



A Guide to Making a Complaint

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:

The Human Rights Commission
The Mechanics Building, Suite 301
11 Church Street, Hamilton HM 11

Tel: (441) 295-5859

Fax: (441) 295-6573

Web: www.hrc.bm

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

MAKING A COMPLAINT

This guide is designed to help you understand how to make a complaint under the Human Rights Act 1981 (which we refer to here as the "Act") if you feel that you have been discriminated against in Bermuda.

It answers the following questions:-

- What types of discrimination are covered by the Act?
- How do I contact the Human Rights Commission to make a complaint?
- What happens when a complaint is first 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 you from discrimination based upon your:-

- Race, Ethnicity, Place of Origin, National Origin
- Colour
- Religion/Beliefs
- Sex
- Disability
- Marital status
- Political opinions
- Family status
- Criminal record

In the areas of:-

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

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 who the complaint is being made (the '**Respondent**'). It is the duty of the HRC to fairly investigate complaints. Reprisals or actions against anyone who complains to the HRC, or who assists with an investigation are strictly forbidden under the Act.

HOW TO CONTACT THE HRC TO MAKE A COMPLAINT

The HRC offices are located on the 3rd floor of the Mechanics Building, at 11 Church Street, Hamilton. It is recommended that if you wish to make a complaint you do so personally. The HRC will have an investigation officer interview you to obtain details of your complaint. You can also contact the HRC by telephone at 295-5859. There are occasions when a complaint does not fall within the HRC's jurisdiction, but the officer may be able to refer you to the appropriate agency.

WHAT HAPPENS WHEN A COMPLAINT IS MADE?

- Once an officer has interviewed you, the HRC will determine whether your complaint appears genuine and is covered by the Act.
- If it is determined that your complaint appears to be genuine, then an officer will work with you to 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**').

Under normal circumstances any complaint to the Commission must be made within 6 months of the alleged incident, although complaints can sometimes 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 the '**Respondent**' in writing about the complaint, and of the HRC's intention to investigate it;
- The '**Respondent**' then has the opportunity to make a written and/or oral response;
- It is the HRC's policy to then offer **Mediation*** to both parties. If mediation is not agreed, or if the matter cannot be settled by mediation, an investigation will commence.
- The officer will then carry out a detailed investigation, during which he or she may enter business premises, request the production of relevant documents, and speak to possible witnesses.

*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", or are unlikely to settle, and if a settlement cannot be reached within 9 months, the HRC must then refer the complaint to the Minister of Culture and Social Rehabilitation unless the HRC determines that the complaint has no merit. The Minister will then review the complaint and may refer it to a Board of Inquiry.
- In exceptional cases the HRC can 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, one of whom is legally trained, are appointed to a Board of Inquiry to hear the complaint. These individuals 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 it can dismiss the case.

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