



Guide to a Human Rights Hearing

This document will provide you with general information on what to expect if your complaint goes to a public hearing.

What is a human rights hearing?

A human rights hearing or adjudication hearing is similar to a court hearing. Instead of a judge, however, there is an adjudicator. It is public. Both sides present their argument to the adjudicator. This includes opening and closing statements, witnesses and documents.

Do all complaints go to a hearing?

No. The Board of Commissioners reviews the complaint and documents relating to the complaint such as the reply, the investigation report and any responses to the report. If the Board determines that there is enough evidence of discrimination and the complaint cannot be resolved through mediation, it will refer the complaint to be determined at a human rights hearing.

How is the adjudicator selected?

The Board of Commissioners asks the Chief Adjudicator to appoint an adjudicator to conduct a public hearing. Adjudicators are independent and are **not** Commission staff or on the Board of Commissioners. The adjudicator is usually a lawyer practicing in Winnipeg. The Commission will send you a letter letting you know who that adjudicator is.

Do I need a lawyer?

You are entitled to be represented by a lawyer. The decision to have a lawyer, however, is up to you and you are not required to have one.

The Commission's legal counsel represents the Commission and consults with the complainant to gather the relevant facts and evidence. He or she then presents the complaint of discrimination to the adjudicator at the hearing.

How do I know when the hearing will be?

The hearing dates are set with the agreement of all parties. A notice of the hearing is sent to you by the Adjudicator. It is published, a few days before the hearing in the Winnipeg Free Press and is also posted on the Commission's website.

Will my name be used?

The names of the parties are part of the public notice unless a special request is made to the adjudicator to have names removed. The adjudicator considers the reasons for the request and decides whether or not to remove the name of some or all of the parties prior to the notice being published.

What happens at a human rights hearing and how much power does the adjudicator have?

A human rights hearing is similar to a court hearing. Both sides present their argument to the adjudicator, which includes opening and closing statements, witnesses and documents. Witnesses can be cross examined (or asked further questions) by the opposing party.

The Commission's legal counsel presents the complaint to the adjudicator. The Commission generally has a public interest in the outcome of the complaint. The complainant (the person who first filed the complaint) can also be represented by his or her own lawyer. The respondent (the

person or company or organization that the complaint was filed against) can represent him or herself or be represented by his or her own lawyer.

Hearings usually take at least 2 days and normally begin at 9:30 am and end at 4:00 pm with a break for lunch.

The adjudicator makes a decision that is legally binding. If either party appeals the decision, the case moves into the traditional court system.

What does the adjudicator already know about the complaint?

The adjudicator only gets a copy of the complaint and the reply to the complaint. Prior to the hearing, the adjudicator may convene a teleconference with the parties to talk about procedure, such as how many witnesses you will be calling and to see if everyone can agree that certain documents or facts will be presented to the adjudicator before the hearing.

Can an individual be forced to attend as a witness?

Yes. If an individual does not wish to attend as a witness voluntarily, you can request the adjudicator issue a subpoena that will require them to attend. Each party ordinarily exchanges a list of their witnesses with the opposing party, before the hearing.

What if I want to resolve the complaint without going to a hearing?

The parties can enter into a settlement agreement at any time. The Commission's legal counsel will usually try and see if the parties are interested in resolving the issues without a hearing at some point before the hearing. These are called a "without prejudice" settlement discussions because they will not affect either parties' position if the hearing does take place. If the parties reach a settlement, an agreement and release is signed.

Who can come to a hearing?

Anyone may attend the hearing, including the public and the media. The adjudicator will determine the use of cameras and recording devices. Audio/visual equipment is not ordinarily permitted during the hearing. The adjudicator may also prohibit publication or broadcast of the identities of the parties involved until a final written decision is released.

A court reporter will be present to keep an accurate record of the proceedings. An individual who is giving evidence as a witness cannot be at the hearing until he or she has finished giving testimony.

How long will it take to get the decision?

After the hearing, the adjudicator will deliver a written decision. This process usually takes at least a few months. You can request that the adjudicator not include your name in the written decision but this is normally done at the hearing. The decision is made by the adjudicator, **not** the Commission.

The adjudicator determines if there has been a violation of *The Human Rights Code* and if so, may order one or more of the following:

- Stop the discriminatory action or behaviour
- Compensate the party for any financial loss, expenses incurred or benefits lost because of the discrimination
- Compensate the party who was discriminated against for injury to their dignity, feelings or self-respect
- Pay the party exemplary damages, if the adjudicator considers this appropriate, for any malice or recklessness involved
- Adopt or implement a policy or program designed to prevent further discrimination

The adjudicator's written decision is sent to both you and the Commission. The Commission will then issue a news release and make the adjudicator's decision available to the media and the public. The news release and decision will be on the Commission's website.

Is there an appeal process?

You can apply to the Court of Queen's Bench for a review of the decision based only on the following reasons:

- The adjudicator committed an error of jurisdiction
- The legal process was not fair
- There was an error in law

What if the media contacts me?

Although there is nothing to stop you from speaking with the media, it is advised that you do not do interviews during the length of the hearing. If you have a lawyer, he or she may decide to speak with the media.

During the hearing, the Commission's executive director or chairperson or may answer questions with respect to the human rights process or, in broad terms, about the section of *The Code*, that is at issue in the complaint. Questions about the specifics of the complaint or hearing will not be answered until after the hearing has concluded. In most cases the Commission will wait for the decision before commenting.

Once the Commission has received the adjudicator's written decision it will respond to media questions. If you want, you can do so as well.

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