

PROCEDURE – INQUIRY STAGE

These procedures shall guide the work of HRO/s in accordance with the Dispute Resolution Policy and the restorative principles as defined in the policy. For clarity, all terms used within these procedures shall be defined as they are in the policy.

Contact from Individuals or Organizations

1. HRO/s shall endeavour to respond to all contacts within three (3) business days. This includes, but may not be limited to: telephone calls, emails, written correspondence sent through regular mail, text messages or in-person office visits.

Recording of Contact

2. All contact inquiries shall be documented in the Commission's database (HRCTS) within one business day of the contact.
 - a. Wherever possible, this documentation should include, at a minimum:
 - i. the name and contact information of the individual/s;
 - ii. the relevant information the individual/s provided;
 - iii. the request (if any) that the individual/s is making; and
 - iv. the action taken by HRO/s.

Individuals Wishing to Make a Complaint

3. If an individual/s who was not directly affected by the conduct complained of, i.e. a parent or guardian, wishes to make a complaint, an assessment will need to be made on whether they can legally do so. If it is determined that this individual/s can make a complaint, the process set out in section 4 will be followed.
4. If the individual/s making the inquiry is the individual/s directly affected by the conduct complained of and that individual/s wishes to make a complaint, HRO/s shall:
 - a. Determine if the 12-month limitation period provided by section 29 of the Act has expired. If more than 12 months but less than 24 months have passed from the date of the conduct complained of, then the process and information for applying to the Director for an extension of time pursuant to

section 29(3) of the Act, must be provided. In situations where the 12-month limitation period expires shortly the HRO/s shall make every effort to facilitate the filing of the complaint by this deadline.

- b. The process for applying to the Director for an extension shall be as follows:
 - i. an individual/s seeking an extension of the 12-month limitation period shall submit a written request to the Director using the form provided;
 - ii. if an extension is requested, the Director may, in exceptional circumstances, grant an individual an additional period of not more than 12 months to make a complaint if to do so would be in the public interest and, having regard to any prejudice to the individual/s, would be equitable; and
 - iii. If the last date of discrimination is within the 12-month limitation period of the date of the inquiry, but it may be impossible to complete a complaint within that 12-month limitation period, a request for an extension should be made, in consultation with Legal, to the Director.
- c. Determine whether reasonable grounds exist to believe that a violation of the Act has occurred. At a minimum, this includes gathering sufficient information from the individual/s making the inquiry to establish:
 - i. the presence of a prohibited area (as defined by section 5(1)(a)–(g) and/or 5(2) of the Act;
 - ii. the presence of a protected characteristic (as defined by section 5(1)(h)–(v) of the Act;
 - iii. the presence of a disadvantage or withheld advantage that is linked to or based up the protected characteristic; and
 - iv. the last date of this alleged discrimination.
- d. If the information establishes reasonable grounds that a violation of the Act may have occurred, HRO/s shall:
 - i. explain the process of filing a complaint, including the materials and information that may be required in support of the complaint, and the approximate timelines for processing;

- ii. identify the full or legal names of the potential respondent/s. If there is a question as to the inclusion of or proper identification of a potential respondent/s, HRO/s should consult with Legal;
- iii. explain the Commission's commitment to the use of restorative principles; and
- iv. provide the individual/s making the inquiry with a complaint form.

Early Resolution

- 5. HRO/s may seek to address conduct which may constitute a breach of the Act prior to a complaint being accepted if:
 - a. the HRO/s has reasonable grounds to believe that a violation of the Act may have occurred;
 - b. the individual/s making the inquiry and the Senior HRO or Manager of Dispute Resolution approves of the early resolution attempt;
 - c. the HRO/s explain to the individual/s making the inquiry that no final determination about the inquiry has been assessed or finalized at this stage;
 - d. the facts giving rise to a complaint fall within one of the following circumstances:
 - i. delay in assessment or processing of a complaint will have a substantially negative impact on the ability of the individual/s to participate in the process;
 - ii. the individual/s is facing significant and immediate consequences, such as loss of employment or eviction; and/or
 - iii. it appears to the HRO/s that the matter may be swiftly resolved due to the specific circumstances of the situation.
 - e. HRO/s may facilitate a resolution of the matter. The resolution may include: reaching an understanding between the parties that resolves the complaint, the offer of policy information, education and/or training.
 - f. If the parties resolve the matter with this option, HROs shall make an entry in HRCTS and provide details of what was agreed upon or clarified.

No Reasonable Grounds for Complaint

6. If HRO/s determine that the information provided by the individual/s making the inquiry does not establish reasonable grounds that a violation of the Act occurred, they will inform the individual/s of this and explain the reasons for that assessment. If the HRO is aware of another agency that may be able to assist the individual/s, HRO/s shall provide the individual with the contact information for that agency, such as the Canadian Human Rights Commission, Nova Scotia Labour Standards Division, Workers' Compensation Board, or Residential Tenancies.
 - a. If the individual/s disagrees with this determination, HRO/s shall refer them to the Senior HRO for re-assessment;
 - b. If following re-assessment from the Senior HRO, the individual/s continues to disagree with the determination, the Senior HRO shall provide them with the necessary information to make an appeal.
 - i. individual/s must make appeals to the Director;
 - ii. appeals must be submitted to the Director in writing and must be copied to the HRO/s whose decision is under appeal;
 - iii. upon receipt of a written appeal, HRO/s must, within ten (10) business days, submit to the Director a written response to the appeal;
 - iv. the Director shall consider the appeal and may make any further inquiries or seek further information from the parties to the appeal the Director considers appropriate to fairly consider the appeal;
 - v. the decision of the Director shall be issued in writing to the parties to the appeal and is final and binding; and
 - vi. the Director's decision is only reviewable upon an application to the Supreme Court of Nova Scotia for a judicial review.

Receipt of Complaint Form

7. HRO/s shall review and assess each completed draft complaint form within ten (10) business days of receipt.
 - a. HRO/s shall apply these criteria when reviewing each draft complaint form:
 - i. is the information clear and understandable?

- ii. is the information sufficient to establish the Commission's jurisdiction under the Act?
 - iii. is the information sufficient to allow a potential respondent/s to understand and respond to the allegations?
- b. If these criteria are met, HRO/s shall finalize a complaint form for review, comment, and signature by the individual/s making the complaint.
- c. If the information provided in the draft compliant form does not meet these criteria, HRO/s shall contact the individual/s to discuss and clarify these issues within twenty (20) business days. HRO/s shall record all contact and information provided and received in HRCTS within one business day of the contact.
- d. If jurisdiction is not established through additional information or clarification, the HRO/s shall inform the individual/s that a complaint cannot be processed and enter all relevant information in HRCTS. The individual/s may request a review of the HRO's assessment as set out in section 6.

Systemic Discrimination Considerations

- 8. HRO/s shall consider whether it is appropriate to include an allegation of systemic discrimination to a complaint and may consider the following:
 - a. the number of previous complaints of a similar nature against the same potential respondent;
 - b. whether the individual/s alleges under-representation of others sharing the same protected characteristic by the same potential respondent;
 - c. whether the complaint is related to the same potential respondent's organizational policies and procedures; and
 - d. whether the complaint relates to the same potential respondent's organizational practices, including informal practices.
- 9. If the HRO/s believes there is sufficient information to support allegations of systemic discrimination, the HRO/s shall meet with the Senior HRO to outline the reasons for including an allegation of systemic discrimination.
- 10. The Senior HRO may:
 - a. ask the HRO/s to obtain more information; or

- b. make a determination whether there is sufficient information to make a complaint of systemic discrimination and, if necessary, direct the HRO/s to amend the complaint form appropriately.

Complaint Form to Senior HRO

11. HRO/s shall submit each completed draft complaint form to the Senior HRO for review.
12. In reviewing each completed draft complaint form, the Senior HRO shall consider if the complaint form contains sufficient information to establish that the complaint falls within the jurisdiction of the Act.
13. Should the Senior HRO determine that additional information is required, the HRO/s who assisted with drafting the complaint shall contact the individual/s to request the information. Upon receipt of the requested information, the HRO/s shall determine if the complaint should be amended.
14. Should the Senior HRO determine that the matter may be one that is appropriate for early resolution before a decision is made by the Commission whether to accept a complaint, the HRO/s who assisted with drafting the complaint shall contact the individual/s to request their consent to attempt an early resolution. Upon receipt of consent, the HRO/s shall attempt to facilitate a resolution of the matter.
15. Should the Senior HRO determine that the complaint does not fall within the jurisdiction of the Act, the Senior HRO shall advise the HRO/s and provide reasons for that conclusion. The HRO/s shall advise the individual/s in writing of the conclusion and the reasons.
16. The Senior HRO's conclusion that the Commission does not have jurisdiction to accept a complaint may be appealed to the Director. The procedure to make such an appeal as set out in section 6(b) shall apply.

Acceptance of a Complaint

17. If the Senior HRO determines that the Commission's jurisdiction has been established, the Senior HRO shall notify the HRO/s who submitted the complaint in writing and confirm that the complaint has been accepted by the Commission.
18. Once a complaint is accepted, the Senior HRO will provide the complaint file to the Manager of Dispute Resolution for assignment to investigation within ten (10) business days.

PROCEDURE – INVESTIGATION STAGE

These procedures shall guide the work of Commission staff in accordance with the Dispute Resolution Policy and the restorative principles as defined in the policy. For clarity, all terms used within these procedures shall be defined as they are in the policy.

Initial Contact with Parties

19. Upon being assigned a complaint by the Manager of Dispute Resolution, the assigned HRO will contact the complainant and respondent/s as soon as practicable. The HRO may make contact orally or in writing.
20. In the initial contact with the complainant and respondent/s, the HRO shall provide the following information to the complainant and respondent/s:
 - a. an explanation of the Commission's investigation process, including its commitment to the use of restorative approaches; and
 - b. details as to what is expected of the parties.
21. The HRO shall provide the respondent/s with a copy of the complaint and provide an opportunity to send a written reply, if they wish to do so at this stage, within 15 business days or such other timeframe as the HRO considers appropriate.
22. The HRO shall make a notation of all contact with parties and information received or provided shall be entered in HRCTS within five business days of the contact.

Complaint Processing Options

23. After speaking with the parties to the Complaint and reviewing the information provided, the HRO must determine the next steps to be taken with respect to the Complaint. These steps may include one or more of the following options:
 - a. a recommendation to the Director that the complaint be dismissed pursuant to section 29(4) of the Act;
 - b. a recommendation of a Direct Referral to a Board of Inquiry;
 - c. deferring investigation pending completion of a related proceeding; and
 - d. investigation of the Complaint.

Recommendation to Director to Dismiss Complaint

24. If the HRO determines that one or more subsections of section 29(4) of the Act are relevant to the Complaint, and the matter should be dismissed by the Director, the HRO shall:

- a. advise the parties in writing in as timely a manner as possible that the HRO is recommending that the Complaint be dismissed and the reasons for the recommendation;
- b. invite the parties to make submissions with respect to the recommendation and advise the parties that any submission:
 - i. must be made within 15 business days of the recommendation;
 - ii. must be in writing or typed, legibly and that it may not exceed five (5) letter-sized, single sided pages; and
 - iii. will be provided to the other parties for their information.
- c. submit a written recommendation to the Director that the Complaint be dismissed pursuant to s. 29(4) of the Act; and
- d. advise the parties that the decision of the Director to dismiss the Complaint is only reviewable upon application to the Supreme Court of Nova Scotia for a judicial review.

25. The HRO's recommendation and any submissions received from the parties pursuant to section 24 of these procedures shall be provided to the Director who shall make a final determination on the disposition of the Complaint. The decision of the Director will be communicated to the parties and to the HRO in writing from the Office of the Director & CEO.

Recommendation for Direct Referral to Board of Inquiry

26. If the HRO determines that any of the following factors are present, the HRO may suggest to the Manager of Dispute Resolution that a recommendation be made to the Commissioners that the Complaint be referred directly to a Board of Inquiry in accordance with section 32(A)(1) of the Act:

- a. complex legal issues that are beyond scope of an investigator;
- b. multiple complainants with the same set of issues against the same respondent/s;

- c. possible conflict of interest situations; or
- d. any other such situation where it would be appropriate to direct refer the Complaint.

27. Following consultation with Legal, the Manager of Dispute Resolution may approve the direct referral recommendation to Commissioners.

Deferring Investigation pending Completion of Related Proceeding

28. HRO/s may advise the Manager of Dispute Resolution if they become aware that the subject matter of the Complaint or any portion thereof is the subject of an alternate proceeding in some other forum.
29. The Manager of Dispute Resolution may make such inquiries as are necessary and consult with Legal to determine if it would be just and not prejudicial to the ultimate investigation of the Complaint for the Commission to stand aside or suspend investigation of the Complaint pending the disposition of the alternate proceeding.
30. If the Manager of Dispute Resolution believes that investigation of the Complaint should be deferred, and the parties are in agreement, the HRO shall advise the parties in writing of the terms and duration of the deferral.

Complaint Investigation

Investigation Process Development

31. The complaint investigation process shall be guided by the restorative principles as defined in the Policy. The goal of the investigative process, in part, shall be to assist the parties in working together to achieve a shared understanding of the situation and an opportunity to move forward together.
32. The Commission seeks to have all investigations completed within a reasonable timeframe. On average, all complaints should be concluded within 200 calendar days of acceptance of the complaint.
33. The HRO shall determine the steps necessary to investigate the complaint and shall consult with the parties with respect to the proposed investigation process. The process should be tailored to meet the needs of each circumstance and may incorporate any or all of the following:
- a. one or more meetings between the parties, facilitated by the HRO or another agreed upon facilitator;

- b. meetings between a single party and the HRO;
 - c. written submissions by one or more of the parties, with those submissions to be shared with the other party(ies);
 - d. submission and analysis of evidence (documents, video or audio recordings, digital media, etc.);
 - e. interviews of parties and/or witnesses and/or other involved or impacted individuals;
 - f. visits by the HRO to and assessment of the sites of alleged discrimination;
 - g. email, telephone, and text exchanges when questions arise, or information is being transferred; and
 - h. other processes which are appropriate to the specific nature of the Complaint.
34. The complaint investigation process shall be on the record.
35. The HRO shall ensure that the parties receive any necessary accommodations.
36. The HRO shall attempt to accommodate parties who request services in their first language through the use of language interpreters.
37. The HRO may at any time consult Legal during the investigation, where an issue arises that is appropriate to be consulted on.
38. The HRO may agree to have off-the-record conversations with either or both parties if the HRO believes it may help facilitate a resolution of the matter, otherwise all discussions the HRO may have with the parties shall be on-the-record. The HRO shall not use information discussed during any off-the-record conversation in their investigation report. The investigation process shall not be off-the-record.

Case Management

39. The Manager of Dispute Resolution shall convene regular case management meetings with HROs to review, in respect of each complaint, the investigation plan, the status of the investigation process generally and with respect to the 200 day investigation completion expectation.

Recommendation that Complaint be Investigated as a Systemic Discrimination Complaint

40. The HRO may, upon investigation, recommend that the complaint be investigated as a systemic discrimination complaint.
41. If the HRO believes at any time during the investigation, there is sufficient information to support allegations of systemic discrimination, the HRO shall meet with the Manager of Dispute Resolution to outline the reasons for making such a complaint.
42. The Manager of Dispute Resolution may:
 - a. ask the HRO to obtain more information; or
 - b. make a determination whether or not there is sufficient information to make a complaint of systemic discrimination and ask the HRO to amend the Complaint appropriately.
43. If the complaint form is amended to include systemic discrimination, the HRO shall provide the respondent/s with a copy of the amended complaint and provide an opportunity to send a written reply, if they wish to do so at this stage, within 15 business days or such other timeframe as the HRO considers appropriate.

Mediation/Alternative Dispute Resolution

44. If requested by the parties, the HRO, following consultation with Legal and approval by the Manager of Dispute Resolution, may schedule mediation or other alternative dispute resolution mechanism with a view to resolving all or a portion of the Complaint.

Settlement

45. The parties shall advise the HRO if they have reached an agreement concerning the Complaint, any such agreement shall not be final or binding until approved by the Commissioners. Upon being advised of an agreement by the parties, the HRO may raise matters of policy planning, education and training which may be relevant to the Complaint and should be incorporated into the agreement. Agreements must be in writing, and wherever possible, should be captured on the Commission's template.
46. When an agreement results from a meeting and one or more of the parties are unrepresented by legal counsel and/or request the opportunity, they shall be provided ten (10) business days to obtain legal advice before signing the agreement. If they choose to sign immediately, then they shall be provided with a waiver to sign.

47. If the parties wish to attach documents to an agreement, such as letters of reference, letters of apology or waivers, they shall be attached to the agreement as addendums.
48. If the parties settle only a portion of the subject matter of the Complaint, the HRO shall explain to the parties that the outstanding unresolved issues will be investigated in accordance with these procedures.
49. All parties shall receive a copy of the signed agreement.
50. Pursuant to section 32(1) of the Act, any agreement must be provided to the Commissioners for their approval or rejection at the next regularly scheduled Commission meeting.

Recommendation regarding Complaint

51. Should the Complaint not be referred to the Director for disposition pursuant to section 29(4), or not resolved completely by mutual agreement, the HRO will draft an investigation report upon completion of the investigation. This investigation report will include a recommendation to the Commissioners indicating whether the Complaint will be dismissed or referred to a Board of Inquiry.
52. All parties will be provided with the HRO's report and recommendation and advised that the recommendation to the Commissioners may or may not be followed. The parties will be advised that they may make written submissions regarding the HRO's report and recommendations to accompany the Complaint for consideration by the Commissioners. The HRO shall advise the parties that any submission:
 - a. must be made within 15 business days of the recommendation;
 - b. must be in writing or typed, legibly and may not exceed five (5) letter-sized, single sided pages; and
 - c. will be provided to the other parties for their information.
53. The final report and submissions from the parties will be presented to the Commissioners at the next regularly scheduled Commission meeting for a determination pursuant to section 29(4) or 32(a)(1) of the Act. Notification of the decision of the Commissioners will be sent to the parties in writing from the Office of the Chairperson and signed by the Chair of the Commission. HROs may also choose to informally contact all the parties to inform them of a decision and advise them on the expected timeframe to receive an official decision in writing.

Conflict of Interest

54. HRO/s shall not be engaged in any matter during the Inquiry Stage or Investigation Stage in which the HRO/s has a personal interest or matter where they or the Commission may be perceived as being biased in favour of one party to a complaint over another party. HRO/s shall immediately notify the Manager of Dispute Resolution of any potential conflict of interest and shall refrain from further involvement with the parties and the complaint until otherwise directed.
55. If the Manager of Dispute Resolution agrees that the HRO/s has an alleged, actual or perceived conflict of interest and/or bias that makes involvement in a complaint inappropriate, the Manager of Dispute Resolution may assign the file to another HRO. For certainty, the HRO/s or Manager of Dispute Resolution may consult with Legal.
56. If the alleged, actual or perceived conflict of interest and/or bias make it impractical or inappropriate to have the complaint dealt with by any HRO/s, the Manager of Dispute Resolution, following consultation with Legal, may refer the complaint to an external investigator who shall investigate the complaint in accordance with the Act. These Procedures shall apply to an external investigator's handling of the complaint. The external investigator shall direct any questions concerning these procedures to Legal.

Externally Investigated Complaints

57. All authority provided to HRO/s under these procedures shall apply with any necessary modifications, to an external investigator.
58. Externally investigated complaint reports shall be submitted to the Commissioners in a manner consistent with these procedures. If the external investigator is not available, the investigation report shall be presented by legal counsel for the Commission.