

Information Sheet: Traditional Board of Inquiry

Last Revised August 2016

The Board of Inquiry is an independent administrative tribunal conducted separate and apart from the Nova Scotia Human Rights Commission. The Board of Inquiry Chair is the adjudicator, and is appointed after the complaint has been referred to a Board of Inquiry by the Board of Commissioners. The Traditional Board of Inquiry closely resembles a civil trial; however, the rules of evidence are relaxed. The parties include those referred to the Board of Inquiry by the Board of Commissioners as well as the Commission. The Commission is an independent party representing the public interest and does not represent either the complainant or the respondent.

❖ Communication prior to a hearing: teleconference to set dates

Hearing dates will be scheduled and confirmed on a teleconference call organized after a Board Chair has been appointed. The teleconference call, like the hearing, will be moderated by the Board Chair and include all parties: the complainant, the respondent and the Commission. The call will cover all aspects of scheduling the hearing and the setting of filing deadlines for the various materials and briefs necessary for the hearing.

❖ Communication with the Board Chair

Any communication with the Board Chair must include all parties. A party can request a teleconference or include all parties on email communications, should it be necessary to speak to the Board Chair.

❖ Negotiation / Mediation

Parties to a Board of Inquiry have the option to engage in negotiation or mediation throughout the Board of Inquiry process. Engaging a private mediator will be at the parties' own cost. The Commission will not pay for a private mediator. Negotiated or mediated discussions are typically considered off the record. Commission counsel can assist the parties negotiate/mediate to reach a settlement. S/he participates in discussions and must be consulted on the public interest aspect prior to a final settlement. Commission counsel will offer, if asked, feedback to any of the parties on their understanding of the issues, the law and how to find common interests with each other. Commission counsel does not represent or provide legal advice to any party.

❖ Settlement agreements

A settlement between the parties must be approved by both the Board of Commissioners and the Board Chair. If there are matters that cannot be resolved through negotiation or mediation, the Board Chair adjudicates the outstanding issues through a Traditional Board of Inquiry hearing. If a final settlement is reached during negotiation or mediation, the settlement agreement will not be considered confidential. Settlement agreements created after a complaint has been referred to a Board of Inquiry are considered to be a matter of public interest and can be made available, unless the Board Chair orders otherwise.

❖ *Documents prior to a hearing*

Prior to the Board of Inquiry hearing, the parties will have the option to file “legal briefs” (written arguments) for the Board Chair to consider. Written argument provides the Board Chair with the parties’ position on what happened; this may include the facts and any relevant law that demonstrates their position. The parties also have the option to provide the Chair with relevant documents (evidence) by creating exhibit books for the Chair to reference during the hearing. The parties may choose to do this jointly. If the parties agree on some of the facts of the case, they may provide the Board Chair with an “agreed statement of facts” (outlining the facts in agreement). This allows the Chair to make a determination on the facts that remain at issue between the parties.

❖ *Hearing*

At the hearing, the parties will have an opportunity to orally present facts and arguments to the Board Chair for his or her consideration. The parties will be able to testify or call witnesses to testify. Everyone who testifies is subject to cross-examination. The Board Chair will consider the oral argument to establish the facts and make his or her determination. Typically, legal counsel asks the questions of witnesses. If a party is unrepresented, they can ask questions themselves or Commission counsel can lead the case by asking questions of the witness(es). The Commission, however, does not represent the complainant or the respondent. In some instances, the interests of the Commission and the unrepresented party may be different.

Boards of Inquiry are public hearings. The general public, including media, will be notified of the date, time and location of all hearings. A party, however, may request a publication ban to prevent a serious risk to the administration of justice. The Board Chair will have discretion as to whether to order a publication ban; however, it is rare for a publication ban to be ordered.

❖ *Decision*

After the facts and arguments are presented and the hearing concludes, the Chair determines what law should be applied and whether discrimination occurred. The Board Chair has six months to make this determination and hand down a written decision. The Board Chair will order a remedy if there is a finding of discrimination or may set down a new hearing to determine remedy. Once a written decision has been rendered by the Board Chair, it will be posted on the Nova Scotia Human Rights Commission website and the Canadian Legal Information Institute website. This process does result in an order of the Board Chair. Upon posting, the general public, including media, will be notified of the decision via a press release issued by the Commission.