

FACT SHEET

MEDIATIONS AND SETTLEMENT DISCUSSIONS

1. **Mediations are voluntary**

No one has to participate in mediation if they don't want to. You can end a mediation at any time if you no longer wish to participate. You can also ask for breaks, time to speak with your lawyer or advocate, or anything else you need to be comfortable and participate effectively.

2. **Mediations are confidential**

Any information that's provided during settlement discussions must be kept confidential.

This means that it's not usually possible to bring other people into a mediation. If you want to have a support person with you (other than your lawyer or advocate), you can ask if the other side will agree. Your support person will have to promise to keep everything that happens at the mediation confidential.

Note that this rule doesn't apply to interpreters. If you need an interpreter at your mediation, the Tribunal will provide one. There is no cost.

3. **The purpose of mediation is to reach a resolution of the complaint**

At a mediation, the parties work towards finding a resolution of the complaint. The purpose of mediation is not to prove your case or defend yourself. The goal is to find a resolution that both parties can agree to. A resolution that both parties agree to is called a "settlement agreement."

4. **Mediations involve negotiation and compromise**

Both parties at the mediation must agree to the resolution. This usually means that both parties have to compromise. A complainant might agree to accept less compensation than they think they could get at a hearing. A respondent might believe they have done nothing wrong, but still agree to pay some compensation to the complainant. Both parties compromise in order to reach a resolution of the complaint.

If both parties can't agree on a resolution, the mediation will end with no settlement agreement. The complaint will then move forward in the Tribunal's complaint process.

5. **Parties can be creative in coming up with a settlement agreement**

The Tribunal is limited in what it can do to remedy discrimination. In mediation, however, the parties can be creative in deciding what should happen to resolve the complaint. They can agree to things the Tribunal can't or is unlikely to order, such as a reference letter for a terminated employee, reinstatement at work, or an apology for the harm caused.

6. **Prepare to tell your story**

Although mediation is not a time to try and prove your case, you should take the opportunity to explain what happened, in your own words. Prepare a script or some notes that you can refer to. Start at the beginning and explain what happened. Explain the impact the events have had on you. If you have a lawyer or advocate, they may do this part for you, with your input.

7. **Listen carefully**

Both parties have the opportunity to share their perspective on the events in the complaint. When it's the other side's turn to speak, listen closely and take notes on what they say. You may learn facts you didn't know before. Understanding the other side's perspective may help you reach a resolution that both sides are willing agree to.

8. **Prepare an offer to settle**

Think about what you have lost as a result of the alleged discrimination. Did you lose wages? Did you have to spend money on things you wouldn't have otherwise, like moving costs or higher rent? What is a reasonable amount to compensate you for the injury to your dignity, feelings, and self-respect caused by the respondent's conduct? Are there other things you want to ask for, like training for the respondent, or a policy change you want them to make? Your lawyer or advocate, if you have one, will help you come up with a reasonable offer to settle.

9. **Offer + Acceptance = Agreement**

If you make an offer to settle, and the other side tells you they accept that offer, you have reached a binding settlement agreement. And, if you accept an offer from the respondent, you have reached a binding settlement agreement.

Communication of the offer and acceptance may happen verbally, by email, or may be communicated through the mediator. Once there has been an offer and acceptance of that offer, it can be very difficult, if not impossible, to change or add things to the agreement. When you make an offer to settle, make sure it includes everything you want. If the other side accepts it, you will be stuck with its contents.

10. **Counter-Offer = Rejection**

If the other side makes an offer, you can decide to accept it, reject it and end the negotiations, or reject it and make a counter-offer. When you make a counter-offer, you are rejecting the respondent's last offer. That offer may be no longer on the table if you change your mind.

11. **Standard Terms in an Agreement**

Almost every settlement agreement includes a few standard terms. Standard terms include a comprehensive release from liability for the respondent; confidentiality of the terms of the settlement agreement; and an acknowledgment that the settlement agreement is a compromise and the respondent is not admitting they have done anything wrong.

12. **Release from Liability**

A "comprehensive release from liability" means that you agree not to take any other legal action against the respondents about the events in your complaint. You won't be able to make any other complaints, like a wrongful dismissal action or an employment standards complaint, about the events giving rise to your human rights complaint.

If you have already made another complaint, you may have to withdraw it in order to settle your human rights complaint. Make sure you understand this part of the agreement, and what you're agreeing to, very clearly. Discuss any other legal claims you may have with the mediator during the mediation, and with your lawyer or advocate if you have one.

13. **A settlement agreement is a binding contract**

Parties are expected to comply with the terms of a settlement agreement. Most of the time, they do. However, if one party fails to comply with the settlement agreement, the other party may have to take steps to enforce it. The Clinic has published a guide on enforcing a settlement agreement that's available on our website [here](#).