

PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION



GUIDE TO THE COMPLAINT PROCESS

THE PRINCE EDWARD ISLAND HUMAN RIGHTS ACT

The PEI Human Rights Act states that every person is free and equal in dignity and rights. Every Canadian province and territory has similar human rights legislation that promotes this simple principle. The Act became law on September 11, 1976.

The Act prohibits discrimination in certain situations on the basis of personal characteristics or “grounds”. “Discrimination” is unequal, prejudicial treatment of persons.

Discrimination is prohibited in:

- Employment
- Volunteering
- Leasing or Selling Property
- Publishing, Broadcasting and Advertising
- Offering Accommodations, Services or Facilities to the Public
- Membership in Professional, Business or Trade Associations and Employee Organizations

Discrimination on the basis of any of the following grounds is prohibited:

- | | |
|---|-----------------------|
| - age | - association |
| - colour or race | - creed or religion |
| - ethnic or national origin | - criminal conviction |
| - family status | - marital status |
| - physical or mental disability | - political belief |
| - sexual orientation | - source of income |
| - sex (including pregnancy and sexual harassment) | |

Discriminating against someone for filing a complaint or giving evidence to the Commission is also prohibited.

- * A booklet describing each ground of discrimination is available by contacting the Commission or accessing our website.

Examples of Discrimination:

You may have been discriminated against if you have been:

- dismissed from employment because you are pregnant
- refused an apartment because you have children
- refused employment because of your age
- refused employment because of a physical or mental disability
- refused admission to a club, hotel or guest home because of your sexual orientation
- harassed on the basis of sex or race at work
- refused service at a restaurant because you have an assist animal
- refused employment because of a criminal conviction that is unrelated to the job
- passed over for a promotion because you have a spouse and/or children

THE PEI HUMAN RIGHTS COMMISSION

The PEI Human Rights Commission administers and enforces the Human Rights Act. The Commission also develops programs of public information and education about human rights through seminars, publications and responses to general inquiries.

The Act provides for the appointment of not less than three and not more than nine Commissioners, one of who is designated as Chairperson. The Commissioners perform administrative duties, and one or more Commissioners form a Human Rights Panel to adjudicate complaints.

The Commission is staffed by an Executive Director, an Education Officer, a Human Rights Officer, and an Administrative/Intake Officer.

THE COMPLAINT PROCESS

Costs Associated with the Complaint Process

There is no cost to file a complaint, respond to a complaint, or to participate in an investigation, settlement negotiations or a panel hearing. Parties are not required to have legal representation; however, a Complainant or Respondent who hires legal counsel to represent them will be responsible for the legal costs they incur. Settlement agreements or panel orders may require the Respondent to pay monetary compensation to the Complainant.

Filing a Complaint

Any person, except the Commission or an employee of the Commission, who has reasonable grounds for believing that a person has contravened this Act may make a complaint to the Commission. Under the Act, “person” includes employers, organizations or associations.

A complaint must be:

1. Made in writing in a form acceptable to the Commission.
(Complaint forms are available from the Commission on our website at www.gov.pe.ca/humanrights)
2. Made within **one year** after the alleged contravention of the Act occurred.

The person making the complaint (the “Complainant”) must indicate the name of the person or organization they are making the complaint against (the “Respondent”), and when the alleged act of discrimination occurred. The Complainant must then indicate the situation in which the alleged discrimination occurred. For example, the discrimination may have occurred in employment or when the Complainant was seeking public services. The Complainant must then indicate the basis of the alleged discrimination. For example, does the Complainant feel he or she was discriminated against on the basis of his or her age, religion or race?

The Commission requests that the Complainant give the details of the alleged discrimination he or she is complaining about. It is helpful if the Complainant provides dates, places and the full names of any persons involved. The complaint form asks the Complainant to suggest how the complaint could best be resolved. The Complainant may seek:

- a letter of apology
- a letter of reference
- an education session provided by the Commission's Education Officer to the Respondent
- an indication that the Respondent will not discriminate in the manner complained of in the future
- monetary compensation for injury to dignity and hurt feelings
- monetary compensation for lost wages
- monetary compensation for expenses incurred due to the discrimination
- reinstatement to an employment position
- provision of the services or accommodations that were denied

The Complainant must sign and date the complaint form. Complaints cannot be made anonymously. Any documents that the Complainant feels are relevant to the complaint may be attached to the complaint.

Until a human rights panel has made a ruling, a Complainant may withdraw his or her complaint at any time by filing a Notice of Withdrawal.

Responding to a Complaint

After the complaint is filed, the Administrative/Intake Officer sends a copy of the complaint and a response form to the Respondent. The Respondent has **30 calendar days** to file a written response to the complaint with the Commission.

The Respondent should address the allegations set out in the complaint. It is helpful if the Respondent provides dates, places, and the full names of anyone involved. The response form asks the Respondent to suggest how the complaint could best be resolved. The Respondent must sign and date the response form. Any documents that the Respondent feels are relevant to the complaint may be attached to the response form. When the Administrative/Intake Officer receives a response to the complaint, a copy of the response is sent to the Complainant. The Complainant has **30 calendar days** to submit comments in reply to the response.

Investigation

The Act states that the Executive Director shall investigate and attempt to settle a complaint. However, the Act also states that, at any time, the Executive Director may dismiss or discontinue a complaint. Therefore, not all complaints will be investigated.

The duty to investigate is often delegated to the Commission's Human Rights Officer. The Human Rights Officer will conduct an impartial investigation. The investigation usually includes interviews with the parties, witnesses and/or experts, and the gathering of documentation or other materials.

Investigation Report

When the investigation has been completed, the Human Rights Officer may prepare an Investigation Report detailing the complaint, the response to the complaint, and the information gathered during the investigation. The Human Rights Officer sends the report to the Complainant and the Respondent, who have **30 calendar days** to submit any further comments. The report is then forwarded to the Executive Director to assist him in deciding whether to dismiss or discontinue the complaint, or forward the complaint to a panel hearing.

Settlement

The Commission will try to assist the Complainant and Respondent to resolve the complaint through settlement. A settlement is an agreement between the Complainant and the Respondent about how the alleged discrimination will be addressed. Through a settlement, the Respondent may agree to:

- provide a letter of apology
- provide a letter of reference
- attend an education session on human rights provided by the Education Officer
- not discriminate in the manner complained of in the future
- pay monetary compensation for injury to dignity and hurt feelings
- pay monetary compensation for lost wages
- pay monetary compensation for expenses incurred due to the discrimination
- reinstate the Complainant to an employment position
- provide the services or accommodations that were denied

The Commission encourages the Complainant and Respondent to settle the complaint whenever possible because it is generally less costly and more effective if the Complainant and Respondent develop their own solution instead of having one imposed on them.

A settlement may be agreed upon at any time before a human rights panel has made a ruling on the complaint.

Executive Director's Decision

Section 22 (4) of the Act states that the Executive Director may, at any time:

- (1) dismiss a complaint if the Executive Director considers that the complaint is without merit;

- (2) discontinue further action on the complaint if, in the opinion of the Executive Director, the complainant has refused to accept a proposed settlement that is fair and reasonable;
- (3) discontinue further action on the complaint if it could be dealt with more appropriately by an alternate method of resolution under any other Act, or if grievance or other review procedures have not been exhausted; or
- (4) report to the Chairperson of the Commission that the parties are unable to settle the complaint.

The Commission notifies the parties in writing of the Executive Director's decision.

Appeal

If the Executive Director dismisses or discontinues a complaint, the Complainant has **30 calendar days** to appeal the decision and have it reviewed by the Chairperson of the Commission. The Commission advises the Respondent of the appeal. The Chairperson will either uphold the Executive Director's decision or refer the complaint to a Human Rights Panel. The Chairperson may consider new information.

Human Rights Panel

If a complaint is not dismissed, discontinued, or settled, the Executive Director reports this to the Chairperson of the Human Rights Commission and the Chairperson shall forward the complaint to a Human Rights Panel Hearing. A Panel is made up of one or more Commissioners of the Human Rights Commission. The hearing is open to the public, unless the Panel determines that the hearing should be held in private. Prior to the hearing, each party must submit any documents and written submissions on fact and law that they intend to rely on at the hearing. At the hearing, each party may call witnesses and make oral submissions.

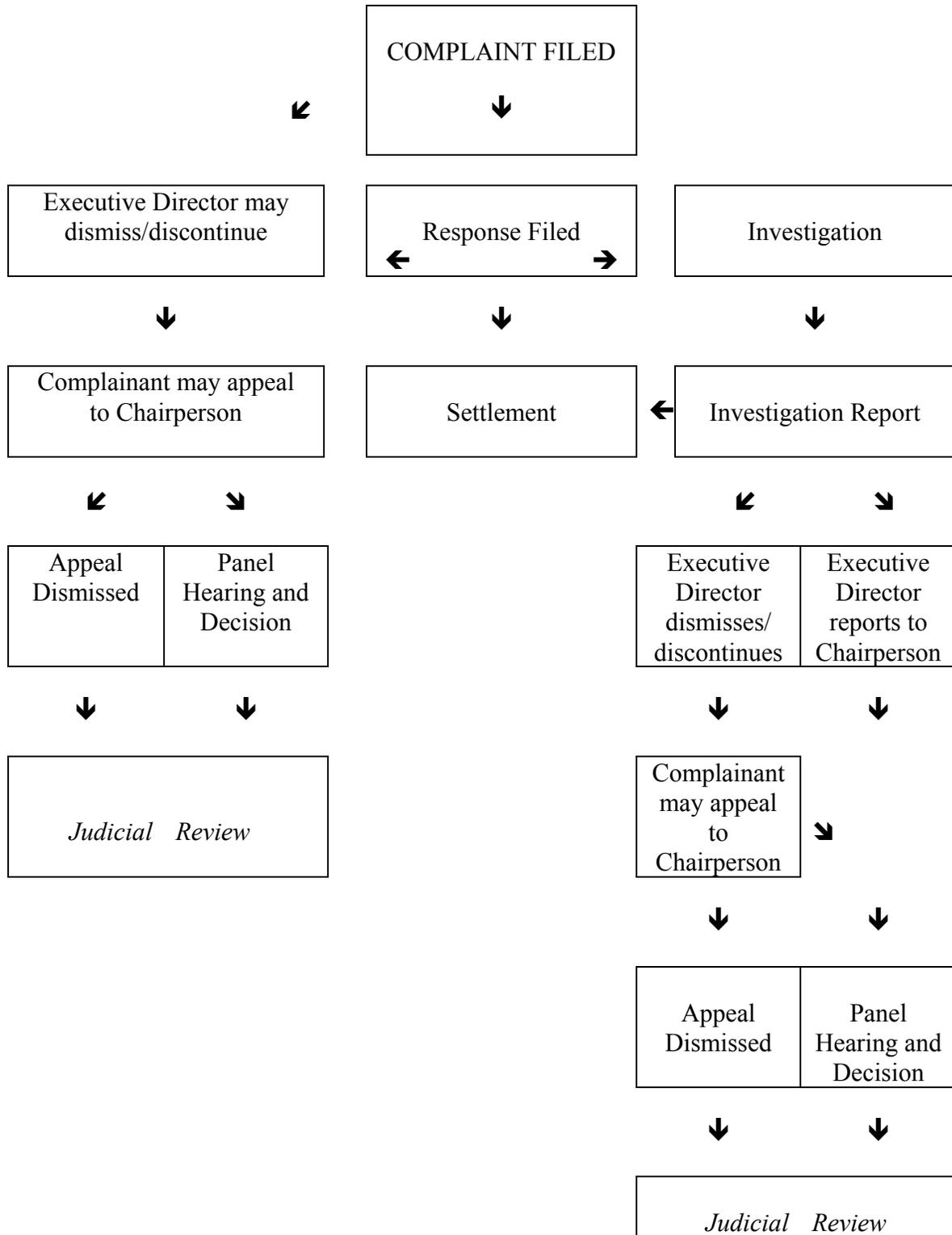
If the Panel finds that the complaint is without merit, it may dismiss the complaint. If the Panel finds that the complaint has merit, in whole or in part, it may order the Respondent to do any or all of the following:

- to cease the discrimination;
- to refrain in future from committing the same or any similar discrimination;
- to make available to the complainant, or other person dealt with contrary to this Act, the rights, opportunities or privileges that the person was denied contrary to this Act;
- to compensate the complainant for wages or lost income or expenses incurred;
- to take any other action the Panel considers proper to place the complainant in the position he/she would have been in, before the contravention.

Judicial Review

An application may be made to the Supreme Court of Prince Edward Island, Trial Division, for a review of a decision of the Chairperson of the Commission or a decision and order of a Human Rights Panel. This application must be made **within 30 days** of the date of the decision in question. Please refer to the Judicial Review Act R.S.P.E.I. 1988, Cap. J-3, for further information.

PEI HUMAN RIGHTS COMPLAINT PROCESS



*Complaint may be settled or withdrawn at any time prior to panel decision

COMMISSION PUBLICATIONS

Information booklets and guides are available by contacting the Commission or accessing our website.

PEI Human Rights Commission

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This guide contains an overview of the PEI Human Rights Commission's complaint process, as interpreted by the Commission. It does not contain a complete statement about human rights law. If you have any questions or concerns about human rights, please contact the Human Rights Commission.