

MANITOBA HUMAN RIGHTS ADJUDICATION PANEL

GUIDELINES FOR ADJUDICATION HEARINGS

1. Purpose of these guidelines

The purpose of these guidelines is to facilitate the just and timely resolution of complaints which are referred by the Manitoba Human Rights Commission to be adjudicated by a member of the Manitoba Human Rights Adjudication Panel ("Adjudicator").

The guidelines are intended to assist the parties in knowing how to conduct themselves at a hearing and to ensure that all parties have equal and ample opportunity to be heard.

Proceedings before an Adjudicator should be conducted as informally and expeditiously as possible, with courtesy and respect.

2. What is a hearing?

- A hearing is a court-like process in which an Adjudicator hears evidence and submissions from the parties to a complaint to decide whether or not the complaint has been proven.
- Each party presents their position by bringing forward evidence for the Adjudicator to consider.
- The evidence may be in the form of witnesses and/or documents.
- The hearing is open to the public, including the media.
- However, the Adjudicator may prohibit publication or broadcasting of the identity of a party or witness until the Adjudicator's final decision has been rendered.
- In some instances, upon a party's application the Adjudicator may also allow a party's identity to be anonymized for the purpose of the Adjudicator's published decision.
- A court reporter is usually present to record the proceedings.

3. Parties to the hearing

- The parties to a hearing include:
 - the Complainant who filed the claim of discrimination with the Manitoba Human Rights Commission;
 - the Respondent(s), i.e. all the person(s) or organization(s) that are alleged to be responsible for the discrimination that is alleged to have taken place; and
 - the Manitoba Human Rights Commission, which represents the public interest.
- Parties are entitled to be represented by a lawyer or to represent themselves.

4. What is the Commission's role in the hearing?

- The Commission has "carriage of the complaint" which means it has the responsibility of presenting the evidence to prove the complaint. The Commission works closely with the Complainant to do this

5. Pre-hearing Conference

- After an Adjudicator has been designated to conduct an adjudication, they will contact the parties to schedule a pre-hearing conference. The purpose of a pre-hearing conference is to ensure that the parties are prepared for the hearing and that the hearing runs as smoothly and efficiently as possible. The pre-hearing conference will discuss such matters as dates for the parties to exchange witness lists and documents, as well as scheduling a date and location for the hearing.

- Most often the pre-hearing conference will take place by phone although it may also be conducted in person.
- Communication among the parties prior to, during or after the hearing is most often made through mail, email or telephone.
- Any interaction between a party and the Adjudicator must be made in the presence of the other parties. For example, all parties must be copied on any letter or email addressed to the Adjudicator. Similarly, any telephone call with the Adjudicator must have all parties present. This is done in order to preserve the Adjudicator's impartiality.

6. Language of hearings

- Hearings may be conducted in English, French, or a combination of both if the Adjudicator allows for that.
- Where a party or witness requires, interpretation services are provided at the hearing in languages other than English or French.
- The parties must let the Adjudicator know before the hearing, if interpretation services are needed.

7. Accommodation of *Code*-related needs

- At the pre-hearing conference, the Adjudicator may ask whether the parties or witnesses are likely to require accommodation of special needs at the hearing. People who are involved in hearings are entitled to accommodation (special arrangements) for needs related to the characteristics listed at section 9(2) of The *Code* (*Code*-related needs), unless to do so would cause undue hardship.

8. The Evidence at the hearing

- Unless all the parties agree about what the facts are, each party will have to present the evidence they believe proves their position. This will usually involve the parties and their witnesses testifying under oath or affirmation as well as presenting documentary evidence.
- The Adjudicator may determine the procedures to be used at the hearing and may receive such evidence or other information as they consider relevant and appropriate whether or not the evidence is given under oath or affirmation and whether or not it would be admissible in a court of law, unless the evidence is subject to any type of legal privilege.

9. Disclosure of Documents

- Disclosure of documents ensures a fair and expeditious process. It helps each party to know what the other side's case is about and prepare for the hearing accordingly.
- It is important for each party to know what the other party intends to say and rely on at the hearing in support of their position. No party should be taken by surprise.
- At the pre-hearing conference, the Adjudicator will likely set deadlines for the parties to disclose to each other any documents that are arguably relevant to the adjudication and any documents upon which they intend to rely at the hearing.
- Documents which are arguably relevant are those that have some relevance and connection to an issue or issues in dispute in the complaint, including the remedy that is being sought. These include both documents that the party intends to use at the adjudication and documents that the party does not intend to use but which are otherwise relevant to the case.
- The term "documents" includes written documents (policies, memos, emails, contents of a human resources file, etc.) as well as other things such as photographs, sound recordings, videotapes, charts, graphs, maps, floor plans, information stored electronically and even physical objects.

10. Witnesses

- At the pre-hearing conference, the Adjudicator will also want to know the number of witnesses each party intends to call at the hearing. The Adjudicator will likely set deadlines for the parties to exchange witness lists and a short summary of each witness' evidence. This helps to ensure participants can prepare for the hearing and not be taken by surprise.
- The term "witnesses" refers to people who can provide evidence (information) about an issue or fact that is relevant to the dispute between the parties. For example, a witness may have been present at a relevant event and may have information about what they saw or heard. Witnesses can have other types of personal knowledge or information. For example, a witness may know about an important document, such as an organization's policy, and may be able to explain how it was developed, applied in the past or how it relates to the events at issue in the complaint.
- Generally, witnesses are required to focus on giving information about issues and facts rather than offering their opinion about a claim. The exception to this is expert witnesses. A party may want to call an expert witness – someone who has specialized experience, education, training or skills that qualify them to give an informed opinion about some matter that is relevant to the complaint, to testify at the hearing.
- If a party wants to call an expert witness, an Adjudicator will likely require that the party provide a copy of the expert witness' written report, or a full summary of the expert witness' proposed evidence, as well as their *curriculum vitae* (résumé) setting out the expert's qualifications.
- The Adjudicator has discretion not to allow any witness to testify.
- If a party is concerned that a witness may not attend to give his or her evidence at the hearing, or if the party wants added assurance that a witness will come to the hearing, it can subpoena the witness. Sometimes a witness wants a subpoena in order to be able to be absent from work.
- Subpoenas will be issued by the Adjudicator upon request.

11. Book of Agreed Documents, Statement of Agreed Facts, Authorities

- Where the parties can agree, they may compile the documents upon which they intend to rely, into a Book of Agreed Documents. The Commission will often facilitate the preparation of this book.
- Further, where the parties can agree, they may also compile a summary of facts that are not in dispute into a Statement of Agreed Facts. Again, the Commission will often facilitate the preparation of this document.
- The Adjudicator may set deadlines for a Book of Agreed Documents, any Statement of Agreed Facts and any legal authorities upon which the parties intend to rely, to be provided to him/her in advance of the hearing.

12. Notice of Hearing

- The adjudication dates are set by agreement between the Adjudicator and the parties.
- At least 14 days prior to the hearing, the Adjudicator will send out a Notice of Adjudication to the parties. The notice is also published a few days before the hearing in the Winnipeg Free Press (or other local newspaper if the hearing is held outside of Winnipeg) and is posted on the Commission's website.
- The names of the parties are included in the public notice unless a special request has been made to the Adjudicator to have names removed or anonymized and the Adjudicator has granted the request.

13. Failure to attend a hearing

- If a party was notified of the adjudication hearing but does not attend, the Adjudicator may still proceed with the adjudication to determine whether the complaint has been proven and if so, what remedy should be ordered.

14. What to expect at the hearing

- At the beginning of the hearing, the Adjudicator will introduce him or herself and ask the parties and representatives to introduce themselves.
- A hearing before an Adjudicator is generally less formal than a court proceeding. All parties and their representatives are required to conduct themselves with courtesy and respect towards each other and the Adjudicator.
- Subject to the direction of the Adjudicator, a party may expect to make an opening statement, question witnesses and introduce documents as evidence.
- Except for the complainant and respondent, witnesses will generally be asked to sit outside the hearing room until they have given their evidence.
- After all the witnesses are finished the Adjudicator will ask the parties to make a closing argument, which should include their position on the remedy.
- A closing argument briefly summarizes the evidence that the Adjudicator has heard at the hearing that supports the party's case. It can refer to other human rights decisions which are similar to your case and support your point of view.
- If you are representing yourself at a hearing, the Adjudicator will understand that you cannot be expected to present a legal argument in the same way that it would be presented by a lawyer. The Adjudicator will consider the law which is relevant to your case whether or not you specifically refer to it.
- If you want to refer to an earlier decision of the Adjudication Panel or one which has been delivered by another human rights tribunal or a court, you should have a copy of the decision to give the other parties and the Adjudicator, if you have not already done so in advance of the hearing.
- If you are a respondent, you should tell the Adjudicator why you think the Commission has not proved that a violation of the *Code* has taken place and/or that you have proven a defence to the complaint of discrimination.

15. The Decision

- The Adjudicator will rarely make a decision at the hearing. They will most often have to take time to consider everything they have heard or read before they can make a decision.
- It is not unusual for an Adjudicator to take between 2-6 months to complete their decision. Where the Adjudicator has not issued their decision respecting the complaint within 60 days of the completion of the hearing, they must advise the Chief Adjudicator of the reasons for the delay and indicate when a final decision will be rendered.
- In making their decision, the Adjudicator determines if there has been a violation of *The Human Rights Code* and if so, may order that the respondent do one or more of the following:
 - stop the discriminatory action or behaviour
 - compensate the complainant for any financial loss, expenses incurred or benefits lost because of the discrimination
 - compensate the complainant who was discriminated against for injury to their dignity, feelings or self-respect
 - pay the complainant 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

- Every decision or order made by an Adjudicator must be issued in writing and accompanied by a written statement of the reasons for it. The Adjudicator must provide a copy of the decision and reasons, to all the parties.
- The Commission must make every decision, order and statement of reasons made by an Adjudicator available to the public unless the Adjudicator has directed that the Commission delete any information that would disclose the identity of a party or witness from a decision because they believe the disclosure would cause undue prejudice or hardship to the party or witness.
- Once the Commission receives the decision it will often issue a news release and will make the decision available to the media and the public.
- The decision will be published on the Commission's website.
- Adjudicator's decisions are also published on on-line legal databases which are available to the public.

16. Resolution without proceeding through a hearing

- The parties can enter into a Settlement Agreement at any time before the Adjudicator issues their decision.
- If the parties settle, they will sign an agreement and release.
- Under s.37.1 of the *Code*, if a respondent makes a settlement offer after an Adjudicator has been designated to hear the complaint, the party who makes the offer can ask the Chief Adjudicator to have a different Adjudicator determine if the settlement offer is reasonable.
- If a complainant rejects a settlement offer that that Adjudicator considers to be reasonable, that Adjudicator must terminate the adjudication to the extent that it relates to the parties to the settlement offer.

17. Appeal Process

- A party can apply to the Court of Queen's Bench for a review of the Adjudicator's decision based only on the following reasons:
 - the Adjudicator committed an error of jurisdiction;
 - the legal process was not fair; or
 - there was an error in law.

18. Sources of Information about Human Rights

- For information about the *Code*, human rights issues in Manitoba or human rights education:
- Website: www.manitobahumanrights.ca/
- Canadian Legal Information Institute (CanLII) is a free internet resource offering access to legal documents and copies of the MHRBAD's decisions issued since 2005: www.CanLII.org
- The Canadian Human Rights Reporter is available online (for a fee) or in many law libraries: www.cdn-hr-reporter.ca
- Quicklaw is an online legal database (for a fee): www.lexisnexis.ca/en/quicklaw/