

New Brunswick Human Rights Commission

Guideline on Delegation of Compliance Functions under the Human Rights Act

Adopted March 10, 1997¹

1.0 THE GUIDELINE

1.1 The New Brunswick Human Rights 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 will permit the delegation of authority to Commission staff by the New Brunswick Human Rights Commission in order to strengthen its case management function.

1.2 The Commission's Director, 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 hereby affirms the authority of the Director to designate a Human Rights Officer, any other staff member or the Director personally to inquire into any complaint made pursuant to s. 18(1) and to effect a settlement of the matter complained of. Ancillary to such authority, the Commission authorizes the Director, in conjunction with the Human Rights Officer and the Commission's Legal Counsel, to exercise the functions set out in s. 18(3), 18(4), 19 and 19.1 of the *Human Rights Act*.

2.0 LEGISLATION

Sections 18, 19, 19.1 and 19.2 of the *Human Rights Act* provide that:

18(1) The Commission itself or through any person designated so to do shall inquire into any complaint made pursuant to section 17 and shall endeavour to effect a settlement of the matter complained of.

18(2) If, in the opinion of the Commission, a complaint is without merit, the Commission may dismiss the complaint at any stage of the proceedings.

18(3) If in the opinion of the Commission it is necessary, for the purposes of inquiring into and endeavouring to effect a settlement of the complaint, that a per-

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son be designated to exercise the powers in section 19, the Commission may apply to a judge of the Provincial Court for authority to designate such a person.

18(4) The judge, if he is satisfied that it is reasonably necessary for the purposes of the Commission's functions under this section, may authorize the Commission to designate a person to exercise the powers in section 19.

19 When so authorized by a judge of the Provincial Court under section 18, the Commission may designate a person who may, for the purpose of inquiring into and endeavouring to effect a settlement of the complaint made pursuant to section 17,

(a) inspect and examine any book, payroll, personnel record, register, notice, document, and any other record of any person that in any way, relates to

(i) the wages, hours of labour, or conditions of employment affecting any person,

(ii) membership of any person in or application by any person for membership in a trade union, employers' organization, professional association, or business or trade association,

(iii) any accommodation, services or facilities available to the public; and

(iv) the occupancy of any commercial unit or dwelling unit;

(b) take extracts from or make copies of any entry in any book, payroll, personnel record, register, notice, document, or record referred to in paragraph (a);

(c) require any person to make or furnish full and correct statements, either orally or in writing in whatever form is required respecting matters referred to in paragraph (a) and, in the discretion of the member of the Commission or person so authorized, require the statements to be made by the person on oath, or verified by affidavit; and

(d) require any person to make full disclosure, production, or delivery to the Commission, or to the person so authorized, of

(i) any record, document, statement, writing, book, paper, extract therefrom, or copy thereof that the person has in his possession or control, or

(ii) other information, either oral or in writing and either verified on oath or otherwise as may be directed.

that may in any way relate to matters referred to in paragraph (a).

19.1 A person designated under section 19 may enter any place to which he reasonably requires access for the purposes of that section, and may, before or after attempting to enter such place, apply for an entry warrant in accordance with the *Entry Warrants Act*.

19.2(1) The Commission may, in writing, delegate to an employee of the Commission the duties and powers of the Commission under subsections 18(1) and (2).

19.2(2) Where 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 subsection (1), that person may, within fifteen days after receipt of the decision, request that the decision be reviewed by the Commission.

19.2(3) A request referred to in 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.

19.2(4) Where 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 of the Commission, in conjunction with the Human Rights Officer and the Commission's Legal Counsel, to close a file. The decision and supporting reasons must be communicated in writing to the Commission at its next regularly scheduled meeting.

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. 17.1(2) of the *Human Rights Act*;
- (d) the whereabouts of the Complainant or Respondent cannot be ascertained, notwithstanding the documented efforts by the Commission's staff (i.e. registered mail) to locate the party over a 1 month (30 days) period;
 - (d.1) the Complainant has neglected or refused to contact the Commission's staff despite several requests to do so;
 - (d.2) the Complainant has failed to provide requested additional information, including medical documentation;

- (e) the Complainant is not an aggrieved person under the *Human Rights Act*;
- (f) the complaint is clearly not within the Commission's jurisdiction;
- (f.1) the complaint is clearly without merit. Commission members dismiss complaints which in the *Act* are referred to as “without merit”. The Commission delegates authority to the Director to close complaints that are “clearly without merit”. This gives the Director authority to dismiss complaints, at any stage of the process, that clearly need to be dismissed because the information provided does not support the allegation(s) made by the Complainant (the Commission members could not have come to any other conclusion);
- (g) 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;
- (h) 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*;
- (h.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;
- (i) the complaint is clearly frivolous, vexatious or made in bad faith; and
- (j) in any other circumstance, the Commission so directs.

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 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 15 calendar days of being notified of the closure of the file.