

New Brunswick Human Rights Commission

Guideline on Time Limit Extension for Complaint Initiation *Human Rights Act, s. 17.1*

**Adopted April 15, 1996
Revised May 11, 2011**

1.0 PURPOSE

The purpose of this Guideline is to ensure that the provision of s. 17.1 of the *Human Rights Act* is administered in a fair, consistent and equitable manner; i.e., that the one year time limit imposed by s.17.1(1) is extended by the Commission under s. 17.1(2) in appropriate and defensible circumstances.

1.1 LEGISLATIVE PROVISION

Section 17.1 of the *Human Rights Act* provides that:

17.1(1) Subject to subsection (2), every complaint shall be filed within one year after the alleged violation of the Act.

17.1(2) the Commission may, where in the opinion of the Commission circumstances so warrant, extend the time for the filing of the complaint.

2.0 GROUNDS FOR EXERCISE OF COMMISSION'S DISCRETION UNDER S. 17.1(2)

The Commission may extend the one year time limit for making a complaint under s. 17.1(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 “*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;
- 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 was involved in active settlement discussions with the respondent(s) within 30 calendar days from the date of filing, which settlement discussions failed to result in a resolution to the matter;
- 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.

2.1.3 “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.