

Guideline on Time Limit Extension for Complaint Initiation

May 2017



NEW BRUNSWICK
HUMAN RIGHTS COMMISSION
COMMISSION DES DROITS
DE LA PERSONNE DU NOUVEAU-BRUNSWICK

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Human Rights Act, s. 18

Adopted May 5, 2017¹

1.0 Purpose

The purpose of this Guideline is to ensure that the provision of s. 18 of the *Human Rights Act* (the *Act*) is administered in a fair, consistent and equitable manner; i.e., that the one year time limit imposed by s. 18(1) is extended by the Commission under s. 18(2) in appropriate and defensible circumstances.

1.1 Legislative Provision

Section 18 of the *Act* provides that:

s. 18(1) Subject to subsection (2), a complaint shall be filed within one year after the alleged violation of the *Act*.

s. 18(1.1) Despite subsection (1) and subject to subsection (2), if a continuing violation is alleged, the complaint must be filed within one year of the last alleged instance of the violation.

s. 18(2) the Commission may extend the time for the filing of a complaint if, in the opinion of the Commission, circumstances so warrant it.

1.2 Continuing Violations

For allegations to constitute a continuing violation under s. 18(1.1), there must be a succession or repetition of separate acts of discrimination of the same or similar character. These must be “acts of discrimination which could be considered as separate contraventions of the *Act*, and not merely one act of discrimination which may have continuing effects or consequences”.² Further, the allegations of discrimination must occur with sufficient frequency.³

If a continuing violation of the *Act* is alleged in a complaint, only the last alleged instance of the violation must fall within the one year time limit. In such complaints, a time limit extension under s. 18(2) is unnecessary for alleged acts outside the one year time limit if they are part of the alleged continuing violation.

¹ Previously adopted April 15, 1996; Modified May 11, 2011, March 14, 2012 and May 5, 2017.

² *Manitoba v. Manitoba (Human Rights Commission)*, [1983] M.J. No. 223 at para. 19.

³ *A.B. v. Brunswick News Inc. (No.4)*, (2009) 69 CHRR D/246 (NB BdInq) at para. 115.

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However, if the Commission is of the view that the alleged acts that are outside the one year time limit do not constitute a continuing violation under s. 18(1.1), the Commission may require a complainant to seek a time limit extension under s. 18(2) in order for those alleged acts to be considered as part of the complaint.

2.0 Grounds for Exercise of Commission's Discretion under s. 18(2)

The Commission may extend the one year time limit for making a complaint under s. 18(1) where:

- a) there is a strong arguable case, both in fact and law;
- b) there is evidence of a substantial loss or damage to the complainant and a clearly identifiable remedy;
- c) the complainant had a *bona fide* reason, as determined by the Commission, for not filing the complaint within the one year time limit; and
- d) the respondent will not be unduly prejudiced by the extension.

2.1 Interpretation

2.1.1 "Strong Arguable Case", in the context of this Guideline, includes an analysis of the complainant's allegations and the respondent(s)' response to the allegations.

2.1.2 "Evidence of a Substantial Loss or Damage and a Clearly Identifiable Remedy", in the context of this Guideline includes, but is not limited to:

- i. information and/or documentation pertaining to special damages, including, but not limited to:
 - a. lost wages; and
 - b. expenses (other than legal fees) incurred because of the violation (replacement health benefits, moving costs if evicted due to discriminatory reasons, etc.);
- ii. information and/or documentation pertaining to general damages (the impact the alleged discriminatory action has had on one's dignity, feelings and self-respect); and
- iii. information with respect to the remedy sought such as reinstatement to employment position, compensation for special damages and general damages, etc.

2.1.3 "Bona fide reason, as determined by the Commission", includes, but is not limited to:

- i. mental or physical disability, supported by specific medical documentation from the complainant's health care provider (physician, psychiatrist, psychologist, etc.) indicating the complainant's inability to file within the timeline was directly due to a physical or mental disability;

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- ii. the exercise of a statutory or other applicable appeal or review right in a timely and appropriate fashion, such as:
 - a. an internal complaint with the respondent employer, respondent service provider, etc.;
 - b. a grievance procedure;
 - c. an appeal in the courts; or
 - d. an appeal of a WorkSafeNB decision.
- iii. the complainant did file a complaint with the Commission within 30 days following the failed settlement discussions to resolve the matter with the respondent(s);
- iv. the complainant's lawyer missed the specified time line to file the complaint although being instructed by the complainant to file the complaint; or
- v. any other justified reason as determined by the Commission.

2.1.4 “undue prejudice”, in the context of this Guideline, means an actual loss of evidentiary position as a result of the disappearance of a witness, document or other evidence.

For More Information

For further information about the *Act* or this guideline, please contact the Commission at 1-888-471-2233 toll-free within New Brunswick, or at 506-453-2301. TTD users can reach the Commission at 506-453-2911.

You can also visit the Commission's website at <http://www.gnb.ca/hrc-cdp> or email us at hrc.cdp@gnb.ca

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