The Human Rights Complaint Process:

A guide for respondents

A complaint must be made to the Alberta Human Rights and Citizenship Commission within one year after the alleged incident of discrimination.

The one-year period starts the day after the date on which the incident occurred. For help calculating the one-year period, contact the Commission.

Upon request, the Commission will make this publication available in accessible multiple formats. Multiple formats provide access for people with disabilities who do not read conventional print.

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Contact us

For more information about human rights law and the complaint process, please contact the Alberta Human Rights and Citizenship Commission. We are an independent commission of the Government of Alberta, reporting through the Ministry of Community Development. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

Northern Regional Office

800 Standard Life Centre
10405 Jasper Avenue
Edmonton, Alberta T5J 4R7

Confidential Inquiry Line (780) 427-7661

Fax (780) 427-6013

Southern Regional Office

Suite 310, 525 – 11 Avenue SW
Calgary, Alberta T2R 0C9

Confidential Inquiry Line (403) 297-6571

Fax (403) 297-6567

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

For province-wide free access from a cellular phone, enter *310 (for Rogers-AT&T) or #310 (for Telus).

TTY service for persons who are deaf or hard of hearing

Edmonton (780) 427-1597
Calgary (403) 297-5639
Toll-free within Alberta 1-800-232-7215

E-mail humanrights@gov.ab.ca

Website www.albertahumanrights.ab.ca

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Human rights law protects Albertans

The *Human Rights, Citizenship and Multiculturalism Act* is the legislation that protects Albertans from discrimination. The Alberta Human Rights and Citizenship Commission is an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

The **respondent** is the business, organization, service provider, landlord or individual that is being complained about.

A **complainant** is a person who believes they have experienced discrimination and chooses to complain to the Commission. A complainant may also make a complaint on behalf of someone else.

Making a complaint to the Commission or responding to a complaint is an orderly process—one step follows another. This helps to make sure the process is fair for everyone.

This handout is for you, as the **respondent** to a human rights complaint. It explains the complaint process and tells you about your rights and responsibilities. The Commission also has a handout for **complainants**.

Someone has complained to the Alberta Human Rights and Citizenship Commission about my organization or me. What does this mean?

If someone has made a human rights complaint against your organization or you, they are alleging that your organization or you have discriminated against them. When the Commission receives a human rights complaint, we assess the complaint to determine if we can accept it. We accept a complaint if:

- the complaint falls under the Commission's mandate and jurisdiction;
- the complainant has shown that there is reason to believe that discrimination **may** have occurred under the *Human Rights, Citizenship and Multiculturalism Act*; and
- the complaint was made within the timelines outlined in the *Act*. A complaint must be made to the Commission within one year after the alleged incident of discrimination. The one-year period starts the day after the date on which the incident occurred. For help calculating the one-year period, contact the Commission.

The *Act* does not allow a person to make a frivolous or vexatious complaint with malicious intent. This means that people should not make human rights complaints that are not serious. They should not make complaints just to cause trouble for someone. If people make such complaints, a complaint can be made against them.

You are the respondent in the complaint process. As a respondent, you will be asked to review the complaint and respond to it within 21 days of receiving it.

What kinds of discrimination does Alberta human rights law cover?

Areas of activity are the places and situations in which a person is protected from discrimination.

These descriptions are not legal definitions. For more information about areas, contact the Commission.

In Alberta, people may not be discriminated against because of their race, gender or other **grounds**.

These descriptions are not legal definitions. For more information about grounds, contact the Commission.

The *Act* prohibits discrimination in these **areas of activity**:

- employment practices such as hiring, firing, conditions of work, and equal pay
- employment applications, job advertisements and job interviews
- residential and commercial tenancy
- goods, services, accommodation or facilities customarily available to the public (for example, restaurants, stores, hotels, provincial government services)
- publishing, issuing or displaying (or causing to publish, issue or display) materials that could encourage discrimination or hatred
- membership in trade unions, employers' organizations or occupational associations

The *Act* prohibits discrimination based on the following **grounds**, whether the grounds are real or perceived:

- **Race:** belonging to a group of people related by common heritage.
- **Colour:** colour of a person's skin. This includes, but is not limited to, racial slurs, jokes and stereotyping.
- **Ancestry:** belonging to a group of people related by a common heritage.
- **Place of origin:** country or province where a person was born.
- **Religious belief:** system of belief, worship and conduct (includes native spirituality).
- **Gender:** being male, female or transgendered. Pregnancy, breastfeeding and sexual harassment are also included in the ground of gender.
- **Age:** Age is defined in the *Act* as "18 years or older." Persons who are 18 years or older can make complaints on the ground of age in these four areas:
 - employment practices
 - employment applications or advertisements
 - statements, publications, notices, signs, symbols, emblems or other representations that are published, issued or displayed before the public
 - membership in trade unions, employers' organizations or occupational associations

However, age is not protected in these two areas:

- tenancy: For example, a landlord advertises that an apartment building is for adults only and specifies that all tenants must be over 21 years old. Because age is not protected in the area of tenancy, a 19-year-old could not make a complaint of discrimination based on age.

– goods, services, accommodation or facilities that are customarily available to the public: For example, a movie theatre offers lower ticket prices to seniors (people over 65 years old) only. Because age is not protected in the area of services, a 55-year-old could not make a complaint of discrimination based on age.

Persons under the age of 18 can make complaints on all grounds except the ground of age. For example, a 16-year-old can make a complaint of discrimination in the areas of employment practices, tenancy, etc. based on the grounds of physical disability, race, gender, etc. but not on the ground of age.

- **Physical disability:** any degree of physical disability, deformity, malformation or disfigurement that is caused by injury, birth defect or illness. This includes, but is not limited to, epilepsy; paralysis; amputation; lack of physical coordination; visual, hearing and speech impediments; and physical reliance on a guide dog, wheelchair or other remedial appliance or device.
- **Mental disability:** any mental disorder, developmental disorder or learning disorder regardless of the cause or duration of the disorder.
- **Marital status:** the state of being married, single, widowed, divorced, separated, or living with a person in a conjugal relationship outside marriage.
- **Family status:** being related to another person by blood, marriage or adoption.
- **Source of income:** Source of income is defined in the *Act* as “lawful source of income.” The intent behind protecting source of income is to cover income that may attract a social stigma to its recipients, for example, social assistance, disability pension, and income supplements for seniors.
- **Sexual orientation:** Although it is not stated explicitly in the *Act*, the Government of Alberta has agreed to “read in” sexual orientation as a protected ground, effective April 2, 1998. This ground includes protection from differential treatment based on a person’s actual or perceived sexual orientation, whether homosexual, heterosexual or bisexual.

I have just received a copy of the complaint. What do I do?

Now it is time for you to tell your side of the story. You have 21 days to reply to the complaint, from the time you received a copy of it. You can respond in writing on the response form, which you received with the copy of the complaint. Or you can write a letter that answers all the questions asked on the form. Commission staff will work with you if you need help to prepare your response. When necessary, Commission staff will help a respondent write their response if they need help because of barriers such as language or literacy difficulties, or disability.

Whether or not you choose to use the response form, be sure to include your full name, telephone number and mailing address. If the complaint was made against a corporation or organization, give its name, business address and telephone number. Be sure to include all the information requested on the form in your response.

If you have any letters, memos, or other documents that support your position, you may wish to attach copies of them to your response.

In your response, tell us in your own words what happened. If you think the complainant is wrong, or there has been a misunderstanding and there was no discrimination under the *Act*, explain why.

If you agree that there has been discrimination, think about how this matter could be resolved. Is there some action you can take to help resolve the problem? Include your suggestions in your response. If the complainant accepts your suggestions, the complaint may be resolved, and the Commission may be able to close the complaint.

You do not have to hire a lawyer to respond to a human rights complaint. However, if you choose to hire someone to give you legal advice or represent you, you are responsible for the costs. The Commission does not pay legal costs for you or for the complainant.

Can't I just deal with the complainant myself?

Once the Commission has accepted the complaint, you must follow the Commission's complaint process. You may propose a resolution at any time, but you must work with the human rights staff person who is handling the complaint.

Respondents must not use their position to retaliate against the person making a complaint, or against anyone providing information about the complaint, or anyone helping the complainant. Retaliation is against the law and may become the basis for another human rights complaint.

Who sees my response?

The Commission will give a copy of your response to the complainant. The complainant may have a lawyer or someone else advising them. They may review your response.

What happens after I respond?

The complainant will review your response. One of three things may happen:

1. The complainant may choose to withdraw their complaint for various reasons. Your explanation may satisfy the complainant. Or the complainant may simply not want to continue with the complaint for their own personal reasons.
2. The complainant and you may want to try to work out your differences with the help of a conciliator assigned by the Commission. This is called **conciliation**, and it is a voluntary step, that is, it is your choice whether to try conciliation.
3. If the complainant or you do not want to participate in conciliation, the complaint will proceed to the investigation stage.

Conciliation is a voluntary, non-adversarial way to resolve disputes quickly. The success rate of conciliation is high: more than half of complaints are resolved at the conciliation stage.

Human rights staff are experienced in helping people resolve conflict. They are not advocates.

Human rights staff often have legal, business or social services backgrounds. They also receive specialized training in investigation and conciliation.

How does conciliation work?

If you choose conciliation, the Commission will assign a conciliator to work with you and the complainant. The conciliator is knowledgeable about human rights law and the Commission's complaint process. The conciliator will help you understand the human rights issues in the complaint, and what types of solutions are common in such complaints.

The success rate of conciliation is high: more than half of complaints are resolved through conciliation.

The conciliation process is not adversarial; it is an exchange of information about how each party sees the situation. You and the complainant may meet together with the conciliator, or each of you may meet with the conciliator separately or on the phone. The conciliator's job is to make the complainant's position clear to you and your position clear to the complainant, in a search for common ground.

The conciliator does not take sides or investigate the complaint. If you and the complainant cannot resolve the complaint, the complainant will be asked if they want the complaint to be investigated. If they do, the complaint will be placed in a queue to be assigned to an investigator. Any

information that you or the complainant provided during the conciliation is kept confidential. The investigator is not allowed to know what was discussed during conciliation.

How does investigation work?

Once an investigator is assigned, the investigator is immediately available to work on the complaint. You tell the investigator what you believe is important to the investigation and you name any people who may have useful information about the complaint. The complainant has this same opportunity.

The investigator considers the facts of the complaint thoroughly and impartially, assesses the information, and considers related law. The investigator assesses whether there is a reasonable basis to proceed to the next step in the complaint process—in other words, the investigator assesses whether the complaint has merit.

Throughout the process, the investigator will be in touch with both you and the complainant. If the complainant or you want to try to settle your differences at any point in the investigation process, the investigator can help you. The complainant may also withdraw the complaint at any time.

After the investigation is complete, you can expect to receive a report of the results of the investigation. The results will either support the complaint and show that it has **merit**, or they will show that the complaint has no merit.

A complaint is said to have **merit** if an investigation into the facts confirms that there is a reasonable basis in the available information to proceed with the complaint.

What happens if the complaint has merit?

If the complaint has merit, the investigator will work with you and the complainant to try to find a reasonable settlement.

A **remedy** can be financial or non-financial compensation for losses that the complainant experienced. A remedy is intended to restore the complainant to the position they would have been in if discrimination had not occurred. It is not intended to punish the respondent. Examples of remedies include money, an apology, or a change in policy. Remedy may also include your agreeing to participate in a human rights education activity. For more information about remedy, please see the Commission's *Remedy* information sheet.

A **remedy** is compensation for losses that the complainant experienced. It can be financial or non-financial.

When you make an offer to settle the complaint, you and the complainant can agree to the settlement by signing a binding release. This says that you

agree to end the complaint in exchange for the terms that you and the complainant agree upon.

If the complainant rejects what the director of the Commission thinks is a fair and reasonable offer from you to settle the complaint, the director can **discontinue** the complaint, and the complaint will be closed unless the complainant appeals.

If you do not offer a remedy that the director considers fair and reasonable, the director reports to the chief commissioner that you and the complainant are unable to settle the complaint. The chief commissioner then appoints a human rights panel to hear the complaint.

What happens if the complaint does not have merit?

The information collected by the investigator may show that your complaint does not have merit. The complainant can withdraw the complaint, and the complaint will be closed. The complaint is still confidential.

If the complainant does not withdraw the complaint, the investigator will make a formal report explaining why the complaint does not have merit, and the complaint will be **dismissed**.

What happens if the complainant disagrees with the decision to dismiss or discontinue the complaint?

If the complainant disagrees with the director's dismissal or discontinuance of the complaint, the complainant has 30 days after receiving notice of the dismissal or discontinuance to **appeal** the decision to the chief commissioner. The chief commissioner reviews certain information, including:

- selected documents, including the original complaint, your response, and the investigation report;
- the information that the complainant provided in the appeal; and
- any response you make to the appeal.

If the chief commissioner decides that the complaint should have been dismissed or that the proposed settlement was fair and reasonable, the chief commissioner denies the appeal.

If the chief commissioner decides that the complaint should not have been dismissed or discontinued, or that the proposed settlement was not fair and reasonable, the chief commissioner asks the complainant if they want to

An **appeal** is an action that only the complainant can take.

take the complaint to a human rights panel. If you disagree with the chief commissioner's decision, you can seek a judicial review from the Court of Queen's Bench. A judicial review is a review of the process used in making the decision, not an appeal of the decision, and must be requested within six months of the chief commissioner's decision.

If the complainant chooses to take their complaint to a human rights panel, then the chief commissioner appoints a panel. If the complainant does not choose to take their complaint to a panel, then the complaint is closed.

A **human rights panel** is made up of one or three human rights commissioners, who are appointed members of the Alberta Human Rights and Citizenship Commission. The panel acts as a quasi-judicial body—that is, they have the power to hear sworn evidence and decide a case, but their hearings are less formal than a court hearing. Panel hearings are open to the public.

If the complaint is to be heard by a panel, the panel coordinator will send you a guide that describes the panel process.