

# **Saskatchewan Human Rights Commission**

## **Mediation of Settlements – Pillar 2**

The Saskatchewan Human Rights Commission's Four Pillar business plan, approved by Cabinet, includes the intent to pursue more mediation as part of the complaint settlement process. The Saskatchewan Human Rights Commission is taking a look at aspects of the Manitoba human rights complaint resolution model to determine if they could be useful to better serve both complainants and respondents to human rights complaints in Saskatchewan.

The Manitoba Human Rights Commission has a number of places in their complaint resolution process where mediation can be used to facilitate settlement. Manitoba has found this process offers good results and greater satisfaction for settlement of complaints by the parties than settlement through an adjudicated hearing. Manitoba has one of the highest rates for complaint settlement by the parties themselves in Canada.

### **The Manitoba Model**

In addition to offering the parties to a human rights complaint a mediation option throughout the complaint resolution process, Manitoba has two types of mediation processes that are somewhat unique and have been found to further enhance complainant and respondent satisfaction. These two mediation options are Pre-Complaint Mediation/Conciliation and Directed Mediation. A brief outline of them follows:

#### **1. Pre-Complaint Mediation (Manitoba Model)**

This option is available prior to any written complaint being formalized. It is completely voluntary and requires the participation of both the complainant and the potential respondent. The process involves a telephone call by the mediator to the potential respondent to explore the possibility of an informal resolution without a written complaint. It is a fast and informal process

wherein any agreement reached will be set out in a letter to both the complainant and respondent, thus avoiding misunderstandings. If the agreement is not carried out, the Commission will look into the matter further and assess the possibility of formalizing a written complaint on the matter.

### **What are the benefits of this pre-complaint process?**

This process is fast and informal and Manitoba has found that many complainants and respondents view this option positively. There is an opportunity to come to a better understanding of the issues with the added value of human rights information provided by Commission staff. The Manitoba Human Rights Commission effectively uses this process to settle a significant portion of the complaints that come to their office.

### **2. Directed Mediation (Manitoba Model)**

When a formal written complaint is filed and not settled through any mediation process, the matter proceeds to an investigation. At the conclusion of an investigation, the investigation file and the parties' submissions are provided to the Board of Commissioners. If the Board finds there is sufficient evidence to warrant having the complaint proceed further, it may direct the parties to engage in mediation to resolve it. In this "directed mediation", experienced Commission mediators will work with the parties to reach a settlement which is reflective of human rights principles. If no settlement is reached, the Board may direct a hearing unless it is determined the complainant has unreasonably rejected a settlement offer – in which case the complainant can still choose to accept the offer or the complaint will be dismissed. The Board, in its decision on the reasonableness of an offer, would seek guidance from case law and settlements coming out of courts, tribunals and other dispute resolution processes.

Though a face to face mediation can be agreed to by the parties within this process, Manitoba's experience to date has most often involved "shuttle negotiations" where the mediator facilitates discussion toward settlement while going back and forth between the parties conveying their positions to

each other. In this manner, the respondent and complainant work their way toward a realistic settlement. Should a reasonable settlement outcome not be achieved, the complaint proceeds to a hearing where the Commission lawyer represents the complainant free of charge. The respondent pays the costs of any legal representative retained for the hearing.

### **What are the benefits of this directed mediation process?**

The goal of directed mediation is to achieve a complaint settlement, which repairs harm and assists to prevent future complaints, in a process which is less adversarial and where the parties have more say in the settlement outcome than what is generally achieved through litigation.

The process encourages respondents to provide a reasonable settlement in order to avoid the expense of litigation, and provides the complainant more negotiating power knowing that an unreasonable offer from a respondent will lead to the complaint being taken forward to a hearing.

A jointly agreed upon settlement, where the parties have had input into the process, usually provides the parties with greater satisfaction. This process is less time consuming, less stressful, and less expensive than taking complaints to a hearing.