

## **Settlement Meeting Policy and Procedure**

**B.C. Human Rights Tribunal**

**January 17, 2008**

**(amended April 16, 2015)**

**(withdrawn October 26, 2017)**

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## **Part 1: Purpose and Application**

### **A. Purpose of the Settlement Meeting Policy and Procedure**

The *Human Rights Code* (the “*Code*”) sets out the right of every person to participate fully and without discrimination in British Columbia society. The purposes of the *Code* are broadly stated. They are to eliminate discrimination, to promote a climate of mutual understanding and respect, and to provide a means of redress to individuals who are discriminated against contrary to the *Code*.

The Tribunal offers settlement meeting services as one means of fulfilling these goals. Parties are provided with the opportunity to engage in tribunal-assisted settlement discussions on a voluntary basis, at any time before a Tribunal Member determines if the complaint is justified at a hearing.

### **B. Public Policy Issues**

To further the broader public goals of the *Code*, mediators may identify public policy issues, such as systemic discrimination or new applications of the *Code*, that may be raised by complaints filed with the Tribunal. The *Code* does not authorize the Tribunal to require that public policy issues be addressed; however, parties may be encouraged to explore public policy issues, and to formulate remedies that address them.

## **C. Application**

This policy applies only to the Tribunal's settlement meeting services. Parties to complaints before the Tribunal may, at their own expense, make additional or alternate arrangements between themselves to attempt to resolve the complaint.

## **Part 2: Conditions of Participation**

### **A. Settlement Meetings are Voluntary**

Participation in settlement meetings is voluntary. It is an additional opportunity to try to resolve a complaint. Participating in a settlement meeting has no impact on a party's right to proceed to hearing or to make an application.

### **B. Settlement Meetings are Confidential**

Settlement meetings are confidential. Any document created for the purpose of the settlement meeting and anything said during the settlement meeting is not admissible as evidence if the complaint proceeds to a hearing, without consent of the party on whose behalf the document was created or the matter spoken. All records or documents resulting from settlement meeting are confidential and do not form part of the Tribunal file. The only document the Tribunal keeps on file from the mediation is the *Settlement Meeting Agreement* signed by the settlement meeting participants.

### **C. Settlement Meeting Agreement**

Parties are required to sign the Tribunal's *Agreement to Participate in Mediation*, which sets out the terms of participation in the settlement meeting. (Attachment #1)

## **Part 3: Participants**

### **A. Who Attends?**

A settlement meeting is private. The participants in a settlement meeting are the mediator, the parties to the complaint, their representatives, interpreters, affected third parties and any other person the parties agree may participate. Intervenors may not participate without the agreement of the parties. Support persons may attend the settlement meeting with the consent of the parties.

### **B. Independent Legal Advice**

Although the Tribunal does not require parties to be represented by legal counsel, it is strongly recommended that unrepresented parties obtain independent legal advice both before the settlement meeting and prior to signing an *Agreement to Settle*. Time will be provided to allow parties to obtain independent legal advice.

### **C. Infant Complainants**

The Tribunal may accept complaints filed by mature minors. Contracting by minors is governed by the *Infants Act*, R.S.B.C. 1996, c. 223. A contract made by a minor is unenforceable against him or her, except in limited circumstances. When parties agree to attend a settlement meeting and the Tribunal is aware that the complainant is a minor the Tribunal will refer the respondent to the *Infants Act*. The respondent must notify the Tribunal if it agrees to participate in a settlement meeting with the minor. If the respondent will only agree to the settlement meeting with the participation of the minor's legal guardian, the Tribunal will request that the complainant's legal guardian attend. If the parties are unable to agree on the settlement meeting participants, the settlement meeting will not proceed.

### **Part 4: Settlement Meeting Services**

The Tribunal's settlement meeting services are intended to help the parties resolve all or part of the complaint prior to the complaint going to a hearing.

A settlement meeting is first offered after notice of a complaint is delivered to the respondent and before other steps are taken in the proceedings. If a settlement meeting is scheduled, rule 18(4) of the Tribunal's *Rules of Practice and Procedure* provides that the Tribunal will extend the time for the respondent to file a response to the complaint.

The Tribunal sets a maximum time for a settlement meeting to be held before a response to complaint is filed. Under rule 18(5), a respondent must file its response by the earliest of:

- (a) 35 days from the date that the Tribunal advises the respondent that the settlement meeting is cancelled.
- (b) 35 days from the date the Tribunal is advised that the settlement meeting did not result in resolution.

A later time for filing the response to complaint may be set at the end of the settlement meeting: rule 18(5).

The Tribunal will continue to provide settlement meeting services to parties making good faith efforts at resolution of the complaint, upon request, throughout the life of a complaint.

### **Part 5: Role of the Mediator**

#### **A. Appointment of Mediator**

All mediators are appointed at the discretion of the Tribunal. The Tribunal will not consider requests for particular mediators. A mediator appointed by the Tribunal under

this policy may be a Tribunal Member, legal counsel to the Tribunal, or an external mediator.

## **B. Role of the Mediator**

In all cases the mediator is neutral and facilitative. The mediator does not act as a legal representative for any party.

Mediators may provide interest-based mediation where the aim is to move the parties away from conflict, to focus on interests rather than positions, and to generate solutions to the issues raised. The parties themselves generate solutions.

Alternatively, or in addition, mediators may provide early evaluation, also called rights-based mediation, where the mediator reviews the facts with the parties and provides the parties with an assessment of the strengths and weaknesses of the complaint. The mediator may also advise the parties of remedies that might be expected should the matter proceed to hearing and the complainant is successful. In rights-based mediation, the parties can accept or reject the mediator's assessment of the complaint and proposed remedies.

A Tribunal Member/mediator may be asked to provide a final determination on the merits by the parties who have not been able to resolve the human rights complaint in a settlement meeting. In this process the parties consent to the same Tribunal Member adjudicating the matter and making an order based on the information exchanged at the settlement meeting. In order to participate in a settlement meeting that is converted to an adjudication the parties must sign a written agreement stating that the parties agree to participate in this process, have received independent legal advice or will be represented by legal counsel, agree to the procedure set out in the written agreement, and are prepared to be bound by the terms of the order made by the Tribunal Member.

## **C. Tribunal Member acting as Mediator**

When acting as a mediator, a Tribunal Member has no power to decide the complaint. The Tribunal Member who acted as mediator will not hear or decide the complaint if it is not resolved through a settlement meeting, except in the circumstances set out above, where there is legal representation or independent legal advice, and written agreement by all parties to convert the settlement meeting to a hearing of the complaint, before the same Tribunal Member.

A Tribunal member appointed to adjudicate a case will not act as a mediator on that case, except in circumstances where there is legal representation, and written agreement by all parties to convert the hearing of the complaint to a settlement meeting with the same member.

## **D. Mediator Discretion**

The mediator retains discretion to withdraw the Tribunal's settlement meeting services at all times. The circumstances where a mediator may decide to terminate the settlement

meeting include: if the mediator determines that a party is not abiding by the terms of the *Settlement Meeting Agreement* or following the mediator's directions; or if in the mediator's view the settlement meeting process is unfair, unproductive or abusive.

## **Part 6: Settlement Meeting Preparation**

### **A. Information Package**

Parties who agree to attend a settlement meeting receive an information package to assist them to prepare for the settlement meeting.

### **B. Contact by mediator**

The mediator may contact the parties before the settlement meeting to prepare for the settlement meeting and to answer questions of the parties. In any event, the parties are expected to be prepared to proceed on the date scheduled.

### **C. Interpretation Services**

Parties are asked to bring their own interpreter to settlement meetings. If a party is unable to provide an interpreter, and is not able to participate meaningfully without one, they may request the Tribunal to provide interpretation services. A request must be made 3 weeks before the settlement meeting to permit the Tribunal to arrange for the requested services.

## **Part 7: The Settlement Meeting**

### **A. Conference Call or Personal Attendance**

The Tribunal offers one day settlement meetings in a neutral setting in locations convenient for the parties. If the Tribunal is unable to arrange an appropriate venue or the parties request it, a settlement meeting may be held by conference call arranged by the Tribunal.

### **B. Parties are expected to attend**

Every complainant and respondent wishing to resolve the complaint through the settlement meeting process is expected to attend the settlement meeting, unless the parties otherwise agree. Parties must provide the names and roles of the persons who will be attending the settlement meeting in advance.

Participants in the settlement process, either in person or by phone, are required to attend the entire settlement meeting. If it is not possible for a party to attend in person, the party may attend by telephone with their legal counsel attending in person.

## **Part 8: After the Settlement Meeting**

### **A. If Complaint is not resolved by Agreement**

If all or part of the complaint is not resolved at the settlement meeting, the complaint will continue in the Tribunal's process. That may include filing a response to the complaint or preparation for a formal hearing before a Tribunal Member. To assist with this process the mediator will confirm the parties' current names and addresses and confirm the next procedural requirement applicable to each party.

### **B. Agreement to Settle**

If the parties agree to settle the complaint, legal counsel, if present, will draft an *Agreement to Settle*. If both parties are unrepresented the mediator may act as the scribe for the parties and may use the *Agreement to Settle* precedent (Attachment #2).

All *Agreements to Settle* will include the names of the parties to the agreement, the complaint file number, the date, the signature of every party to the agreement or counsel authorized to sign on behalf of a party, and the terms of the agreement set out in numbered paragraphs.

The complainant will keep the original agreement. The respondent will be provided with a copy of the agreement. The Tribunal will not receive a copy of the agreement.

### **C. Complaint Withdrawal**

If all or some of the complaint is resolved the complainant will sign and deliver a Complaint Withdrawal (Form 6) to the Tribunal. The complainant may also advise the Tribunal by letter that the complaint settled.

Under section 17 of the *Administrative Tribunals Act*, the Tribunal will dismiss all or the part of the complaint that is withdrawn.

### **D. Enforcement of Agreements**

The Tribunal does not approve or enforce settlements. The parties to the settlement are responsible for the resolution of problems arising from the settlement or the settlement agreement. Section 30 of the *Code* governs enforcement of settlement agreements.

**Settlement Meeting Policy and Procedure  
Attachment #1**

**BC Human Rights Tribunal  
Agreement to Participate in Mediation  
(amended April 16, 2015)**

**Re: Complainant v. Respondent**

**(Case Number: 00000)**

**A complaint under the *BC Human Rights Code*, R.S.B.C. 1996, c. 210 (as amended) and the provision of settlement services by the BC Human Rights Tribunal**

We agree as follows:

**Purpose of mediation**

1. We are participating in this mediation in good faith for the purpose of resolving all or part of this complaint.

**Authority to settle**

2. Any person representing a party to the mediation process has full authority to agree to a final settlement of all or part of the complaint.

**Process**

3. We will follow the reasonable directions of the mediator for the effective and efficient conduct of the mediation.
4. If any issues arise during the mediation regarding the process itself, we will raise the issues with the mediator as soon as practical. We will attempt to resolve these process issues in a manner acceptable to all concerned and in a manner that respects the confidentiality of the process.

**Role of mediator**

5. We agree that the mediator is not acting as legal counsel for any participant in the mediation.

**Discussions are confidential**

6. Anything said during the mediation must be kept confidential.
7. Anything said during the mediation will not be used in any legal proceeding, including a Tribunal hearing, unless the participant who gave the information consents.
8. During the mediation process, if participant needs to speak to a person who has not signed this agreement, they will inform the mediator, and will tell the person that the

**Settlement Meeting Policy and Procedure  
Attachment #1**

communication must be kept confidential and obtain their agreement to keep the information confidential.

**Information from separate sessions**

9. During the mediation process, if the mediator meets with a participant in the absence of at least one other participant, the mediator may reveal to the other participants any information received in the separate session, unless a participant expressly requests that the mediator treat specific information in strict confidence.

**Failure to Agree**

10. If we cannot reach a resolution of all or part of this complaint by the end of the mediation, we may agree on a process for continuing our settlement efforts or we will end the mediation process.

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Complainant

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Respondent

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Representative for Complainant

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Representative for Respondent

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Complainant

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Respondent

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Representative for Complainant

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Representative for Respondent

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Mediator

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Dated



**Settlement Meeting Policy and Procedure  
Attachment #2  
Precedent**

**AGREEMENT TO SETTLE**

**BETWEEN:**

**COMPLAINANT**

**AND:**

**RESPONDENT**

**Re:   A complaint under the *Human Rights Code*, R.S.B.C. 1996, c. 210 (as amended); Case Number: \_\_\_\_\_**

The undersigned participants agree as follows:

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3.   Additional paragraphs may be added.
4.   In return, the Complainant agrees to withdraw his human rights complaint, case number #\_\_\_\_\_, filed against the named Respondent,\_\_\_\_\_.
5.   The Complainant agrees to file the Notice of Withdrawal form with the B.C. Human Rights Tribunal within \_\_\_\_\_ business days of completion of the terms set out in paragraphs 1, 2..... above.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2004, in the city of Vancouver:

\_\_\_\_\_  
(Complainant)

\_\_\_\_\_  
(Respondent)

\_\_\_\_\_  
(Complainant)

\_\_\_\_\_  
(Respondent)

original to complainant  
copy to respondent