



## A Guide for Respondents

### FACTS ABOUT THE HUMAN RIGHTS COMMISSION

The Human Rights Commissioners are members of the public (up to 12 in total) who are appointed by the Governor, on the advice of the Premier, after the Leader of the Opposition has been consulted. Commissioners are responsible to the Minister of Culture and Social Rehabilitation for the administration and enforcement of the Act.

The staff of the Human Rights Commission are public officers.

### FOR FURTHER INFORMATION PLEASE CONTACT:

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*This leaflet was produced by the Human Rights Commission as a public information guideline. It provides a brief explanation of your rights and responsibilities as a 'Respondent', but you may wish to read The Human Rights Act 1981, to obtain full details of your rights and responsibilities.*

This guide is designed to help you to understand your rights, and your responsibilities in the event that anyone makes a complaint against you, or your organization, of discrimination under The Human Rights Act 1981 (referred to here as the "Act").

#### It answers the following questions:-

- What types of discrimination are covered by the Act?
- What are the duties of the Human Rights Commission to investigate complaints?
- What happens when a complaint is made?
- How is a complaint processed?
- What is "Mediation"?
- What happens when a complaint cannot be settled?
- What is a Board of Inquiry?
- Additional facts about the Human Rights Commission



## TYPES OF DISCRIMINATION COVERED BY THE ACT

The Act protects all persons in Bermuda from discrimination based upon their:-

- Race, Ethnicity, Place of origin, National origin
- Colour
- Religion/Beliefs
- Sex
- Disability
- Marital status
- Political opinions
- Family status
- Criminal record (except where there are valid reasons relevant to the nature of the particular offence for which the person has been convicted that would justify a difference in treatment)

In the areas of:-

- Employment
- Housing
- Goods, facilities & services
- Contracts
- Public notices
- Membership in associations & trade unions

In summary, the Act requires that all persons receive equal treatment. For example, hiring decisions should be based on individual merit without regard to sex, race, place of origin, or family status etc.

## DUTIES OF THE HUMAN RIGHTS COMMISSION TO INVESTIGATE COMPLAINTS

The Human Rights Commission (the “HRC”) is an impartial agency. It acts neither for the person making the complaint (the ‘**Complainant**’) nor the person against whom the complaint is being made (the ‘**Respondent**’). It is the duty of the HRC under the Act to investigate complaints fairly. Reprisals or actions against anyone who complains to the HRC, or who assists with an investigation, are strictly forbidden under the Act.

## WHEN A COMPLAINT IS MADE

- When a complaint is received by the HRC, an officer will interview the Complainant to obtain the initial details.
- At this point the Complainant may be advised if the alleged discrimination does not fall within the Act, or if the matter should be dealt with by another agency.

- If covered by the Act, the HRC then determines whether the complaint appears genuine. At this point the HRC has only heard from the Complainant.
- If it is determined that the complaint appears to be genuine, then an officer will have the Complainant complete a signed formal complaint in writing, outlining the grounds, and identifying the person or persons against whom the complaint is being made (the Respondent/s).

Under normal circumstances any complaint to the HRC must be made within 6 months of the alleged incident, although complaints can be heard up to 2 years after the incident if there are good reasons for the delay, and if no one will be prejudiced by the delay.

## HOW A COMPLAINT IS PROCESSED

Once a “formal complaint” has been signed, the HRC will:-

- Notify you, as the Respondent, in writing about the complaint, providing you with the details, and advising you of the HRC’s intention to investigate.
- You then have an opportunity to provide the HRC with a written and/or oral response.
- It is the HRC’s policy at this point to offer **mediation\*** to both parties.
- If mediation is not agreed to by both parties, or if the matter cannot be settled by mediation within a period of 30 days, an investigation will commence.
- The officer will then carry out a detailed investigation, during which he or she may request to inspect payrolls, written appraisals, and any relevant documents as the Act gives the HRC legal authority to examine related records and documents.
- The officer is also entitled to interview any person or persons who may be able to provide useful information to the HRC.
- The purpose of the investigation is to ascertain all of the relevant facts, including facts which may disprove the allegation.
- It is in your best interest, as the Respondent, to provide the HRC with any evidence to support your case.
- It should be noted that it is strictly against the law to penalize a person for complaining, or assisting with an investigation, and it is also against the law to obstruct an investigation.

## \*What is meant by mediation?

Mediation is a means of trying to settle a dispute by offering the services of an independent 3rd party at the earliest stages of an investigation to help both parties work towards a mutually agreeable settlement. Mediation can only be used if both parties agree to it. Both parties are involved in selecting a suitable mediator from a list of persons who are considered by the HRC to have the skills and experience needed to assist in helping to resolve a complaint. The cost of mediation is paid for by the HRC. For more information about mediation please see our pamphlet “A Guide to Mediation”.

## WHAT HAPPENS WHEN A COMPLAINT CANNOT BE SETTLED?

- If the two parties cannot settle the matter through “mediation”, and if a settlement cannot be reached within 9 months, the HRC must then decide whether or not there is sufficient evidence to refer the complaint to the Minister of Culture and Social Rehabilitation. If so, the Minister will review the complaint and may refer it to a Board of Inquiry.
- In exceptional cases the HRC could decide to refer a complaint directly to the Director of Public Prosecutions for court proceedings.
- If the HRC determines that a complaint is without merit, it can dismiss the complaint at any stage, but must first provide the Complainant with an opportunity to be heard.

## WHAT IS A BOARD OF INQUIRY?

A Board of Inquiry is a decision making body which operates like a court. Three independent persons are appointed to a Board of Inquiry to hear the complaint. They are NOT members of the HRC. The Board hears testimony given under oath, and makes findings based on the evidence presented. If the Board finds in favour of the Complainant it has the power to order certain remedies, including financial compensation. If the Board finds there has not been a contravention of the ‘Act’, then the Board can dismiss the case.

Any party who disagrees with the decision of a Board of Inquiry may appeal to the Supreme Court.