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Administrative Tribunals Using ADR

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ADMINISTRATIVE TRIBUNALS USING ADR

TREVOR C. W. FARROW AND ADA HO

MAY 2007

Introduction

This document provides a sampling of administrative tribunals available in Canada, many of which use some form of ADR. The primary focus areas of the tribunals are Health, Environment, Labour and Human Rights.

This document was created by copying and pasting relevant information from various tribunal websites. All the information contained in this document was taken directly from the website as referenced. Any information that reflects additional commentary is included in square brackets.

To see the legislation supporting each tribunal, please refer to the enabling legislation and regulations in the accompanying Legislation Chart.

Finally, as this document is current as of May 2007, some legislative provisions, rules and practices, etc. will have changed (see e.g. Ontario's new human rights regime; or the realignment of Alberta's Energy and Utilities Board).

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Federal Tribunals

Canadian Industrial Relations Board

Enabling Statute: [Canada Labour Code, R.S.C. 1985, c. L-2](#)

Regulation: [Canada Industrial Relations Board Regulations, 2001, S.O.R./2001-520](#)

Overview

The 2001 Regulations provide rules of general application respecting proceedings and hearings before the Canada Industrial Relations Board. In keeping with the objective set out in the Code's Preamble to deal effectively with labour relations issues, the 2001 Regulations focus on achieving labour relations goals, not initiating court proceedings..

The 2001 Regulations provide for the ability of the Board to determine matters in a more straightforward manners on the basis of the written submissions without the requirement of a public hearing; the use of pre-hearing conferences, the increased use of technology to reduce hearing costs; the delegation of certain powers to staff in uncontested matters; as well as the effective use of single member panels¹.

¹ Canadian Industrial Relations Board, *An Overview of the 2001 Regulations*. (Canada: Canadian Industrial Relations Board) online: Office Canadian Industrial Relations Board Canada. < http://www.cirb-ccri.gc.ca/down/Regulations_overview_eng.pdf >

Canadian Human Rights Commission

Acts administered: [Canadian Human Rights Act, R.S.C. 1985, c. H-6](#) (which expressly provides for some sort of ADR in the legislation)
[Employment Equity Act, 1995, c. 44](#)
 (which does not expressly provide for ADR in the legislation)

Overview

The Canadian Human Rights Commission is empowered by the [Canadian Human Rights Act](#) to investigate and try to settle complaints of discrimination in employment and in the provision of services within federal jurisdiction. Under the [Employment Equity Act](#), the Commission is responsible for ensuring that [federally regulated](#) employers provide equal opportunities for employment to the four designated groups: women, Aboriginal peoples, persons with disabilities, and members of visible minorities. The Commission is also mandated to develop and conduct information and discrimination prevention programs².

History of ADR

The Commission launched a pilot mediation program in 1999. In 2002, parties agreed to mediation in 42 per cent of the cases and 64 per cent of those settled successfully. The settlements came within three or four months—significantly less time than it takes to conduct an investigation. The Commission created a new branch—the Alternative Dispute Resolution Services Branch—in February 2003 to manage the expanded role of ADR. The branch will provide experienced mediators without cost and encourage complainants and respondents to consider ADR. It will also be independent of the investigation process to ensure impartiality³. In late 2005, the Commission brought all of its services related to the resolution of human rights disputes under a single umbrella: The Dispute Resolution Branch⁴.

Alternative Dispute Resolution

The Commissioner actively promotes ADR with disputing parties and other interested Group. In February 2003, the Commission created the ADR Services Branch (now the Dispute Resolution Branch) with a mandate to strengthen the service and actively promote it with stakeholders. The Branch offers two forms of ADR: mediation and conciliation

² Canadian Human Rights Commission, *Overview: About Us* (Canada: Government of Canada) online: Canadian Human Rights Commission < <http://www.chrc-ccdp.ca/about/default-en.asp>>

³ Canadian Human Rights Commission, *Alternative Dispute Resolution: What is ADR* (Canada: Government of Canada) online: Canadian Human Rights Commission < <http://www.chrc-ccdp.ca/about/default-en.asp>>

⁴ Canadian Human Rights Commission, *2005-2006 Annual Report* (Canada: Government of Canada) online: Canadian Human Rights Commission < <http://www.chrc-ccdp.ca/about/default-en.asp>>

Why use Alternative Dispute Resolution?

There are many reasons to choose alternative dispute resolution.

First, ADR works quickly. The parties can get together soon after the dispute occurs, before positions harden and discussion becomes more difficult. This means that solutions are not only more likely, but that they can be put in place relatively fast.

ADR is confidential and without prejudice. Parties can say what is really on their minds without fear that their words will be used against them later if mediation doesn't lead to settlement and the case goes on to investigation and litigation. Because ADR does not seek to determine guilt or innocence, parties find it easier to discuss matters openly and to entertain creative solutions.

ADR is better for participants and their future relationships than the confrontation of adjudication. Used early enough in the dispute process, it can help to heal fractured relationships, and avoid the toll that a drawn-out dispute can have in the workplace.

Participants set the agenda themselves. With the help of a professional and experienced mediator, they present their views, listen to the other party and try to work out an agreement. An agreement isn't always possible, but the success rate is good. And because the solutions are identified by the parties themselves, they are more likely to be satisfactory than those imposed by a Tribunal or Court, and more likely to be implemented with a minimum of resistance.

The Commission ensures that the process is fair to all parties and that the results are consistent with the [public interest](#). ADR is not the answer to every human rights issue but it is a healthier route to take than adjudication in many cases⁵.

Mediation

Mediation is a **voluntary** process of discussion and negotiation by the parties involved in a complaint. It is available at any stage of the complaint process up to the commencement of hearings before the Canadian Human Rights Tribunal.

Mediators work for the Commission and have training and experience in mediation and human rights issues. Mediators do not provide information to investigators or lawyers. And they have no authority to make decisions.

When parties reach a settlement through mediation, the mediator helps parties prepare a written agreement and the signed agreement is submitted to the Commission for review to ensure it is fair and in the public interest.

⁵ Canadian Human Rights Commission, *Alternative Dispute Resolution: Why use ADR?* (Canada: Government of Canada) online: Canadian Human Rights Commission < http://www.chrc-ccdp.ca/adr/why_use_it-en.asp/>

If mediation fails or the process ends, the complaints proceeds to investigation. After investigation, the Commission decides whether to dismiss the complaint or refer it to the Canadian Human Rights Tribunal for hearings.

What are the advantages of mediation?

Mediation allows parties to get a better understanding of each other's positions. It often helps them improve communications and reach cooperative solutions which can lead to better relations in the future. Mediation is flexible, permitting parties to deal not only with the issues but with what may have caused them. And it allows them to craft creative solutions. Mediating a dispute as soon as possible can help parties avoid delays and enable them to reach a speedy resolution⁶.

Conciliation

Under the *Canadian Human Rights Act*, the Commission has the power to appoint a conciliator and require parties to participate in direct discussion and negotiations on the issues.

Conciliation is **mandatory** and **confidential**. The Commission encourages use of mediation early in the complaint process, and conciliation generally takes place after an investigation of the facts, before a case is referred to a Tribunal.

Conciliators work for the commission and have training and experience in dispute resolution and human rights issues. Conciliators have no authority to make decisions and cannot be called as witnesses in any tribunal proceeding.

When parties reach a settlement through conciliation, the conciliator helps parties prepare a written agreement and the signed agreement is submitted to the Commission for review to ensure it is fair and in the public interest.

If conciliation conducted after an investigation fails, the unresolved case will be referred to the Tribunal. If conciliation happens earlier in the investigation process, the Commission may decide on further investigation, dismissal or referral to the Tribunal⁷.

⁶ Canadian Human Rights Commission, *Alternative Dispute Resolution: Publications - Mediation and Human Rights Complaints* (Canada: Government of Canada) online: Canadian Human Rights Commission < <http://www.chrc-ccdp.ca/publications/mediation-en.asp>>

⁷ Canadian Human Rights Commission, *Alternative Dispute Resolution: Publications Conciliation and Human Rights Complaints* (Canada: Government of Canada) online: Canadian Human Rights Commission < <http://www.chrc-ccdp.ca/publications/conciliation-en.asp>>

Settlement Examples

The [Settlement Examples](#) are intended to provide general information on the types of complaints that can be resolved at the Commission. If parties to a complaint require advice on potential outcomes that might be appropriate to their own circumstances, they should seek independent legal advice. Because the complaint process is confidential, the Commission is unable to provide any further detail on the cases.

Ground(s): Religion

Area: Employment

Allegation:

The complainant cannot work on Sundays because of her religious beliefs. She alleged that, because of this, her supervisor required her to work every Saturday. Eventually, her employment was terminated.

Settlement:

Financial compensation for general damages.

Letter of regret.

Ground(s): Race, colour, national or ethnic origin

Area: Provision of services

Allegation:

The complainant, who is black, alleged that his request to transfer his RRSP from one financial institution to another was denied.

Settlement:

Letter of regret.

Financial compensation for pain and suffering.

Ground(s): Sexual orientation

Area: Employment

Allegation:

The complainant alleged that, during a job interview, he was asked inappropriate questions about his sexual orientation. In the end, the complainant got the job.

Settlement:

Letter of regret.

Training for all interviewers on the *Canadian Human Rights Act*.⁸

⁸ Canadian Human Rights Commission, *Alternative Dispute Resolution: Settlement Examples* (Canada: Government of Canada) online: Canadian Human Rights Commission < <http://www.chrc-ccdp.ca/adr/settlements/disability-en.asp> >

Canadian Transportation Agency

Statute: [Canada Transportation Act, S.C. 1996, c. 10](#)

Overview

The Canadian Transportation Agency deals with:

Accessible Transportation

Air

Rail

Marine

The Canadian Transportation Agency's mandate includes an authority to resolve various transportation disputes and complaints. The Agency, a quasi-judicial body, is committed to enhancing its service by seeking new ways to resolve disputes. Since June 2000, the Agency has provided mediation services to parties upon request. Mediation can be used to resolve disputes in various transportation modes, for issues encompassing the Agency's formal mandate and its areas of expertise. The Agency's goal in offering mediation is to facilitate dispute resolution by providing parties with an effective alternative to the more formal adjudicative process.

Mediation Process

Mediation is **voluntary** and is accessible when parties submit a *Request to Mediate* form to the Agency. Once the form is submitted, the Agency will contact the other party to determine whether it is willing to have the dispute resolved through mediation.

Settlement

The mediator may assist by preparing the minutes of settlement of the main points decided during negotiations. If the parties reach a partial settlement, the remaining issues may then return to the Agency for resolution through the traditional process. If settlement is not reached through mediation, the entire file may return to the Agency.

Confidentiality

The mediation process is informal, the parties must agree in writing beforehand that all information disclosed will remain to be confidential. The mediator cannot be compelled to produce information or to testify regarding information obtained during mediation⁹.

⁹ Canadian Transportation Agency, *Resolving Disputes Through Mediation* (Canada: Canadian

Transportation Agency) online: Canadian Transportation Agency < http://www.cta-otc.gc.ca/mediation/disputes/index_e.html#1/>

Canadian International Trade Tribunal

Statute: [Canadian International Trade Tribunal Act, R.S.C. 1985, c. 47](#)

Overview

The *Canadian International Trade Tribunal Act* contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

Canadian International Trade Tribunal, *About the CITT* (Canada: Canadian International Trade Tribunal) online: Canadian International Trade Tribunal <http://www.citt-tcce.gc.ca/about/index_e.asp>

Commission for Public Complaints against the RCMP ("CPC")

Statute: [Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10](#)

Overview

The Commission for Public Complaints Against the RCMP (CPC) provides civilian review of RCMP members' conduct in performing their policing duties so as to hold the RCMP accountable to the public.

The CPC carries out its duties impartially. Throughout the complaints process, the CPC does not act as an advocate either for complainants or RCMP members. This results in unbiased findings and recommendations being made, which are aimed at identifying, correcting and preventing recurring problems in policing¹⁰.

Application of ADR

Once the CPC analyst determines the relevant facts and understands the goals of the complainant, the analyst explains the citizen's options for dealing with his or her concern. In appropriate cases, the analyst invites the complainant and the RCMP to work together informally to resolve the complaint. The complainant always retains the right to file a formal complaint.

Where the complainant elects to resolve the complaint informally, the CPC analyst serves as a facilitator, helping the complainant obtain information by enlisting the aid of the senior RCMP officer in the jurisdiction where the problem arose. When facilitating in this manner, the analyst provides the RCMP with a summary of the concern expressed by the complainant, normally on the same day that the citizen raises the concern.

The informal resolution of complaints against members of the RCMP has been highly successful - the needs of complainants often can be addressed more quickly than through the formal process. Informal resolution makes it possible for both the CPC and the RCMP to deploy scarce resources to higher priority work.

Process to Engage ADR

¹⁰ Commission for Public Complaints Against the RCMP, *Home* (Canada: Commission for Public Complaints Against the RCMP) online: Commission for Public Complaints Against the RCMP < http://www.cpc-cpp.gc.ca/DefaultSite/Home/index_e.aspx?ArticleID=1>

After a complainant files a complaint with the CPC, if the complainant and the RCMP member involved agree, the CPC can help provide an opportunity to alleviate concerns directly with the RCMP, without going through the formal complaint process. Initial reliance on this speedy resolution alternative does not prevent the lodging of a formal complaint if concerns are not addressed to the complainant's satisfaction.

Examples of Successful Settlements for 2005-2006

An Aboriginal female living on a reserve with her children alleged that while the family was sleeping, RCMP members entered the home and awoke a 15-year-old male in an effort to locate his brother. The members then searched the home and, when challenged, said that the 15-year-old had allowed them entry. The Commission contacted the noncommissioned RCMP officer in charge, who visited the family, obtained further information, and directed the RCMP members concerned to visit the complainant and apologize for their actions. The noncommissioned officer later observed that the visit had served as a positive learning experience for both the RCMP members and the complainant. The complainant was satisfied and did not file a formal complaint.

A male youth was arrested in British Columbia, fingerprinted, photographed and released under conditions of bail. The youth's parents hired a lawyer and attended court, only to learn that the Crown had not approved the charge. In British Columbia, the RCMP is required to advise a citizen when charges are not laid; also, fingerprints and photographs are not to be taken until charges are approved. The family needlessly incurred legal fees and the youth unnecessarily remained under bail conditions. The youth's father wanted an apology as well as assurances that the youth's photographs and fingerprints would be destroyed. A CPC analyst contacted the RCMP, who assigned an officer to meet with the complainant. This meeting successfully resolved the family's concerns. A formal complaint was not lodged.

The complainant was travelling down a highway with her 10-year-old daughter when she observed numerous RCMP vehicles. As she approached a bridge, she saw a spike belt being laid across the road so she pulled off the road and stopped her car. Shortly thereafter, the suspect vehicle came past her travelling in excess of 120 km/h and narrowly missed hitting her vehicle. The complainant was upset because she had not been advised by the RCMP to pull off to a place of safety. A CPC analyst contacted the RCMP and a member spoke with the complainant for three and a half hours. Although the complainant said she still had questions, she felt that nothing more could be done and chose not to file a formal complaint¹¹.

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Commission for Public Complaints Against the RCMP, *Publications: 2005-2006 Annual Report* (Canada: Commission for Public Complaints Against the RCMP) online: Commission for Public Complaints Against the RCMP < http://www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?ArticleID=1203#3.5>

Alberta Tribunals

Workers Compensation Board

Appeals Commission for the Workers' Compensation Board

Statute: [Workers' Compensation Act, S.N.S. 1994-95, c. 10](#)

Overview

The Workers' Compensation Board (WCB) - Alberta is a not-for-profit organization legislated to administer the workers' compensation system for the province. Through the payment of premiums, 117,000 employers fund this no-fault system to provide compensation for workplace injuries and occupational diseases to over 1.5 million workers.

Review and Appeals Process

Under sections 13(2), 21(3), 45, 46, 119 and 120 of the [Workers' Compensation Act, RSA 2000, and Section 11 of the General Regulations](#), a worker, employer, or interested party who is dissatisfied with an adjudicative or employer account decision has the right to seek a review of the decision or to appeal the decision. The WCB is committed to a review and appeal process that ensures decisions are in compliance with the Act and Policies, and the merits of each case are considered.

The WCB Dispute Resolution and Decision Review Body uses a process that is flexible, informal, collaborative and focused on looking for opportunities to resolve issues. As a first step, a Resolution Specialist will contact the person requesting a review to ensure there is clear understanding of the specific issues or concerns. The Resolution Specialist works with the requestor to determine the best approach to resolving the issue. There are a number of approaches available including; a documentary review, a telephone conference with the interested parties or an in-person meeting with the interested parties.

2005-2006 Results of Dispute Resolution

38% of cases did not progress to formal appeal partly due to the fact that the WCB Dispute Resolution and Decision Review Process provides another opportunity to discuss issues and reach a resolution¹².

¹² Workers Compensation Board, *WCB Policy Manual: Review and Appeals Process*, (Canada: Workers Compensation Board) online: Workers Compensation Board

Environmental Appeals Board

Statute: [*Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12*](#)
[*Water Act, RSA 2000, c. W-3*](#)

Overview

The Environmental Appeals Board is an independent board that gives Albertans an opportunity to appeal decisions made by Alberta Environment under the Environmental Protection and Enhancement Act and the Water Act. These decisions may include development approvals, water licences, reclamation certificates, and enforcement orders. The Board places a high value on its mediation program and encourages participants to use mediation as the primary way to resolve matters that come before the Board. Board mediations promote open and collaborative discussions between the participants and encourages individuals to come up with their own solutions¹³.

Mediation

The key elements of mediation are that it is entered into freely by all participants and is designed to assist participants in reaching a mutually agreeable solution. The type of mediation used by the Board is known as interest-based mutual gains dispute resolution. This means the Board's mediators work to uncover the real reason or motivation behind the dispute and find out what is important to the participants in reaching a solution. This is known as the participant's interest. Once the participants' interests have been uncovered, the Board's mediator helps them come up with mutually agreeable solutions that meet as many of these interests as possible. This is the mutual gain that is being sought.

Board mediations are private and confidential.

Mediation - Why Use It?

- cost effective;
- timeliness;
- private/confidential;
- saves face;
- participants are more likely to follow-through with an agreement they have crafted;
- promotes win-win solutions;

<<http://www.wcb.ab.ca/policy/manual/G2.asp>>

¹³ Environmental Appeals Board, *Welcome*, Canada: Environmental Appeals Board) online: Environmental Appeals Board <<http://www.eab.gov.ab.ca>>

control over outcome lies with the participants;
 maintains existing relationships and sometimes forms new relationships;
 promotes creativity in generating options; and
 promotes positive communication and understanding.

When is Mediation not Appropriate?

The Board strongly values the principles of mediation and tries to use it as much as possible to resolve its appeals, however, there are times when mediation may not be appropriate.

Generally, the Board will not recommend mediation for the following situations:

the matter is of important legal principle that should be decided by a panel in a formal proceeding;

the issue is of significant importance or deserves public attention and there is a need to have a hearing where the public has an opportunity to participate;

key participants are entrenched in their positions and are unwilling to negotiate in good faith; long, protracted discussions have taken place with no resolution to date;

participant(s) is incapable of listening;

participant(s) is too agitated to negotiate a workable agreement; or

participant(s) is unwilling to participate.

Mediation Experience

The vast majority of participants have indicated that mediation was a positive and effective process in resolving their disputes. They also indicated they would use the process again.

Generally, participants thought mediation was useful because it gave them the ability to speak candidly, restored relationships, and they were encouraged to develop their own solutions¹⁴.

Statistics on Mediation

Between April 1 2004 – May 31, 2005, the Board held 18 mediation and all 18 were successfully resolved.

Since its inception in 1993, the Board has held 139 mediations with respect to 581 appeals. Of those cases, 116 were resolved through mediation; an overall resolution rate of 83%. Mediation continues to be the Board's preferred way to resolve matters, because it promotes open and collaborative discussions and encourages participants to come up with their own solutions.

The Board believes it is important to continually review and improve the way it conducts

¹⁴ Environmental Appeals Board, *About Mediation*, (Canada: Environmental Appeals Board) online: Environmental Appeals Board < <http://www.eab.gov.ab.ca> >

mediations and therefore, it requests participants to provide feedback via anonymous survey forms. The majority of participants have indicated that mediation was a positive and effective process in resolving their disputes and indicated they would use the process again. Generally, participants thought mediation was useful because it gave them the ability to speak candidly, restored relationships and they were encouraged to develop their own solutions¹⁵.

What Happens when a Resolution is Reached

After the participants reach a resolution, the Board will either prepare a Discontinuance of Proceedings or a Report and Recommendations. A Discontinuance of Proceeding is issued if the participants come to a resolution in which conditions of the resolution are non-regulatory in nature. If regulatory changes are made in the resolution, then a Report and Recommendations will be prepared and forwarded to the Minister of Environment to be dealt with in accordance with the Environmental Protection and Enhancement Act. Participants will receive a copy of either decision when the appeal file has been closed¹⁶.

¹⁵ Environmental Appeals Board, *2004-2005 Annual Report*, (Canada: Environmental Appeals Board) online: Environmental Appeals Board <<http://www.eab.gov.ab.ca/pub/2004-05-AR.pdf>>

¹⁶ Environmental Appeals Board, *About Mediation: FAQ*, (Canada: Environmental Appeals Board) online: Environmental Appeals Board <http://www.eab.gov.ab.ca/mediation_faq.htm>

Alberta Labour Relations Board

Statute: [*Labour Relations Code, RSA 2000, c. L-1*](#)
[*Public Service Employee Relations Act, R.S.A. 2000, c. P-43*](#)
[*Police Officers Collective Bargaining Act, R.S.A. 2000, c. P-18*](#)

Overview

The Alberta Labour Relations Board is the independent and impartial tribunal responsible for the day-to-day application and interpretation of Alberta's labour laws. It processes applications and holds hearings. The Board actively encourages dispute resolution, employs officers for investigations and makes major policy decisions. The Labour Relations Code encourages parties to settle their disputes through honest and open communication. The Board offers informal settlement options to the parties, but it also has inquiry and hearing powers to make binding rulings whenever necessary¹⁷.

Alternative Dispute Resolution

The *Labour Relations Code* provides for mechanisms to assist in reaching a settlement including the Voluntary Arbitration Board, Compulsory Arbitration Board, Disputes Inquiry Board and the Public Emergency Tribunal.

The Mediation Services program promotes positive relationships between employers and unions and assists in resolving labour disputes. Either the union or the employer may request the appointment of a mediator or grievance arbitrator in accordance with the *Code*. Mediation is required prior to the parties being legally permitted to strike or lock out. Grievance arbitration is used when there is a disagreement over the interpretation of the collective agreement or when one party believes the other has violated the terms of the collective agreement.

Workplace Effectiveness Programs help employers, employees, unions and industry associations work together by offering facilitation services, education, workshops and partnership opportunities.

Alternative Dispute Resolution Experience

The Labour Relations Board's Annual Report is created by the Department of Alberta Human Resources and Employment.

¹⁷ Alberta Labour Relations Board, *Introduction* (Canada: Alberta Labour Relations Board) online: Alberta Human Labour Relations Board <<http://www.alrb.gov.ab.ca/index.html>>

According to the 2005/2006 Annual Report, in 2005/2006 98% of collective bargaining agreements were settled without a strike or lockout. The Department made 113 mediation and 281 arbitration appointments. The percentage of applications, with Board involvement settled before reaching a formal hearing is 73% up almost 20% from 2003/2004.

The Board's 1998/99 Annual Report reveals that a total of 161 complaints were settled with Officer involvement. Most (59%) client respondents having been involved with mediation since January 1st, 1998 report that mediation was effective, primarily due to the impartiality at play and the fact that a resolution was reached. Four-in-ten (39%) clients, however, perceive mediation to have been ineffective because the process was impartial and given that the opposing sides did not reach a settlement. Inconsistencies appear to occur in mediation with respect to impartiality¹⁸.

¹⁸ Alberta Labour Relations Board, *2005/2006 Annual Report* (Canada: Alberta Human Resources Employment) online: Alberta Human Resources Employment <http://employment.alberta.ca/documents/RRM/RRM-PUB_annrpt05_06.pdf>

Alberta Energy and Utilities Board

Statute: [Alberta Energy and Utilities Board Act, R.S.A. 2000, c. A-17](#)

Overview:

The Alberta Energy and Utilities Board (EUB) is an independent, quasi-judicial agency of the Government of Alberta.

The Alberta Energy and Utilities Board (EUB) was created, effective 15 February 1995, by the amalgamation of the Energy Resources Conservation Board and the Public Utilities Board. Effective 1 April 1996, the Alberta Geological Survey became part of the Alberta Energy and Utilities Board¹⁹.

“Appropriate” Dispute Resolution

The EUB’s ADR Program was developed during 2000 in response to concerns of many stakeholders who were looking for more direct involvement and control over resolving their disputes.

The Alberta Energy and Utilities Board (EUB) has a regulatory role regarding oil and gas wells, pipelines, production facilities, electrical substations, and transmission lines. It also has a role in resolving issues and disputes between affected parties, such as between energy companies and landowners and their neighbours. To expand the number of dispute resolution options available, the EUB has undertaken the Appropriate Dispute Resolution (ADR) initiative. Major stakeholders have been involved with the EUB in the development of this initiative.

In ADR a dispute or conflict can be resolved in a number of ways. People in conflict are able to choose which option to use. Some options allow people control over the process used to find a solution and make the final agreements. These options range from those where agreements are made with no outside involvement (e.g., negotiations) onto facilitation and then to mediation. Other options include arbitration or engaging an administrative tribunal (e.g., EUB Board hearing or the court system). These latter ways of resolving disputes involve established, formal procedures that result in a decision being made for the people in conflict.

ADR discussions between the parties and the mediator/ facilitator are considered to be confidential and without prejudice.

¹⁹ Alberta Energy Utility Board, *About the EUB*, (Canada: Alberta Energy Utility Board)online: Alberta Energy Utility Board
<<http://www.eub.ca/portal/server.pt?>>

Forms of ADR

The EUB's ADR options include:

Informal discussion and problem-solving

Parties are able to informally discuss and resolve the issue between themselves.

Occasionally, the phrase "kitchen table" is used to describe the informal nature of these talks.

Direct negotiation: Formal and facilitated negotiations take place directly between the affected parties.

Facilitation: EUB staff may facilitate the communication and discussions between the affected parties.

Mediation: A professional, neutral third party assists the affected parties in reaching a satisfactory agreement.

Arbitration: A neutral adjudicator is empowered by everyone involved in the dispute to listen to all sides and to either recommend nonbinding terms of settlement or impose a binding decision.

Administrative tribunal: (e.g., EUB Board hearing or the court system): A formal adjudication process takes place in which evidence is presented and a binding decision is rendered²⁰.

ADR Program Experience

The evaluation process for the ADR Program includes written feedback form participants and analysis of the data. The following is results from 2001

97% of those who provided feedback said they would participate in ADR again

94% indicated they would recommend the program to others

161 field staff facilitations were initiated between landowners and companies and 115 were completed with 98 fully resolved (85%)

All mediation participants indicated that EUB staff involvement was highly satisfactory and it greatly assisted in the legitimacy of the process, enabled the development of reasonable options and led to successful resolutions.

30 disputes were referred to dispute resolution experts and 23 were completed with 19 resolved (82%).

People using the EUB ADR program were very supportive with 97% of those providing feedback indicating they would try ADR again and 94% indicating they would recommend others try ADR. The average cost of the ADR process was \$4,300 and the average duration from

²⁰ Alberta Energy Utility Board, *Public Zone: EUB Process – Appropriate Dispute Resolution (ADR)*, (Canada: Alberta Energy Utility Board) online: Alberta Energy Utility Board <<http://www.eub.ca/portal/server.pt?>>

referral to end of mediation was 28 days²¹.

²¹ Alberta Energy Utility Board, *News: News Release June 11, 2002 – EUB Releases First Annual Report on Appropriate Dispute Resolution Process*, (Canada: Alberta Energy Utility Board) online: Alberta Energy Utility Board <<http://www.eub.ca/portal/server.pt?>>

Alberta Human Rights and Citizenship Commission

Statute: [Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14](#)

Overview

In Alberta, the *Human Rights, Citizenship and Multiculturalism Act* protects Albertans from discrimination. The Act establishes the Alberta Human Rights and Citizenship Commission to carry out functions under the Act. The Commission is an independent agency of the Government of Alberta.

Application of ADR

After a complaint and response to the complaint is filed, the complainant and respondent may voluntarily decide to settle the matter without any further involvement of the commission.

Conciliation is a voluntary, non-adversarial way of resolving disputes in which a neutral person known as a conciliator (on staff with the Commission) helps the Complainant and the Respondent to identify and discuss the issues to try to resolve the conflict. The conciliator does not take sides or assess the complaint. All information provided by the parties during conciliation is without prejudice and will not be used for any purpose other than the conciliation. If a settlement which is acceptable to both parties is not achieved or if one of the parties declines conciliation, a human rights investigator is then assigned²².

2005-2006 Results of Human Rights Complaints

In 2005-2006 the Commission opened 778 complaint files. Of those files 749 files were closed. 728 or 97% of the files closed were dealt with through the Commission's complaint resolution processes, meaning they were resolved through conciliation, settled through investigation, dismissed or discontinued by the director, or withdrawn or abandoned by the complainants. Of the files that closed, 53% were resolved through conciliation²³.

²² Alberta Human Rights and Citizenship Commission, *Human Rights Complaints: Complaints Process*, (Canada: Alberta Human Rights and Citizenship Commission) online: Alberta Human Rights and Citizenship Commission, <http://www.albertahumanrights.ab.ca/publications/Information_Sheets/Text/Info_Complaint_Process.asp>

²³ Alberta Human Rights and Citizenship Commission, *Publications and Resources: 2005-2006 Annual Review: Complaints Process*, (Canada: Alberta Human Rights and Citizenship Commission) online: Alberta Human Rights and Citizenship Commission, <http://www.albertahumanrights.ab.ca/publications/Information_Sheets/Text/Info_Complaint_Process.asp>

Natural Resources Conservation Board

Statute: [*Natural Resources Conservation Board Act, R.S.A. 2000, c. N-3*](#)

Regulation: [*Rules of Practice of the Natural Resources Conservation Board Regulation, Alta. Reg. 77/2005*](#)

Overview

The NRCB was established in 1991 under the Natural Resources Conservation Board Act. It is a regulatory agency of the Government of Alberta. It reviews proposals for projects that affect Alberta's non-energy natural resources, and regulates Alberta's confined feeding operations.

Natural Resources Conservation Board, *Who we are*, (Canada: Natural Resources Conservation Board) online: Natural Resources Conservation Board, <<http://www.nrcb.gov.ab.ca/weare/default.aspx>>

British Columbia Tribunal

Environmental Appeals Board

Governing Statute: [Environmental Management Act, SBC 2003, C.53](#)
Hears Appeals from: [Environmental Management Act, SBC 2003, C.53](#)
[Integrated Pest Management Act, SBC 2003, C.58](#)
[Water Act, RSBC 1996, C.483](#)
[Wildlife Act, SBC 1995, C.488](#)

Overview

The Environmental Appeal Board is governed by Part 8 of the Environmental Management Act. It is an independent agency which hears appeals from administrative decisions related to environmental issues. The Environmental Appeal Board plays a role in ensuring the protection of the environment by providing a final quasi-judicial access point for public and industry to appeal environmental administrative decisions. The Board ensures that administrative decisions relating to the environment are fair and objective²⁴.

Application of ADR

There is no prescribed ADR processes, but the Board does encourage parties to resolve the subject of the appeal either on their own or with the assistance of the Board. Many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the Appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a “Consent Order” and ask the Board to approve the order²⁵.

²⁴ Environmental Appeals Board, *Mandate*, (Canada: Environmental Appeals Board) online: Environmental Appeals Board, <<http://www.eab.gov.bc.ca/mandate.htm>>

²⁵ Environmental Appeals Board, *2005-2006 Annual Report*, (Canada: Environmental Appeals Board) online: Environmental Appeals Board, <<http://www.eab.gov.bc.ca/Annual06.pdf>>

BC Human Rights Tribunal

Statute: [Human Rights Code, RSBC 1996, c. 210](#)

Overview

The B.C. Human Rights Tribunal is an independent, quasi-judicial body created by the B.C. Human Rights Code. The Tribunal is responsible for accepting, screening, mediating and adjudicating human rights complaints. The Tribunal offers the parties to a complaint the opportunity to try to resolve the complaint through mediation. If the parties don't resolve the complaint, the Tribunal holds a hearing.

Settlement Meeting

As part of the pre-hearing process, the BC Human Rights Tribunal offers parties to a complain the opportunity to attend a settlement meeting. In a settlement meeting, the parties to a complaint meet with a neutral person whose role is to assist the parties to settle the complaint. Common procedures that might be used at a settlement meeting include; Mediation, Early Evaluation; Structured negotiation; Final Determination of the merits. All discussions during a settlement meetings are “off the record” and parties are required to sign an agreement to that effect prior to the commencement of the meeting. Once a complaint is settled, the parties must complete a Notice of Settlement Form and file the signed forms with the Tribunal, a tribunal member will then order that the complaint be discontinued.

Mediation

The Tribunal provides mediation prior to the respondent filing a response to the complaint and at any other stage in the process. On a number of occasions parties have requested mediation mid-hearing and successfully resolved the complaint.

In 2005-2006 the Members released 567 interim decisions, 53 final decisions and presided over 68 hearings and 346 mediations. Approximately one-quarter of their workload involved settlement meetings.

BC Human Rights Tribunal, *2005-2006 Annual Report*, (Canada: BC Human Rights Tribunal) online: BC Human Rights Tribunal,

<http://www.bchrt.bc.ca/rules_practice_procedure/default.htm>

BC Human Rights Tribunal, *Rules of Practice and Procedure* (Canada: BC Human Rights Tribunal) online: BC Human Rights Tribunal Board ,

<http://www.bchrt.bc.ca/rules_practice_procedure/default.htm>

Office of the Police Complaint Commissioner

Statute: [Police Act, RSBC 1996, C.367](#) – s.54.1(9) and (10) – requirement for informal resolution procedures

Overview

The British Columbia Office of the Police Complaint Commissioner is an independent agency established under the Police Act. The Commission Office is responsible for overseeing complaints against municipal police to ensure they are handled fairly and impartially. The Police Complaint Commissioner is an Officer of the Legislature. The office is completely independent from any police department or government ministry, and reports directly to the Legislature.

The *Police Act* requires the Commissioner to establish procedures for mediation and guidelines for informal resolution of Public Trust complaints, however there is currently no mediation program in place, although the Commissioner is attempting to implement a program of mediation. The barriers to implementation are largely due to the reticence by some parties to participate in a scheme involving information resolution²⁶.

²⁶ The Office of the Police Complaint Commissioner, *2005 Annual Report* (Canada: The Office of the Police Complaint Commissioner) online: BC The Office of the Police Complaint Commissioner, <http://www.opcc.bc.ca/Annual%20Reports/Annual%20Reports/Annual%20Reports.htm>

Information and Privacy Commissioner

Statute: [*Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25*](#)
[*Personal Information Protection Act, S.A. 2003, c. P-6.5*](#)

Overview

The Office of the Information and Privacy Commissioner (OIPC) is independent from government and monitors and enforces British Columbia's *Freedom of Information and Protection of Privacy Act* (FIPPA) and *Personal Information Protection Act* (PIPA). FIPPA allows access to information held by public bodies (such as ministries, universities and hospitals) and determines how public bodies may collect, use and disclose personal information. PIPA sets out how private organizations (including businesses, charities, associations and labour organizations) may collect, use and disclose personal information²⁷.

Mediation

The OIPC has the authority to resolve disputes by issuing orders requiring compliance with the Freedom of Information and Protection of Privacy Act ("FIPPA") or the Personal Information Protection Act ("PIPA"), however, before issuing an order the OIPC typically attempts to reach a mediated resolution that all parties to a dispute consider satisfactory. The majority of the files handled by the OIPC office are resolved in this way.

The emphasis in mediation is always on the most practical solution available within the law. As in any other kind of dispute, the core of the problem may lie in communication problems, and the OIPC's involvement will then focus on clarifying key issues and identifying simple remedies that may, for one reason or another, have been overlooked.

The OIPC's efforts at mediation enjoy a high rate of success in producing results that parties to disputes consider fair and effective. Anyone who is unhappy with the result of mediation has the right to request a formal inquiry (in the case of requests for review) or a further review by our office of the portfolio officer's findings (in the case of complaints)²⁸.

Benefits of Mediation

²⁷ The office of the Information and Privacy Commissioner, *Home* (Canada: The Office of the Information and Privacy Commissioner) online: The Office of the Information and Privacy Commissioner <<http://www.oipc.bc.org/index.htm>>

²⁸ The office of the Information and Privacy Commissioner, *Mediation Summaries* (Canada: The Office of the Information and Privacy Commissioner) online: The Office of the Information and Privacy Commissioner <http://www.oipc.bc.org/Mediation_Cases/mediation_cases.htm>

- More information is released
- The issues in dispute are narrowed
- The public body's decision is further clarified
- The applicant's initial request is further clarified
- The matter is referred to another agency for resolution
- An applicant's questions or concerns underlying the request are addressed

In fiscal 2005-2006 the Commission received 559 requests for review under FIPPA, 556 requests for review were closed and 56 resulted in a notice of inquiry being issued.

Examples of Mediated Resolutions

Under FIPPA

Woman Seeks Help Tracking Calls from Jails

A woman wanted to check whether she had received phone calls from correctional facilities asked for a list of all telephone numbers from three correctional facilities. The ministry withheld the list under section 15 of FIPPA on the ground that public disclosure of the telephone numbers could pose a threat to the security of the telephone system. Dissatisfied with the response, the woman asked the Commission to review it.

As a result of mediation, the applicant agreed to modify her request. She had made records of telephone numbers that had called her home phone and was unfamiliar with some of them. With the agreement of the ministry, she provided the Commission with her list of numbers which the Commission compared with lists the ministry provided of all telephone numbers of the three identified correctional facilities.

The comparison resulted in identifying two telephone numbers from one correctional facility and two numbers from another facility that appeared on the applicant's list. The applicant was satisfied and agreed to close the file.

Under PIPPA

Insurance Company Asks Doctor to Vet Medical File Before Release

A woman asked her private medical insurance provider for a copy of her medical file. To ensure that there would be no harm in disclosing the entire contents of the file to her, the company gave it to her doctor instead and told her she could access his copy. She complained to the Commission that the company had improperly disclosed the copy of the file to her physician. She wanted the physician to return the file to the company and the company to provide a copy directly to her.

As a result of mediation, the company gave the complainant a complete copy of her file. The disclosure to the physician was also found to be in compliance with PIPA²⁹.

²⁹ The office of the Information and Privacy Commissioner, *Resources and Publications: 2005-2006 Annual Report* (Canada: The Office of the Information and Privacy Commissioner) online: The Office of the Information and Privacy Commissioner <http://www.oipcbc.org/publications/annual_reports/2006AR/OIPC-AR-2005-06.pdf>

Workers Compensation Board

Statute: [Occupational Health and Safety Act, R.S.A. 2000, c. O-2](#)

Overview

WorkSafeBC is dedicated to promoting workplace health and safety for the workers and employers of this province. WorkSafeBC consults with and educates employers and workers and monitors compliance with the Occupational Health and Safety Regulation.

Programs and Strategies

WorkSafeBC works closely with injured workers, physicians, employers, unions and others to create return-to-work programs customized to meet workers' unique needs. Programs and services may include vocational counseling, return-to-work planning, worker/employer mediation, work assessment, worksite/job modification, job search and placement assistance and help with training and education³⁰.

³⁰ Workers Compensation Board, *2005 Annual Report*. (Canada: WorkSafeBC) online: WorkSafeBC <<http://www.worksafebc.com/default.asp>>

Manitoba Tribunals

Human Rights Commission

Statute: [Human Rights Code, C.C.S.M. c. H175](#) – s.29(1) says the board of Commissioners may cause mediation to be undertaken between the parties where the evidence obtained during investigation is sufficient to warrant further action.

Overview

The Manitoba Human Rights Commission is the agency responsible for carrying out the provisions of The Human Rights Code. The Commission accepts complaints alleging contravention of The Code, offers opportunities to voluntarily resolve complaints by way of conciliation or mediation, and investigates complaints (that are not otherwise resolved) to the extent necessary to provide an appropriate recommendation to the Board of Commissioners³¹.

Pre-Complaint Conciliation

Before a complaint is filed, the Intake Officer may attempt to resolve the complainants concern through pre-complaint conciliation. The Officer, with the complainants agreement, will telephone the person or organisation that the complainant believe has discriminated against him/her. The Officer will explore the possibility of reaching a resolution on an informal basis, without a written complaint.

Pre-complaint conciliation is voluntary, and requires both the complainants participation and that of the potential respondent. Pre-complaint conciliation discussions are not disclosed if the matter proceeds to a formal complaint.

Many potential complainants find a satisfactory resolution or explanation through pre-complaint conciliation. Any agreement that is reached with the potential respondent is set out in a letter to both parties, to avoid misunderstandings. Usually the complainants file about his/her contact with the Commission will not be closed until after the terms of the agreement have been fulfilled. If the potential respondent fails to complete the agreement, the complainant may contact the Commission so they can reconsider the matter.

Mediation

Mediation is a voluntary process that is offered after the Manitoba Human Rights Commission

³¹ The Manitoba Human Rights Commission, *Home* (Canada: The Manitoba Human Rights Commission) online: The Manitoba Human Rights Commission <<http://www.gov.mb.ca/hrc/english/index.html>>

receives a formal complaint. The complainant will be advised that the Commission offers mediation as an option for the parties to consider. One of the Commission's mediators will contact the complainant to explain the mediation process and to assess whether the complainant is interested in exploring a voluntary resolution of the complaint. The Commission's handout entitled "Mediation at The Human Rights Commission" will give an overview of the mediation process before you speak to the mediator.

Mediation is conducted "without prejudice" meaning that the settlement information received during the mediation process will not be used in any other proceeding of the Commission.

If the complaint cannot be voluntarily resolved at this stage, the complaint is assigned to investigation

It should also be noted that parties can request to try mediation or shuttle negotiations at any time during the investigative process.

Advantages of Mediation

Mediation can resolve complaints more quickly than the more formal investigation process. As mediation is confidential and not adversarial in nature, it allows for the protection of privacy and dignity of the participants and promotes respectful interpersonal communication. Also, the resolution of matters can be tailored to the unique circumstances of the parties. Finally, the participants are in control of what decisions are made including the final resolution rather than having them imposed by some third party that can leave the participants feeling unsatisfied. Mediation participants "own" the process and the resulting solutions³².

³² The Manitoba Human Rights Commission, *Publications: What is Mediation?* (Canada: The Manitoba Human Rights Commission) online: The Manitoba Human Rights Commission <<http://www.gov.mb.ca/hrc/english/publications/factsheets/mediation.html>>

Statistics from 2003

The Manitoba Human Rights Commission, *Publications: What is Mediation?* (Canada: The Manitoba Human Rights Commission) online: The Manitoba Human Rights Commission <<http://www.gov.mb.ca/hrc/english/publications/annual-reports/Annual%20Report.03.Stats.pdf>>

Results from 2005 Annual Report

The Commission encourages parties to attempt to resolve a complaint if they wish to do so, at any stage of the process, whether prior to or during an investigation. In 2005, 212 files were assigned to three staff mediators at the pre-investigation stage, another 26 were assigned during investigation. Fifty four complaints were resolved successfully in 2005 at these two stages of the process (37 in pre-investigation and 17 at mid-investigation). Of these, 40 complaints were resolved successfully by mediators while the remaining 14 were resolved by investigators or the parties themselves during the investigation.

Board Directed Mediation

In 2005, 42 files were referred to directed mediation and 11 cases were voluntarily resolved at this stage and in 17 other cases, the board determined the offer made by the respondent in the mediation was reasonable and declined to proceed to adjudication³³.

³³ The Manitoba Human Rights Commission, *Publications: 2005 Annual Report* (Canada: The Manitoba Human Rights Commission) online: The Manitoba Human Rights Commission <<http://www.gov.mb.ca/hrc/english/publications/annual-reports/annual-report-05.pdf>>

Workers Compensation Board of Manitoba

Statute: [*Workers Compensation Act, C.C.S.M. c. W200*](#)

Overview

The Workers Compensation Board of Manitoba was founded in 1916 with the passing of The Workers Compensation Act and officially opened in 1917. The program is the result of a Canadian compromise struck in the early twentieth century and maintained to this day – injured workers gave up the right to sue their employers in exchange for guaranteed no-fault benefits in the event of a work related injury or illness, and employers agreed to pay for the system, in exchange for protection against lawsuits.

New Brunswick Tribunals

Human Rights Commission

Statute: [Human Rights Act, R.S.N.B. 1973, c. H-11](#)

Overview

The New Brunswick Human Rights Commission is the government agency that promotes equality and opposes discrimination and harassment in New Brunswick, Canada. It carries out this mission by enforcing the Human Rights Act and by educating about human rights and responsibilities

Mediation

The Commission offers pre-complaint mediation services to the parties of a potential complaint. However, all formal complaints reviewed by a triage team that identifies human rights issues raised, answer issues as to jurisdiction or the sufficiency of the complaint form, and properly assigns the complaint to mediation and/or investigation.

Parties assigned to mediation and/or investigations are offered early mediation, mediation services include face-to-face mediation sessions and settlement discussions by letter, email and telephone.

Results of Mediation

During the past fiscal year (2005-2006) the Commission's staff was able to assist the parties in obtaining a resolution to 95 complaints. In 2005-2006, the Commission received 205 complaints³⁴.

³⁴ New Brunswick Human Rights Commission, *2005-2006 Annual Report*. (Canada: Human Rights Commission) online: Human Rights Commission <<http://www.gnb.ca/hrc-cdp/e/2005-06-Annual-Report-New-Brunswick-Human-Rights-Commission--Rapport-annuel-Commission-droits-personne-Nouveau-Brunswick.pdf>>

Workplace Health, Safety and Compensation Commission

Statute: [*Workers' Compensation Act, R.S.N.B. 1973, c. W-13*](#)
[*Workplace Health, Safety and Compensation Commission Act, S.N.B. 1994, c. W-14*](#)

Overview

The WHSCC provides accident prevention services, occupational health and safety assistance and cost-effective disability and liability insurance to workers and employers in New Brunswick³⁵.

³⁵ Workplace health, Safety and Compensation Commission (Canada: Workplace Health, Safety and Compensation Commission) online: Workplace Health, Safety and Compensation Commission <<http://www.whscc.nb.ca/index.asp>>

Newfoundland and Labrador Tribunals

Human Rights Commission

Statute: [Human Rights Code, R.S.N.L. 1990, c. H-14](#)

Overview

The Human Rights Commission was established in 1971 pursuant to the Human Rights Code. The Commission is mandated to promote an understanding of and acceptance of and compliance with the provisions of the Act³⁶.

Complaint Procedure (Settlement)

The Commission will accept for investigation complaints made within six months of the event giving rise to the complaint where it appears there may be a violation of the *Human Rights Code*. The Commission is mandated to endeavour to effect a settlement and provides for this to occur at any stage in the investigation process. Settlements must be approved by Commissions and where a settlement is reached, the Commission will notify the parties that no further action will be taken unless the terms of the settlement are not complied with

Settlement Statistics for 2004

Out of 83 files closed in 2004, 15 (18%) were settled³⁷.

³⁶ Newfoundland and Labrador Human Rights Commission (Canada: Human Rights Commission) online: Human Rights Commission <<http://www.justice.gov.nl.ca/hrc/>>

³⁷ Newfoundland and Labrador Human Rights Commission, *Publications: Commission Report 2004-2005*, (Canada: Human Rights Commission) online: Human Rights Commission <<http://www.justice.gov.nl.ca/hrc/Publications/AR2004-05.pdf>>

Workers Health and Safety Compensation Commission

Statute: [*Workplace Health, Safety and Compensation Act, R.S.N.L. 1990, c. W-11*](#)
[*Occupational Health and Safety Act, R.S.N.L. 1990, c. O-3*](#)
[*Radiation Health and Safety Act, R.S.N.L. 1990, c. R-1*](#)

Overview

Serving over 14,000 employers and approximately 12,000 injured workers, the Workplace Health, Safety and Compensation Commission is an employer-funded no fault insurance system that promotes safe and healthy workplaces, provides return-to-work programs and fair compensation to injured workers and their dependants³⁸.

³⁸ Newfoundland and Labrador Workers Health and Safety Compensation Commission, (Canada: Workers Health and Safety Compensation Commission) online: Workers Health and Safety Compensation Commission <<http://www.whscc.nf.ca/default.htm>>

Nova Scotia Tribunals

Human Rights Commission

Statute: [Human Rights Act, R.S.N.S. 1989, c. 214](#) – s.29 addresses Commissions mandate to try to resolve complaints through settlement initiatives.

Overview

The Nova Scotia Human Rights Commission is an independent government commission that is charged with the administration of the province's Human Rights Act. Commission staff investigate and resolve complaints of discrimination³⁹.

Complaint Process

The HRC is contacted by a person or group of people to report what they believe is discrimination. If the complaint appears to fall under the act, the HRC will advise the complainant to make a formal written statement. Prior to filing a formal complaint, an HRC officer may try to help the parties resolve the issues by discussing the matter with the complainant and the respondent. The purpose of this discussion is to find a solution the parties can agree to.

If the parties cannot resolve their issues, then a formal complaint is filed. An HRC will then write up the complainants concerns on a Complaint Form and give it to the respondent and ask the respondent to reply. The complainant can then rebut the reply and then all this information is given to the HRC officer to assess. The HRC officer may investigate the complaint, encourage the parties to try to settle the matter (through mediation) or stop the process.

Settlement Initiative

Participation in a settlement initiative is voluntary and is based on informed consent. Settlement can occur at any stage in the process up to and including after a Board of Inquiry begins a hearing. If a settlement is reached after a formal complaint is filed, the Commissioners of the HRC are asked to approve it. If the Commissioners approve the settlement, the case is closed. If the people involved reach a settlement before a Board of Inquiry is appointed to hear the complaint, information about the settlement can be kept confidential. If a settlement is reached after a Board of Inquiry is appointed, information about the settlement, including what was agreed to in the settlement, is usually made public⁴⁰.

Advantages of Settlement Initiative

Settlement meetings can resolve complaints more quickly than a formal investigation.

³⁹ Nova Scotia Human Rights Commission, *About Us* (Canada: Human Rights Commission) online: <<http://www.gov.ns.ca/humanrights/aboutus.htm>>

⁴⁰ Nova Scotia Human Rights Commission, *The Complaint Process: Guide to the Complaint Process* (Canada: Human Rights Commission) online: <http://www.gov.ns.ca/humanrights/PDFdocs/Complaint_Process_E.pdf>

All parties talk about the actions that led to the complaint and the issues surrounding them. The meeting can bring about a better understanding between the parties even if they do not agree on exactly what happened. The process promotes respect and compromise. The parties find their own solution that is fair to all sides, rather than having someone else decide it for them.

While information from a Human Rights Board of Inquiry hearing is made public, information exchanged during settlement initiatives is kept confidential. This allows participants of settlement initiatives to discuss their situation openly and candidly without fear of repercussion.

Results of Settlement Initiatives

About 70 per cent of mediated complaints are resolved with a fair settlement offer. A settlement may include many different remedies, such as an apology, money to compensate for lost wages or loss of dignity, or training. Parties that cannot reach an agreement can go on to the formal complaint process⁴¹.

Mediation

If a mediation leads to an agreement between the parties before a formal complaint is filed, the mediator will draft a letter, Memorandum of Agreement, or other document agreeable to the parties. Both parties must sign the agreement, usually before leaving the meeting. The settlement agreement reached before a formal complaint is not subject to the approval of the commissioners.

Agreements reached after a formal complaint has been filed must be completed on a prescribed form by the mediator. These agreements are submitted to the commissioners for their review and approval. The form must be signed by the parties to the mediation before its conclusion. If the complaint is resolved, all issues that are related to or arising from the complaint are “closed.”

An agreement reached and signed through mediation is a legally binding contract.

When an agreement is not reached between the parties, the mediator submits a record of the mediation to the commission, stating that mediation was attempted but not successful. The mediation file remains confidential. If everyone is agreeable, it is still possible to attempt to settle through mediation or another process at a later time.

Advantages of Mediation

Mediation can resolve complaints more quickly than a formal and often lengthy investigation process.

Mediation allows people to be directly involved in the process by talking about the actions that led to the complaint and issues surrounding them.

The mediation process can bring about a better understanding of the conflict between the parties, even if they do not agree on exactly what happened.

The mediation process is less adversarial than the investigation process and promotes respect and compromise.

⁴¹ Nova Scotia Human Rights Commission, *Publications: Introduction to Settlement Initiatives* (Canada: Human Rights Commission) online: <http://www.gov.ns.ca/humanrights/PDFdocs/Settlement_E.pdf>

Mediation allows people to find their own solution that is fair to all sides, rather than having someone else decide it for them.

The information from a mediation is kept confidential if it affects the privacy of either party. On the other hand, information from a Human Rights Board of Inquiry hearing is made public.

Results from Mediation

About 70 per cent of mediated complaints are resolved with a fair settlement agreement. A settlement may include many different remedies, such as:

An apology

A positive reference from an employer

Financial compensation – for lost wages, out-of-pocket expenses such as medical bills, or to compensate for humiliation or loss of dignity

Sensitivity training for staff in an organization

The development of anti-discrimination policies.

Situations where Mediation Works Best

Relationship between the parties is important to both of them

Both parties want a measure of control over the outcome

Neither party wants investigation or litigation

Speed is important

Both parties need the opportunity to be heard in a non-threatening environment with a neutral third party present

The parties have the authority to settle the matter⁴².

⁴² Nova Scotia Human Rights Commission, *Publications: Guide to Mediation: One option for settling complaints* (Canada: Human Rights Commission) online: < Nova Scotia Human Rights Commission, *Publications: Introduction to Settlement Initiatives* (Canada: Human Rights Commission) online: <http://www.gov.ns.ca/humanrights/PDFdocs/Settlement_E.pdf>

Labour Relations Board and Construction Industry Panel

Statute: [Trade Union Act, R.S.N.S. 1989, c. 475](#)

Governed by: Nova Scotia Environment and Labour

Overview

The Labour Relations Board and Construction Industry Panel, pursuant to the [Trade Union Act](#) are responsible for the processing of applications/complaints, assisting in the resolution of these matters, and the adjudication of matters filed according to specific sections of the Act. The Board addresses matters arising under Part I of the Act which are of an industrial nature whereas Part II of the same legislation is concerned with issues arising from the Construction Industry. The [Regulations](#) to the Trade Union Act identify the various complaint and application forms that can be utilized to initiate an action before the Board or Panel⁴³.

Trade Union Act Changes in Effect

On December 8, 2005, the legislature passed [Bill 219](#) to amend the Trade Union Act. The Bill dealt with two important labour relations issues: Expedited Arbitration and Duty of Fair Representation. The Expedited Arbitration and Duty of Fair Representation provisions came into force on October 1, 2006⁴⁴.

Expedited Arbitration

Arbitration is a system for the binding resolution of rights disputes, commonly known as grievances. Expedited arbitration takes place within specific time frames mandated by legislation. The expedited arbitration process is administered by Nova Scotia Environment and Labour.

The objectives of expedited arbitration are to:

- reduce delays in scheduling arbitration hearings;
- manage the costs of hearings; and
- establish statutory time frames for the issuance of a binding award/decision

⁴³ Nova Scotia Environment and Labour, *Labour Relations Board/Construction Industry Panel* (Canada: Environment and Labour) online: Environment and Labour < <http://www.gov.ns.ca/enla/lrb/>>

⁴⁴ Nova Scotia Environment and Labour, *Amendments to Trade Union Act* (Canada: Environment and Labour) online: Environment and Labour < <http://www.gov.ns.ca/enla/unionworkplaces/tradeunionamend.asp/>>

Expedited Arbitration applies to

The Trade Union Act was amended effective October 1, 2006 to include expedited arbitration process for organized workplaces governed by

- the Trade Union Act (part 1 only)
- the Civil Service Bargaining Act
- the Corrections Act; and
- the highway Workers Collective Bargaining Act

Process of Expedited Arbitration

Either the union or the employer may apply to the Minister of Environment and Labour for the appointment of an arbitrator if;

- the grievance procedures under their collective agreement have been exhausted
 - five months or more have passed since the dispute was referred to arbitration; and
 - no hearings have commenced to resolve the dispute
- Other Forms of ADR available to Unionized Workplaces

Non-Binding Arbitration

Non-binding Arbitration is an alternative way to settle labour and management disputes. It is unique in Canada. Rather than going to a traditional arbitration hearing, a Non-binding Arbitration panel will consider an issue and provide a decision. This is an extension of the grievance process. This conflict-resolution model has been helping employers and workers in Nova Scotia since 1994. It is a grassroots initiative put forward by members of the business community under the umbrella of Voluntary Planning, a non-partisan group that advises the provincial government on policy issues.

Process

Beginning the process is simple. Employer and union forward a joint application along with the grievance and a statement of agreed facts. Two panelists - one from labour and one from management - are selected from a rotation list, and a hearing date is chosen.

The process is fast and easy to use. Representatives of the two sides meet with the Panel to outline the issues. After hearing both sides, the panel returns with a non-binding decision. The entire process takes about two hours. The decision is consistent with the collective agreement and is not considered precedent-setting. Panelists do not try to mediate. Their role is to give an opinion on what the outcome would be if the case went to traditional arbitration. External counsel are not involved in the hearing.

Conciliation

The [*Trade Union Act*](#) and the [*Teachers' Collective Bargaining Act*](#) require the parties to meet with a Conciliator before they can legally strike or lock out to try and resolve their contract

dispute.

How And When Is A Conciliator Appointed?

Conciliators are appointed by the Minister of Environment and Labour (or a delegate) at the written request of or both parties to collective bargaining when negotiations have broken down. If either the Employer or the Union requests the appointment, two weeks after the application is received, both parties are advised of the appointment in writing. If the parties jointly request the appointment, the application is processed as soon as reasonably possible and both parties are advised of the appointment in writing.

The [Trade Union Act](#) and the [Teachers' Collective Bargaining Act](#) require the parties to meet with a Conciliator before they can legally strike or lock out to try and resolve their contract dispute.

How And When Is A Conciliator Appointed?

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The Cornerstone Of The Conciliation Process

There are two main elements in conciliation:

Impartiality is essential to the work of the conciliator. This means that he/she will be evenhanded, objective, and fair. The conciliator will not be on either party's side. If a conciliator knows either of the parties personally or has any interest in the outcome of the bargaining, he/she will excuse themselves from the case, unless the parties, with full knowledge of the potential conflict, agree otherwise.

Participants who believe that the conciliator assigned to their case has a conflict of interest should contact their chief spokesperson or the Executive Director of Labour Services or the Chief Industrial Relations Officer listed below.

Confidentiality is paramount for effective dispute resolution. Conciliators protect confidential information received during the conciliation process. You can be guaranteed that information identified as confidential will not be shared with the other party without your expressed permission

Conciliators are professionally bound by a Code of Conduct for Conciliators/Mediators that prohibits any comments to the press/media about any cases in progress at any time.

What Happens If An Agreement Is Reached?

The conciliator reviews and confirms the agreed items.

The parties prepare a written Memorandum of Settlement with the assistance of the Conciliator, if necessary. This document includes each agreed item.

The Conciliator reviews the commitment made by the parties as contained in the Memorandum of Settlement and each committee member signs the document.

Preventative Mediation

Preventive mediation means assistance to union and management parties who want to build a constructive relationship. The programs are all voluntary and jointly structured. Union and management must share the desire to improve their relationship and be prepared to begin the work necessary to bring about change. Leadership and advice are provided by experienced mediators who are established labour relations neutrals. Preventive mediation approaches are based on participation of both union and management. Those who are involved in the relationship are the experts on its shortcomings and are the best equipped to identify and implement appropriate solutions.

Interest Based Negotiations (IBN)

Interest-based negotiation (IBN), also known as (Interest Based Problem Solving / Mutual Gains Bargaining / Principled Bargaining / Win-Win Bargaining), is a rational approach which helps management and labour reduce conflict that occurs during negotiations and during the life of the collective agreement. Through IBN, the parties avoid taking entrenched positions.

The IBN process shifts the parties from the traditional, adversarial approach to dealing with issues. Instead of presenting positions, the parties jointly decide which issues need to be addressed. They focus and discuss their interests on each issue. Once all the interests have been explored, the parties jointly brainstorm to generate a number of options to resolve the issue. Participants must remain open-minded and be willing to discuss a variety of options, on the understanding that they are not making commitments but simply discussing hypothetical possibilities. The parties then evaluate various courses of action on the issue by comparing each option against mutually agreed standards, postponing final commitment on each issue until consensus is reached at the end of the process⁴⁵.

⁴⁵ Nova Scotia Environment and Labour, *Unionized Workplaces* (Canada: Environment and Labour) online: Environment and Labour < <http://www.gov.ns.ca/enla/unionworkplaces/> >

Labour Standards Tribunal

Statute: [*Labour Standards Code, R.S.N.S. 1989, c. 246*](#)

Overview

The Labour Standards Tribunal is a body that hears complaints of failure to comply with the *Labour Standards Code*. This Code came into effect by proclamation on February 1, 1973. Pursuant to the Code, the complaints may be heard by the Labour Standards Tribunal in the form of appeals by employers or employees against Director of Labour Standards Orders, or appeals by complainants after the Director has found no violation of the Code. After hearing an appeal, if the Tribunal finds wages or other benefits owing it may issue an order for compliance. The Tribunal is deemed to hold a mortgage on the assets of the employer for the amount set out in the order. This lien takes priority over all other liens on wages due to workers. The Tribunal's mortgage may be enforced by foreclosure proceedings⁴⁶.

⁴⁶ Labour Standards Tribunal (Canada: Labour Standards Tribunal) online: Labour Standards Tribunal < <http://www.gov.ns.ca/enla/lst/>>

Ombudsman

Statute: [*Ombudsman Act, R.S.N.S. 1989, c. 327*](#)

Overview

The first ombudsman was established in 1809. The word ombudsman is a unique office that provides independent, unbiased investigations into complaints against provincial and municipal government departments, agencies, boards and commissions.

The Nova Scotia Office of the Ombudsman was established in 1971. The office is basically comprised of two sections: Investigation and Complaint Services, and Youth and Senior Services. We also have responsibilities for investigating complaints under the Civil Service Disclosure of Wrongdoing Regulations, which came in effect in September 2004.

The focus of the office is to resolve complaints about provincial and municipal government services. It does this by:

- gathering facts and information
- reporting findings
- issuing recommendations
- bringing reason and understanding to disputes⁴⁷

Investigation and Complaint Services

When complaint is brought, first determine whether it is within the proper jurisdiction, gather all the facts relevant to the situation and then try to find a solution. Experience has taught the Ombudsman, an early solution can often be achieved through the use of Alternative dispute resolution (ADR)⁴⁸.

⁴⁷ Office of the Ombudsman, *Who we are: About the ombudsman*, (Canada: Office of the Ombudsman) online: Office of the Ombudsman <<http://www.gov.ns.ca/ombu/>>

⁴⁸ Office of the Ombudsman, *Publications: 2006-2006 Annual Report*, (Canada: Office of the Ombudsman) online: Office of the Ombudsman <<http://www.gov.ns.ca/ombu/publications/AnnualReport-2005-06-en.pdf/>>

Workers Compensation Board of Nova Scotia

Statute: [Workers' Compensation Act, S.N.S. 1994-95, c. 10](#) (Consolidated to May 2002)
[Occupational Health and Safety Act, S.N.S. 1996, c. 7](#)

Overview

In 1917, the Workers' Compensation Board (WCB) opened its doors, and its main purpose, then and now, is to administer the Act. At that time, the WCB was solely a no-fault workplace injury insurance company. This meant that the WCB did not consider whose fault it was that an injury or illness occurred. Responsibility for policing occupational health and safety in a workplace belongs to the Department of Environment and Labour (DEL). So, even though an employer can't be held responsible by the worker or WCB under the Workers' Compensation Act for an injury or illness, it may be subject to fines and/or legal action taken by the DEL under the [Occupational Health and Safety Act](#).

Today, the WCB also has as its responsibility the task of providing prevention information and education to all Nova Scotia workers and employers. This means that the WCB must use its resources to promote occupational health and safety in the workplace, with the end result being to reduce injuries and illnesses. (DEL continues to be responsible for safety inspections, regulations and legislation⁴⁹.)

⁴⁹ Workers Compensation Board of Nova Scotia, *Current Mandate and Mission* (Canada: Workers Compensation Board of Nova Scotia) online: Workers Compensation Board of Nova Scotia <<http://www.wcb.ns.ca/new/index.php?id=168>>

Ontario Tribunals

Energy Board

Statute: [Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B](#)

Overview

The Ontario Energy Board (OEB or "Board") is the regulator of Ontario's natural gas and electricity industries. The Board also provides advice on energy matters referred to it by the Minister of Energy and the Minister of Natural Resources. The Board is a self-funding Crown corporation without share capital.

The Board's mandate and authority come from the *Ontario Energy Board Act, 1998, the Electricity Act, 1998*. The Board reports on administrative matters to the Ontario legislature through the Minister of Energy, but carries out its functions and responsibilities independently. The OEB operates as an adjudicative tribunal and carries out its regulatory functions through public hearings that consider oral and written evidence or written evidence only. These provide a forum for individuals, or groups of individuals who may be affected by the Board's ruling, to express their comments and opinions to the Board and to participate meaningfully in the Board's decision making process. The public's participation helps ensure that the Board makes an informed decision⁵⁰.

Dispute Resolution Service

The Boards dispute resolution service addresses consumer enquiries and facilitates the resolution of disputes between consumers and regulated companies. In the 2005-2006 fiscal year, the Compliance Office reviewed and resolved 833 cases, either on its own or by encouraging regulated companies to solve issues directly with their customers.

Complaint Process

When the OEB receives a complaint against a regulated energy company or their representative, the OEB first determines the nature of the complaint, and then ensures the complainant has tried to resolve the complaint with their supplier. If required, the OEB will act as a mediator between the complainant and the company to try and facilitate a resolution.

Complaints the Board Can Investigate and Mediate

⁵⁰ Ontario Energy Board, *Overview* (Canada: Ontario Energy Board) online: Ontario Energy Board < <http://www.oeb.gov.on.ca/> >

The conduct of sales agents – sales tactics, misrepresentation, etc.
Allegations of forgery (i.e., falsified signatures/names on contracts)
The quality of service you received
Connections
Security deposits
Issues involving the marketing of electricity or natural gas
Any potential violation of a relevant law, regulation, code, etc. under our jurisdiction.

Complaints the Board Cannot Investigate and Mediate

Water heaters
Furnace maintenance
Heating and cooling systems
Pricing offered by electricity retailers or natural gas marketers
Rebate programs (offered by federal and provincial governments)
Energy retrofits⁵¹

⁵¹ Ontario Energy Board, *Consumers: Your Complaint and the OEB* (Canada: Ontario Energy Board) online: Ontario Energy Board
<http://www.oeb.gov.on.ca/html/en/consumers/complaint/complaint_oeb.htm>

Environmental Review Tribunal

Statute: [*Environmental Assessment Act, R.S.O. 1990, c. E.18*](#)
[*Environmental Protection Act, R.S.O. 1990, c. E.19*](#)
[*Nutrient Management Act, 2002, S.O. 2002, c. 4*](#)
[*Ontario Water Resources Act, R.S.O. 1990, c. O.40*](#)
[*Pesticides Act, R.S.O. 1990, c. P.11*](#)
[*Safe Drinking Water Act, 2002, S.O. 2002, c. 32*](#)

Overview

The Environmental Review Tribunal is committed to conducting timely, fair, efficient and impartial hearings which protect the environment and are consistent with the governing legislation.

The Tribunal functions as a quasi-judicial body, subject to the rules of natural justice and the requirements of the Statutory Powers Procedure Act.⁵²

Mediation

The Environmental Review Tribunal has four functions: Outreach, Mediation, Staff Processing of Hearings and Hearings and Decision-Making. The use of mediation in the hearing process encourages parties to narrow or settle their differences and it often removes the need to proceed to a hearing or may shorten the scheduled hearing days by reducing the number of issues to be adjudicated.

Most of the Tribunal's members have received certified training in mediation. Mediation, generally conducted 30 days before the commencement of a hearing is offered in all appeal and application hearings before the Tribunal. Should the parties choose not to participate at that stage, mediation services are offered by the Tribunal throughout the Hearing process upon request.

Results of Mediation

In fiscal year 2005-2006 parties participated in mediations during the hearing process in 11 cases. Of the 11 cases where mediation took place, none of the cases proceeded to a full hearing. Four cases were withdrawn and one case settled following mediation; two cases were settled by

⁵² Environmental Review Tribunal, *Home* (Canada: Environmental Review Tribunal) online: Environmental Review Tribunal < <http://www.ert.gov.on.ca/> >

an agreement and dismissed following the Preliminary Hearing one case was withdrawn following one day of hearing; and three cases are still ongoing⁵³.

⁵³ Environmental Review Tribunal, *2005-2006 Annual Report* (Canada: Environmental Review Tribunal) online: Environmental Review Tribunal < <http://www.ert.gov.on.ca/> >

Ontario Human Rights Commission

Statute: [Human Rights Code, R.S.O. 1990, c. H.19](#) – s.33(1) mandates Commission to attempt to resolve human rights complaints.

Overview

The Ontario Human Rights Commission was established in 1961 to administer the Code. The Commission is an arm's length agency of government accountable to the Legislature through the Attorney General. The Commission's mandate under the Code includes: investigating complaints of discrimination and harassment; making efforts to settle complaints between parties; preventing discrimination through public education and public policy; and looking into situations where discriminatory behaviour exists. Over the past few years, the Commission has implemented new measures to ensure an efficient system for managing complaints under the Code. There is now a centralized, one-window service for inquiry and intake. Specially trained staff provide inquiry and intake, mediation and investigation services⁵⁴.

Mediation

Mediation was introduced in 1997. All individuals who file complaints are offered mediation services before a complaint is investigated. Approximately 65%-70% of complaints in which mediation was attempted were successfully settled.

Mediation and Legislation

Section 33(1) of the Code mandates the Commission to attempt to resolve human rights complaints. This section reads as follows:

Subject to section 34, the Commission shall investigate a complaint and endeavour to effect a settlement.

Mediation, as part of the earlier stages in the complaint process, meets the Commission's obligation under the Code to endeavour to effect a settlement.

Interest-based Mediation

Interest-based mediation involves the Mediation Officer facilitating a meeting with the parties to

⁵⁴ Ontario Human Rights Commission, *About Us* (Canada: Ontario Human Rights Commission) online: Ontario Human Rights Commission <<http://www.ohrc.on.ca/en/>>

move them away from the conflict, focus on interests and not positions, and to generate solutions to the conflict. The Mediation Officer in interest-based mediation does not have any interest in the outcome; rather, the parties themselves generate solutions.

Rights-based Mediation

Rights-based mediation involves the Mediation Officer reviewing the facts with the parties and advising the parties of an appropriate remedy. In rights-based mediation, the parties can accept or reject the Mediation Officer's proposed remedies.

Records of Mediation

Information or documentation from the mediation process is confidential and will not form part of the file nor be referenced in any future document that will influence decision-making in the investigation process, when the file is transferred to an Investigation Officer. The Mediation Officer, the Investigation Officer, the Mediation Manager or any other staff of the Commission shall not discuss information revealed during the mediation process unless otherwise agreed to by the parties.

Publication of Settlements

The Commission, in serving the public interest, publicizes settlements that may have broad impact on human rights issues. The Commission, where it believes that it is in the best interest of the public to do so, may publicize a settlement arising out of a mediated settlement with or without the consent of the parties.

Inadmissibility of Mediation Evidence

It is important to note that the mediation process is separate and distinct from conciliation and investigation. All mediation meetings are completely "without prejudice" and all parties must be informed of this fact at the beginning of the mediation meeting. Any statement made by a party or information received in the context of a mediation meeting is confidential. Where the source of that information is the mediation itself, the statement or information would normally be inadmissible at further stages in the complaint process, including the [Human Rights Tribunal of Ontario](#). However, if that same information is subsequently discovered independently, during the course of the Commission's investigation, that information may be admissible at a hearing before the Tribunal.

Mediation at the Commission

Mediation Process

The Commission's mediation process is voluntary. Mediation is offered to the parties in the earlier stages of the complaint process. It occurs after the complaint has been filed and served and usually after the respondents' Answer to the complaint has been received by the Commission.

Mediation is strictly confidential. Parties are required to sign a Mediation Agreement indicating that they understand that what occurs at mediation will remain confidential. The Commission encourages prompt resolution of complaints through mediation: it may be in the best interests of all parties to seek an early resolution through mediation.

Any agreement reached between the parties containing public interest remedies must be approved by the Commission to ensure that the interests of the public are protected.

Settlement

Should mediation lead to a settlement, the Mediation Officer will prepare Minutes of Settlement and other appropriate documentation (releases, letters of assurance, etc.), which should be signed by all parties at the meeting. Settlement documents and approval must be in compliance with Commission procedures set out in [Compliance Procedures - Settlements](#).

Once the Minutes of Settlement are signed and the Commission has approved the terms of settlement, the Mediation Officer should write to the parties confirming the resolution, and advising that the Commission's file has been closed.

Compliance Procedures – Settlements

A satisfactory settlement of a human rights complaint is one which achieves three goals:

- Restores the complainant, to the greatest extent possible, to the position he or she would have been in if the alleged unlawful discriminatory practice had not occurred and may include both financial compensation as well as restoration of rights;
- Obliges the respondent to take actions to eliminate discriminatory practices and prevent future acts of discrimination; and
- Reflects the interest of the public in the eradication of discrimination.

Minutes of Settlement are sent to the parties for signature, and each party is expected to sign and return the Minutes within a timeframe stipulated by the Mediation or Investigation Officer, normally 10 days. If the Minutes of Settlement have not been returned within the specified time, the Mediation or Investigation Officer may resume the processing of the complaint.

Minutes of Settlement set out the terms agreed upon by the parties and require the signature of all parties in order to be considered executed. It is the Commission's current practice to also ask

the parties to initial the bottom right hand corner of each page of the Minutes of Settlement to indicate that these have been read and to avoid the claim that pages were substituted after signing.

Commission's Right to Disclose the Terms of Settlements

All parties in settlement discussions should be informed that the Commission will not approve settlements, which limit the Commission's right to disclose the terms of settlement. The Commission may agree not to disclose any or all of the terms of the settlement in extraordinary circumstances. In such cases, prior approval of the Chief Commissioner is required. The Commission initiates publicity in a very small proportion of its cases. The Commission is primarily interested in disclosing the terms of settlement in:

- Cases with broad applicability
- Cases that have received extensive community of media attention,
- Cases that establish important precedents and
- Cases that may affect practices throughout an industry or geographical area.

The Commission may determine that specific portions of settlements will not be made public. The name of the complainant in a sexual harassment case, for example, might be kept confidential, as well as other information normally considered to be personal and private. Particular terms that, if disclosed, would cause the invasion of privacy of a person who is not a party to the complaint might also be kept confidential. While the Commission may, in the circumstances outlined above, agree to restrict the release of part or all of a settlement, such an agreement may not operate to protect the parties from any disclosure that may otherwise be required by law, for example, in response to a subpoena in a criminal proceeding.

The Commission may, as part of its disclosure of the terms of settlement, briefly summarize the investigation findings and the respondent's position where appropriate. For example, this may be done to make it clear that the respondent has denied any violation of the Code.

Confidentiality Clause

The Commission discourages the use of confidentiality clauses in Minutes of Settlement that enjoin any or all of the parties from disclosing the terms of settlement. The Commission is of the view that there is educational value in permitting the parties to human rights complaints to discuss the results of the complaint process with others. The Commission may withhold approval of settlements, which contain confidentiality clauses restricting disclosure, for example, where there is evidence of coercion or where there is strong public interest in allowing the parties freedom to discuss the settlement. All settlements which contain confidentiality clauses enjoining any or all of the parties from disclosing the terms of settlement must also contain:

A clause stipulating that the Commission is not bound by confidentiality. The Confidentiality clause should only restrict communication in terms of the settlement, and not of the existence of the complaint or the fact of a settlement. When the Commission decides to publicize a settlement, the parties may be informed of this decision and may be consulted on the preparation of a press release.⁵⁵.

Conciliation

When mediation has occurred at the beginning of the process, conciliation may or may not be attempted after a full investigation has been completed and the Officer has reviewed the findings of the investigation. The decision whether or not to attempt conciliation is dependent upon the evidence received through the investigation. Conciliation is a process of discussing settlement with parties after the investigation has been started. Conciliation may occur before or after the Investigation Officer has shared findings.

The outcome of all attempts to conciliate must be noted on file and in a Conciliation report on CMIS

Conciliation Time Frames

Conciliation may occur at any time after a complaint has been filed with the Commission, if the parties initiate discussions. However, the investigation should not be delayed as a result of the parties' desire to discuss settlement. However, if conciliation is initiated by the parties to a complaint before the conclusion of an investigation, the investigation may proceed concurrently with conciliation discussions. Any final attempt at conciliation must be concluded within 30 days from the completion of the investigation. Should settlement not result from conciliation; the Investigation Officer will proceed to prepare a Case Analysis or Disclosure Letter in the matter.

Admissibility of Conciliation Evidence

It is important to note that the mediation process is separate and distinct from conciliation and investigation. All mediation meetings are completely without prejudice and all parties must be informed of this fact at the beginning of the mediation meeting. Settlement discussions between the Investigation Officer and any party are strictly confidential and will not be revealed by the

⁵⁵ Ontario Human Rights Commission, *Complaint Processing Guides: Internal Guide for Processing Complaints* (Canada: Ontario Human Rights Commission) online: Ontario Human Rights Commission
<http://www.ohrc.on.ca/en/commission/complaint_processing_guides/complaintsprocedure/internalcompguide/pdf/>

Investigation Officer to others unless specifically instructed by the communicating party that he or she may do so. For example, if a respondent makes an offer that Commission staff consider to be reasonable, and Commission staff are considering writing up this offer into a Case Analysis Report or Disclosure Letter with a recommendation that the procedure of referral to the Tribunal is not appropriate, staff must first obtain instructions from the respondent that this offer can now be communicated to the complainant on a non-confidential, “with prejudice” basis and that the offer will remain open for 30 days after the Commission meeting dealing with the matter under section 36. Notes or documents regarding settlement discussions by Investigation Officers are not disclosed to opposing parties if the matter is referred to the Tribunal.

Mediation Results from 2005-2006

The Commission has a consistent 70% or higher success rate in resolving complaints at this stage. Successful early mediation brings about quick remedies, can incorporate public interest provisions, and reduces the need for individuals to go through more lengthy processes of investigation or litigation.

Complaints that cannot be settled or resolved in some other way between the parties early on are referred for investigation: however, they may settle at any stage in the Commission’s process or at the Tribunal. Year after year, the Commission assists parties to reach mutually agreeable resolutions in more than half of all cases completed at the Commission and in approximately 80% of cases at the Tribunal. The Commission seeks out systemic and public interest remedies in all settlements, designed to prevent future discriminatory conduct.

In 2005-06, of all cases completed at the Commission or referred to a Tribunal, 57.1% were settled by the Commission or resolved between the parties, on average at 12.4 months:

- 34.4% (778 cases) were settled through early mediation without investigation, on average at 7.4 months, representing a success rate of 71% of the 1,096 cases in which parties participated in early mediation
- 10.1% were settled at the investigation stage, on average at 26.2 months
- 12.6% were resolved between the parties, on average at 15.0 months⁵⁶

⁵⁶ Ontario Human Rights Commission, *2005-2006 Annual Report* (Canada: Ontario Human Rights Commission) online: Ontario Human Rights Commission < <http://www.ohrc.on.ca/en/resources/annualreports/AnnualReport20052006EN/pdf> >

Landlord and Tenant Board

Statute: [Residential Tenancies Act, 2006, S.O. 2006, c. 17](#)

Overview

The Board was created by *the Residential Tenancies Act* (the RTA) on January 31, 2007. The RTA gives *residential* landlords and tenants specific rights and responsibilities, and sets out a process for how these rights and responsibilities can be enforced. The RTA also has certain rules governing rent increases for residential rental accommodation, and gives the Board authority to enforce these rules.

In general, the role of the Board is to:

- resolve disputes between landlords and tenants through either *mediation* or *adjudication*,
- regulate rent increases in most residential rental units, and
- educate landlords and tenants about their rights and responsibilities under the *Residential Tenancies Act*.

The Board is an independent agency. Any decision which the Board makes about the rights or responsibilities of individual landlords or tenants cannot be influenced by any Member of Provincial Parliament or Minister of the Crown⁵⁷.

Mediation

The Landlord and Tenant Board (the Board) offers mediation services to landlords and tenants when an application has been filed. Mediation is voluntary — both the landlord and the tenant (the parties) must agree to mediate in order for mediation discussions to take place.

Mediators from the Board are available to meet with the parties to try to help them reach a workable agreement that is acceptable to both sides.

Mediation Process

Mediation is available on the day of the hearing at most hearing locations. Parties who want to mediate should arrive early to be sure that there is time to meet with the Mediator before the scheduled start time for the hearing.

Discussions that take place during mediation are private.

If the parties reach an agreement, each party gets a copy of the signed agreement; the Board does not keep a copy.

If the parties do not reach an agreement, the hearing goes ahead. At the hearing, one party cannot tell the Member what the other party said during mediation.

Where an eviction application is mediated, and the tenant fails to meet certain conditions, the

⁵⁷ Ontario Landlord and Tenant Board, *About us* (Canada: Landlord and Tenant Board) online: Landlord and Tenant Board <http://www.ltb.gov.on.ca/en/About_Us/STEL01_079103.html>

mediated agreement may allow the landlord to get an eviction order from the Board without a hearing. For this reason, it is important that the parties carefully consider whether they can live up to the conditions of the mediated agreement before they sign it⁵⁸.

⁵⁸ Ontario Landlord and Tenant Board, *Mediation by the Board* (Canada: Landlord and Tenant Board) online: Landlord and Tenant Board
<http://www.ltb.gov.on.ca/en/About_Us/STEL01_079103.html>

Workplace Safety and Insurance Board

Statute: [Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sch. A](#) as amended
Sections 35(2), 40(7), 41, 122

Overview

The Workplace Safety and Insurance Board (WSIB) promotes workplace health and safety, and provides a workers compensation system for the employers and workers of Ontario. There is extensive information on this site about prevention, forms, health issues, return to work programs, and links to other health and safety organizations⁵⁹.

Mediation

The WSIB provides mediation services to the workplace parties (employer and worker) if a difficulty or dispute presents an obstacle to the worker's early and safe return to work (ESRTW).

The employer and the worker must notify the WSIB of any difficulty or dispute concerning their co-operation with each other in the ESRTW process. The WSIB provides mediation in these cases.

If the WSIB identifies difficulties or obstacles in co-operation through a review of the return to work activities, the WSIB can offer mediation services on its own initiative

If mediation is not successful, the decision-maker makes a determination regarding co-operation within 60 calendar days of being notified of the dispute, or within a longer period, as determined by the WSIB⁶⁰.

⁵⁹ Workplace Safety and Insurance Board, *About Us* (Canada: Workplace Safety and Insurance Board) online: Workplace Safety and Insurance Board
<<http://www.wsib.on.ca/wsib/wsibsite.nsf/public/about>>

⁶⁰ Workplace Safety and Insurance Board, *Workers: Return to Work Mediation* (Canada: Workplace Safety and Insurance Board) online: Workplace Safety and Insurance Board
<<http://www.wsib.on.ca/wsib/wsibsite.nsf/Public/workersrtwdisputeresolution>>

Workplace Safety and Insurance Appeals Tribunal

Statute: [Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sch. A](#)

Overview

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) is the final level of appeal to which workers and employers may bring disputes concerning workplace safety and insurance matters in Ontario. The Appeals Tribunal is separate from and independent of the Workplace Safety and Insurance Board.

As an Adjudicative Agency within the Ontario administrative justice system, the Tribunal seeks to provide quality adjudication in workplace safety and insurance appeals in accordance with the principles of natural justice on a fair and timely basis. Its legislative interpretations should provide workers, employers, the Board, government and the public with a well-reasoned commentary on legislation in the workplace safety and insurance system⁶¹.

Alternative Dispute Resolution Services

ADR services are offered to parties to resolve appeals without proceeding to a formal hearing. If the parties reach a resolution, an agreement is formalized in writing and submitted to the parties for their signatures. The executed agreement is then submitted to a Vice-Chair for review. If the Vice-Chair is satisfied that the resolution is consistent with law, Board policy and is reasonable based on the facts of the case, the Vice-Chair will issue a written decision incorporating the terms of the agreement.

If an appeal is not resolved through the ADR process, it is prepared for hearing.

Mediation Services

Mediation is a more specialized form of ADR. If an appellant requests mediation, the Tribunal reviews the appeal to determine its suitability for mediation and contacts the responding party to determine if the respondent is willing to explore a mediated resolution of the appeal.

Where both parties are amenable to mediation and the appeal is suitable for the process, the appeal is assigned to a mediator for substantive review. The mediator works with the parties in a neutral and confidential setting to arrive at a jointly acceptable resolution to an appeal.

If the Tribunal's review indicates that credibility may be at issue or that oral testimony is required, the appeal is deemed unsuitable for the ADR process. In such instances, the appeal is

⁶¹ Workplace Safety and Insurance Appeals Tribunal, *2005 Annual Report* (Canada: Workplace Safety and Insurance Appeals Tribunal) online: Workplace Safety and Insurance Appeals Tribunal < <http://www.wsiat.on.ca/english/about/index.htm> >

re-streamed for pre-hearing preparation and referred to a hearing in the ordinary course. If the respondent does not want to participate in a mediation, the appeal is scheduled for a hearing.

Single Party Appeals

Where the appellant has indicated an interest in the ADR process, but the respondent is not participating in the appeal, the appeal is referred to the Unit's Early Intervention Officer to determine whether an early resolution is possible. Discussions with the appellant's representative may result in a resolution of the appeal at this stage.

On occasion, Early Review Officers refer an appeal to the Early Intervention Officer, prior to receipt of the COA (Notices and Confirmations of Appeals) where it is believed that a discussion with the parties may result in an expeditious resolution of the appeal⁶².

⁶² Workplace Safety and Insurance Appeals Tribunal, *2005 Annual Report* (Canada: Workplace Safety and Insurance Appeals Tribunal) online: Workplace Safety and Insurance Appeals Tribunal <<http://www.wsiat.on.ca/english/resources/publications/AnnualReport2005.pdf>>

Prince Edward Island Tribunals

PEI Human Rights Commission

Statute: [Human Rights Act, R.S.P.E.I. 1988, c. H-12](#)

Overview

The Prince Edward Island Human Rights Commission administers and enforces the Prince Edward Island [Human Rights Act](#). The Act establishes a complaint process under which the Commission has the authority to receive, investigate, attempt to settle and make rulings on complaints. The Commission also develops programs of public information and education about human rights through seminars, publications, responses to general inquiries and a resource centre. The Commission also advises the government on human rights issues⁶³.

Settlement

The Act states that the Executive Director shall investigate and attempt to settle a complaint. The Commission will try to assist the complainant and the respondent to resolve the complaint through settlement whenever possible. It is generally less costly and more effective if the complainant and the respondent develop their own solution instead of having one imposed on them. A settlement may be agreed upon at any time before a human rights panel has made a ruling on the complaint.

Complaint Outcomes for 2004-2005

Out of 109 complaints, 12 were settled, 13 were withdrawn and 24 were dismissed/discontinued⁶⁴.

⁶³ PEI Human Rights Commission, *About Us* (Canada: PEI Human Rights Commission) online: PEI Human Rights Commission < <http://www.gov.pe.ca/humanrights/index.php3?number=72418&lang=E>>

⁶⁴ PEI Human Rights Commission, *2004-2005 Annual Report* (Canada: PEI Human Rights Commission) online: PEI Human Rights Commission < http://www.gov.pe.ca/photos/original/hrc_04-05annual.pdf>

Workers Compensation Board of Prince Edward Island

Statute: [*Workers Compensation Act, R.S.P.E.I. 1988, c. W-7.1*](#)
[*Occupational Health and Safety Act, R.S.P.E.I. 1988, c. O-1.01*](#)

Overview

WCB exists to promote safe workplaces and to protect employers and injured workers through a sustainable accident insurance program⁶⁵.

Dispute Resolution

In cases where an employee is having a dispute with their employer about return to work, or vice versa, the first step for the complainant would be to speak to a Workers Compensation Board coordinator to assist in resolution of the dispute. If this is not successful in achieving resolution, the case coordinator may arrange to meet with you and the worker to mediate the dispute⁶⁶.

⁶⁵ Workers Compensation Board of Prince Edward Island (Canada: Workers Compensation Board of Prince Edward Island) online: Workers Compensation Board of Prince Edward Island <<http://www.wcb.pe.ca/index.php3>>

⁶⁶ Workers Compensation Board of Prince Edward Island (Canada: Workers Compensation Board of Prince Edward Island) online: Workers Compensation Board of Prince Edward <<http://www.wcb.pe.ca/index.php3?number=1012971>>

Quebec Tribunals

Human Rights Tribunal

Statute: [Charter of human rights and freedoms, R.S.Q. c. C-12](#)

Overview

It began as the first judicial tribunal in Canada specializing in human rights, and its growth has been punctuated by significant developments in both its internal organization and its judicial life per se. Through its privileged ties with other institutions similarly devoted to the respect of human rights in the Canadian and international judicial communities, and through its efforts to give the Charter of human rights and freedoms the broad and generous interpretation linked to its quasi constitutional status, the Tribunal has constantly strived, over the years, to accomplish the important mission the legislator entrusted it with.

Accordingly, independence and impartiality are among the principles that continuously guide the actions of the members of the Tribunal. Inspired as well by the goals of the higher courts, the Tribunal considers effectiveness, promptness and accessibility as cornerstone principles. Beyond this, even though the Tribunal's primary responsibility is to hear and settle the disputes submitted to it, it must also intervene upstream, by participating fully in the development of articulate thoughts on human rights.

In the last few years, the Tribunal has also contributed to human rights education for the judicial community as a whole and especially for those now embarking on their careers, offering thematic sessions in various law schools and training for university students and future lawyers attending classes at the Québec Bar school. On a broader scale, the Tribunal promotes public diffusion of its judgments by making electronic versions available and through press releases for the medias.

The Tribunal draws its life's breath from the judicial community. It also contributes in its own way, as part of the third pillar of government, to the building of an egalitarian society, with proper regard for the principles of fundamental justice and procedural fairness⁶⁷.

⁶⁷ Quebec Human Rights Tribunal (Canada: Human Rights Tribunal) online: Human Rights Tribunal <http://www.tribunaux.qc.ca/mjq_en/TDP/index-tdp.html>

Quebec Workers Compensation Board

Statute:

Saskatchewan Tribunals

Saskatchewan Human Rights Commission

Statute: [Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1](#)

Overview

Promoting and protecting individual dignity and equal rights -that's the focus of [The Saskatchewan Human Rights Code](#). It's the Saskatchewan Human Rights Commission's job to discourage and eliminate discrimination. It does that in three ways:

- investigates complaints of discrimination
- promotes and approves equity programs
- educates people about human rights law in Saskatchewan⁶⁸

Mediation and Settlement

Parties can resolve complaints through mediation or settlement at any stage in the process – before or at intake, during or after an investigation. In many cases, these negotiations provide a faster, more co-operative method of resolving complaints than investigations or hearings. The Commission uses a flexible complaint procedure that can be adapted to the needs of each case. Settlements are an option at every stage of the complaint process and are undertaken through mediation, facilitation, conciliation and talking circles. In 2005-2006 the unit settled 77 complaints.

Mediation or facilitated discussion is available to complainants and respondents who want to settle a complaint before an investigation or at any time during an investigation. The mediation process helps the parties better understand each others' perspectives.

Conciliation

In the fall of 2005, a new conciliation program was launched by the Mediations and Investigations Unit. Conciliation is different from mediation and early resolution attempts that occur earlier in the complaint process in that it sends files back for possible settlement at the stage after investigation but before the matter is directed to a tribunal for adjudication.

⁶⁸ Saskatchewan Human Rights Commission, *About Us* (Canada: Saskatchewan Human Rights Commission) online: Saskatchewan Human Rights Commission < <http://www.shrc.gov.sk.ca/aboutus.htm>>

Application of ADR

The Commission has used alternative dispute resolution methods that may be culturally relevant for some Aboriginal peoples. Talking circles are one such method: they bring people together under the guidance of an elder to share information on a problem and endeavour to resolve the problem. Since 1998, the Commission has convened five talking circles, each under the guidance of an elder, to resolve a human rights dispute⁶⁹.

⁶⁹ Saskatchewan Human Rights Commission, *2005-2006 Annual Report* (Canada: Saskatchewan Human Rights Commission) online: Saskatchewan Human Rights Commission <<http://www.shrc.gov.sk.ca/pdfs/SHRC2005ARnew.pdf>>

Saskatchewan Workers' Compensation Board

Statute: [Workers' Compensation Act, 1979, S.S. 1979, c. W-17.1](#)

Overview

Saskatchewan's Workers' Compensation Board is an independent body created by provincial legislation, [the Workers' Compensation Act 1979](#), [General Regulations](#), and [Exclusion Regulations](#) to administer a compensation system on behalf of workers and employers. The WCB is financially independent of government and special-interest groups⁷⁰.

⁷⁰ Saskatchewan Workers Compensation Board, *About Us*, (Canada: Saskatchewan Workers Compensation Board) online: Workers Compensation Board < <http://www.wcbsask.com/>>

Yukon Tribunals

Yukon Workers Compensation Health and Safety Board

Statute: [Workers' Compensation Act, R.S.Y. 2002, c. 231](#)
[Occupational Health and Safety Act, R.S.Y. 2002, c. 159](#)

Overview

In 2010, work-related injuries and diseases are substantially reduced. Injured workers receive early intervention, quality medical care, safe and early return-to-work opportunities, and comprehensive rehabilitation. Yukon employers have implemented appropriate safety management programs. The Board continues to be fully funded, which ensures employers enjoy the lowest assessment rates in Canada.

The Board is welcomed in full partnership with all stakeholders—injured workers, employers, workers, the medical community, and legislators. There is a high level of understanding of the compensation system. The Board has adopted a "best practices" approach in all program areas, resulting in a high level of stakeholder satisfaction. All partners are focused on wellness; safety and health are an essential part of the Yukon workplace culture⁷¹.

⁷¹ Yukon Workers Compensation Health and Safety Board (Canada: Yukon Workers Compensation Health and Safety Board) online: Yukon Workers Compensation Health and Safety Board <<http://www.wcb.yk.ca/Home.19.0.html>>