

Guideline on Delegation of Compliance Functions under the Human Rights Act

Adopted upon Royal Assent of Bill 51, *An Act to Amend the Human Rights Act.*¹

1.0 THE GUIDELINE

1.1 The New Brunswick Human Rights Commission (the Commission) reaffirms its commitment to ensure that complaints are handled with utmost professionalism and dealt with in an effective and efficient manner which is administratively fair and expedient. This guideline permits the delegation of authority to Commission staff by the Commission in order to enable its case management function.

1.2 The Commission's Director (or the Director's designate), in conjunction with the Human Rights Officer and the Commission's Legal Counsel, may close a complaint file if the complaint meets the criteria described in this Guideline. Any such decision is subject to the right of a dissatisfied complainant or respondent to make a written request for a review by the Commission.

1.3 The Commission, pursuant to subsection 18.1(1) of the New Brunswick *Human Rights Act* (the *Human Rights Act*), hereby affirms the authority of the Director to designate any staff member or an outside investigator or mediator to inquire into any complaint made pursuant to s. 19(1) and to endeavour to effect a settlement of the matter complained of. Ancillary to such authority, the Commission grants to the Director (or the Director's designate), in conjunction with the Human Rights Officer and the Commission's Legal Counsel, the necessary powers to exercise the functions set out in s. 19(2), 20 and 21 of the *Human Rights Act*.

1.4 The Commission, pursuant to subsection 18.1(1) of the *Human Rights Act* hereby affirms the authority of the Commission's Legal Counsel (Head of Mediations) and/or Lawyer at the Commission (Head of Investigations) to designate any staff member or an outside investigator or mediator to inquire into any complaint made

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pursuant to s. 19(1) and to endeavour to effect a settlement of the matter complained of.

1.5 Nothing in this Guideline derogates from the Director's authority regarding the Commission's human resources and financial management.

2.0 LEGISLATION

Sections 19, 20, 21 and 22 of the *Human Rights Act* provide that:

19(1) The Commission shall inquire into a complaint made under section 17 and shall endeavour to effect a settlement of the matter complained of.

19(2) The Commission may dismiss a complaint at any stage of the proceedings, in whole or in part, if the Commission in its discretion determines

- (a) the complaint is without merit,
- (b) the complaint is frivolous, vexatious or made in bad faith,
- (c) the complaint is beyond the jurisdiction of the Commission,
- (d) the complaint has already been dealt with in another proceeding,
- (e) the complainant has abandoned the complaint, or
- (f) the complainant has declined a settlement offer that the Commission considers fair and reasonable.

20(1) To inquire into and endeavour to effect a settlement of a complaint, the Commission may

- (a) order a person to produce or provide access to any relevant document in the person's possession or control,
- (b) to take extracts from or make copies of a document referred to in paragraph (a),
- (c) require any person to make statements either orally or in writing in the form required by the Commission,
- (d) administer oaths and affirmations,
- (e) require evidence to be given under oath or affirmation, and
- (f) require statements to be verified by affidavit.

20(2) If a person fails to comply with a provision of subsection (1), the Commission may apply to The Court of Queen's Bench of New Brunswick for an order directing the person to comply with the provision.

21(1) For the purposes of section 20, a delegate may enter any part of premises normally accessible to the public without a warrant at any reasonable time.

21(2) A delegate may apply to a judge for an entry warrant under the *Entry Warrants Act* before or after attempting to effect entry to any premises.

21(3) A delegate of the Commission shall not enter a private dwelling or any part of premises not normally accessible to the public unless he or she

- (a) is entering with the consent of a person who appears to be an adult and an occupant of the dwelling or premises, or
- (b) has obtained an entry warrant under the *Entry Warrants Act*.

22(1) Repealed

22(2) If a person named in a complaint as the complainant or a person named in a complaint who is alleged to have violated this Act is not satisfied with the decision made in relation to the complaint under a delegation under section 18.1, within 30 days after receipt of the decision, that person may request that the decision be reviewed by the Commission.

22(2.1) If, in the opinion of the Commission, the circumstances warrant it, the Commission may extend the time to request that a decision be reviewed under subsection (2).

22(3) A request under subsection (2) shall be in writing, setting out the reasons for the request and all relevant facts, and delivered personally or sent by prepaid registered or certified mail to the Commission.

22(4) When a request to review a decision is made under this section, the Commission shall review the decision and may uphold, vary or rescind the decision.

3.0 PROCEDURE ON FILE CLOSURE

3.1 A decision may be made by the Director (or the Director's designate) of the Commission, in conjunction with the Human Rights Officer and the Commission's Legal Counsel, to close a file.

3.2 The decision to close the file under this Guideline may be made when:

- (a) the complaint is settled to the satisfaction, expressed in writing, of both the Complainant and the Respondent;
- (b) the complaint is withdrawn, in writing, by the Complainant;
- (c) the complaint is based on acts which occurred outside the normal one-year limitation period for filing a complaint, unless an extension of the time limit may be made pursuant to s. 18(2) of the *Human Rights Act*,

- (d) the whereabouts of the Complainant cannot be ascertained, or the Complainant has neglected or refused to contact Commission staff, notwithstanding the documented efforts by the Commission's staff (i.e. registered mail, voicemail messages, emails) requesting the Complainant to contact staff over a 1 month (30 days) period and therefore the Complainant has abandoned the complaint;
- (e) the Complainant is not an aggrieved person under the *Human Rights Act*;
- (f) the complaint is clearly not within the Commission's jurisdiction;
- (g) the complaint is without merit;
- (h) the subject matter of the complaint has been the subject of a settlement where a release has been freely and willingly signed by the Complainant;
- (i) the Complainant confirms that on the basis of the same facts, she/he will pursue the same remedy by a process other than that provided for in the *Human Rights Act*;
- (i.1) a decision maker with the jurisdiction to decide on human rights issues has already ruled on the matter and has either provided an order containing a remedy or has dismissed the allegations;
- (j) the complaint is clearly frivolous, vexatious or made in bad faith;
- (k) the Complainant has declined a settlement offer that the Commission and/or Director considers fair and reasonable.

3.3 The decision to close the complaint, together with a copy of this Guideline, will be communicated in writing to the Complainant and Respondent (if the Respondent has been advised of the complaint) without delay.

3.4 If the Complainant or Respondent is dissatisfied, the Complainant or Respondent may make a written request for a review by the Commission, setting out the reasons for the request and all relevant facts, within 30 calendar days of being notified of the closure of the file.

3.5. The Commission may, if the Commission determines that the circumstances warrant it, extend the time to request that a decision be reviewed. The Complainant or Respondent seeking an extension to the 30 calendar days, must provide reasons with supporting documentation indicating why they were unable to file the request for review within the 30 calendar days time limit.