



HUMAN RIGHTS IN THE NORTHWEST TERRITORIES

An Advocate's Kit

**Part 2: Working with Human
Rights Claimants**

**Produced by the Centre for Equality Rights in
Accommodation
2007**

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This kit was produced by the Centre for Equality Rights in Accommodation (CERA). CERA is an Ontario-based non-profit housing and human rights organization that works to remove the discriminatory barriers that keep disadvantaged individuals and families from accessing and retaining the housing they need.

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The information contained in this kit is not legal advice and is not a substitute for legal advice. If you require legal advice, please contact a lawyer. CERA and its funders will not be held liable for any loss or damage caused by reliance on any statement, made negligently or otherwise, contained in this advocates' kit.

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CHAPTER 1

OVERVIEW OF THE PART 2 OF ADVOCATE'S KIT

This section of the advocate's kit will focus on practical, every-day strategies for working with and assisting individuals who have experienced discrimination under the NWT *Human Rights Act*. As in Part 1 of the kit, the approach we take and most of the examples we use will reflect the fact that CERA's experience is limited to assisting clients with housing discrimination claims. That being said, the discussions and examples provided below should be easily transferable to other contexts, such as those involving discrimination related to employment or the provision of services.

In addition, most of the following discussion will be geared toward telephone-based assistance, as this is CERA's primary manner of working with claimants. It is important to note that CERA has no official policy of turning away "walk in" clients. Because our services are province wide – and there may be great distances between our office and our clients' homes – and because of the many challenges our clients face attending in-person meetings – such as work scheduling, childcare, transportation costs – our services have evolved over the years to focus on the telephone as the primary method for "meeting" with clients.

We feel that a telephone-based model makes CERA more accessible to human rights claimants, and allows us to provide services in a timely manner. We actually feel that a "storefront, walk-in" model of service would lead us away from many of the constituencies most affected by discrimination, such as the single mother with 2 children who cannot get the time or childcare to come to an in-person appointment. Many of the most significant human rights cases brought forward through CERA would never have reached us if our services were based on in-person meetings and interviews. Telephone-based services also fit well with the realities of housing-based discrimination, which generally involves minimal complicated paperwork.

In our view, most human rights services can be effectively provided over the telephone. In the North, where distances between communities are great, telephone-based service will often be the only option. Without telephone services, it will be very difficult to reach those most in need. That being said, some of the more complex human rights issues may be hard to tackle without in-person meetings. For example, it would likely be difficult to assist someone with a complicated sexual harassment claim

against her employer – a claim which could involve lost wages and healthcare costs over a number of years, multiple witnesses, etc – without substantial face-to-face contact.

CHAPTER 2

PROVIDING ADVICE: WHAT IS YOUR ROLE AS AN ADVOCATE?

The nature of the advice you are able to provide to potential human rights claimants about their rights under the NWT *Human Rights Act (Act)* will depend on your qualifications and your position. If you are a lawyer or a community legal worker, then obviously you are in a position to give legal advice. If you are not trained (or insured against liability) in giving legal advice, you have to be more careful.

Just as in other areas of interest to your clients, such as in landlord and tenant issues, it is helpful for you to be familiar with the law and be able to identify areas where the law has been or may have been violated. Telling your clients about the provisions of the *Act* and about recourse they can take to address discrimination is not usurping the role of a lawyer. It is just giving them useful information. You do not have to be a lawyer to represent claimants filing human rights complaints or appearing before the Adjudication Panel. It is important that non-lawyers become active in this area. However, there are responsibilities that come with this role, such as providing correct advice and meeting statutory and Commission imposed deadlines.

If you decide represent claimants at the NWT Human Rights Commission and before the Adjudication Panel, you will need to make sure that you have professional liability insurance to cover this activity, or that you are supervised by a lawyer.

CHAPTER 3

WHEN SOMEONE CALLS

When someone calls for assistance, your first step is to ask the caller to briefly describe the problem they are facing in order to ensure that the problem is related to human rights and discrimination. You will probably have many callers who feel very strongly that they have been treated unfairly and that their rights have been violated by conduct that is not in fact illegal under the *Act* (i.e. the unfair treatment does not relate to a prohibited ground of discrimination). In these circumstances, you will need to clarify that, although the landlord's or employer's actions were not fair, they were not contrary to the *Act*. If this is the case, the call may end here.

If, however, it appears that there has been a human rights violation, then further information will be required. For example, if the caller experienced discrimination related to housing, ask for:

- ❖ The name of the housing provider, property manager, rental agent, superintendent, or whomever else was involved in the discriminatory conduct
- ❖ Contact information for the housing provider, etc.
- ❖ If there was a denial of housing, the date the application was completed, telephone inquiries made to the landlord, etc.
- ❖ The size, rent, and address of the apartment in question
- ❖ When the apartment is available for occupancy
- ❖ What exactly was said
- ❖ The names and contact information of any witnesses
- ❖ Was there an advertisement involved?
- ❖ Does the caller have good credit and landlord references? If not, what was the problem?
- ❖ Has the caller paid rent at this level in the past?

It is very important for the caller to make detailed notes of his/her experiences as soon as things happen. After you obtain the details, you should advise your client to immediately write down as many details and he or she can remember and to sign and date the notes. If the discrimination is ongoing, advise him/her to keep a "note log".

TIPS ON HOW TO CONDUCT INTAKE CALLS¹

Skills	Example
Listening	Ask open ended questions (eg. "How can I help you today?") and then listen patiently and carefully. This is essential for gathering information, and it also helps build rapport and trust.
Attentiveness	Occasionally repeat back to the caller what he or she has said for confirmation. (ex. "So what you're telling me is..." "So, as I understand things..."). This shows that you are listening, and also ensures that there is not any miscommunication.
Respect	Be respectful at all times.
Pro-active questioning	Follow up any inconsistencies, and err on the side of collecting too much information rather than too little. You can best advocate for someone if you are fully informed of the situation. You do not want to be caught off-guard by a landlord or employer. Also, if the caller is getting off track by explaining events that do not relate to the issue of discrimination, use questions to steer him/her back to the human rights issue.
Respecting privacy	Do not ask questions of a personal nature if not necessary. For example, do not ask details about a person's disability if this information is not offered and is not relevant.
Educating	Do not assume that a caller understands the <i>Human Rights Act</i> or the complaint process. Take the time to educate him/her on the <i>Act</i> .
Validating the caller's experience	Explain what discrimination is under the <i>Act</i> , and if the caller's case does not seem likely to be successful, tell him/her that you are concerned that an adjudicator will find that there is not enough evidence of discrimination. Refrain from telling callers that you do not think they have experienced discrimination. Most often they have, but because there is insufficient evidence, or because the kind of discrimination they experienced is not covered under the <i>Act</i> , they may not have a strong case.
Limiting contact	You are not qualified to give callers advice about non-legal matters. If they need other kinds of help, do your best to refer them appropriately. While you want to be friendly and approachable, always be professional and establish clear boundaries. Make it clear that you are there to help them address discrimination in housing.
Note-taking	It is important for you to make detailed, dated notes during and after the telephone conversation for the file.

¹ These tips are based on a strategies developed by Downtown Legal Services, a student legal clinic associated with the University of Toronto Faculty of Law.

HANDLING DIFFICULT CALLS WITH CLIENTS²

Type of Problem	Possible Cause	Possible Approach
Emotional outburst	Stress	Be understanding and investigate the cause.
	Dissatisfaction with the case	Empathize with the client's frustrations. Go over the facts of the case and explain what action has been taken. Explain that it is not always possible to get an immediate resolution, that challenging human rights violations can take time.
Attached client	Client is in a desperate situation	Set clear boundaries. If you feel that the calls are excessive and are interfering with other casework, you can ask the client not to call you and that you will call him/her as soon as you hear back from the other side.
"Rambling" client	Emotional or difficulty in communicating	Direct the client and inform them "I need to discuss X with you at the moment and we can return to Y later."
	Loneliness	Set clear boundaries while remaining empathetic. Signal when the call is over by thanking the client for his/her time and by telling the client that you will be in touch shortly.
Client picks a fight and will not listen to you.	Emotional difficulty/extreme Stress/mental illness.	Detach yourself from the situation. It may call for more courtesy, more firmness, more tact, or more guidance on your part. However, the main thing is not to be drawn into the client's dynamic. You can terminate the call at any time and hang up. Don't lose your temper. Remember, it doesn't matter whether the client is behaving reasonably or not - your job is still to manage the situation professionally.

² These are based on strategies developed by Downtown Legal Services.

INTAKE CASE MANAGEMENT

In order to assist your clients, it will be critical to establish a formal intake case management system. The following section describes some key components of such a system.

Service-Time Protocol: Individuals experiencing discrimination often need urgent assistance. For example, if they have applied for an apartment and been turned down, there may be very little time available to get them that apartment. It is important to establish a protocol regarding the maximum length of time it will take to get back to a caller. We suggest that 24 hours be the absolute maximum. However, it would be much preferable if calls could be returned within the same business day. This service-time protocol should be explained on the organization's intake telephone message so that callers know what to expect.

Intake Forms: A good place to start your intake case management system is by developing standard intake forms. Important components of your intake form will likely be:

- ❖ Date of intake
- ❖ Name of staff/volunteer who took the intake
- ❖ Detailed contact information for the client
- ❖ Detailed contact information for the landlord, employer, service provider, etc.
- ❖ Selected personal information (family status, income source, sex, etc.)
- ❖ Information on how the client came to contact the organization
- ❖ Information on the ground(s) of discrimination involved
- ❖ Type of service provided by the organization (was this summary advice, a full-blown investigation/representation, public education, referral, etc?)
- ❖ Final outcome (did the person get the housing or accommodation required? Did he/she file a complaint?)

Not all of this information will be collected at the initial intake. Some will be completed throughout the course of the case, and some will be completed after the file is closed. The rest of the form should be given over to the advocate's notes.

While some of the statistical information may, on first glance, appear irrelevant to your ability to assist the client, it could greatly assist with public education and advocacy in the future. The demographic information CERA collects is extremely important as it allows us to develop an understanding of who we are serving, and who is experiencing discrimination with respect to their housing. We regularly use the

demographic statistics we collect through casework to advocate with and educate policy-makers, landlords and the general public on the "face" of discrimination in housing.

Note-taking: As discussed earlier, note-taking is a critical part of assisting human rights claimants. As an advocate, you will need to take good notes on every conversation you have with the client, the landlord, witnesses and anyone else involved with the case. You will also need to document any other action you take related to the case and any action that needs to be taken. Notes on conversations you have with the landlord are particularly important. Make sure to document these conversations in detail as soon as possible after they occur and, where you can, quote the person directly. If the Human Rights Commission has a standardized witness statement form, make sure to have some on hand so that the statement can be completed soon after the conversation. If there is no standard form, you may want to work with Commission staff to develop your own.

Try to make the notes as complete as possible while keeping an eye to minimizing the amount of time you spend note-taking. This is a difficult balance to master, and it will likely take some time before you find an approach that works for you. It will also be very important to put the date and, ideally, the time beside each entry. If more than one person is working on the file, put your initials beside the entry so that it is clear who did what.

While some of these particulars may seem excessive, keep in mind that you could be working on this case for months - and potentially years - if it involves a formal complaint. Generally, you want to take notes that will allow anyone reading the file to understand exactly what work has been done. Similarly, those notes may become very important if your client files a human rights complaint. Advocates should not hesitate to document all relevant information, even if it does not necessarily help the client's case. Your case notes are privileged and should only be used or seen by your staff. It is critical that your client knows that these discussions are completely confidential. If clients feel that what they say to you could be used against them in the future, they will not tell you everything you need to know, and you will not be able to do your job. Any requests made by the Human Rights Commission or a respondent (where a complaint has been filed) to see notes between you and your client should be strongly opposed.

Electronic Intake Database: While the organization may not have a large human rights caseload (particularly early on), it would be useful to develop an electronic database for you intake files. This will make it very easy to quickly determine the status of a file, and to generate statistics related to

the caseload as a whole. It will also help you easily identify conflicts (i.e. where working with a new client may put you in the position of acting **against** a former client). The organization may want to combine this database into a broader casework database that would store information on all advocacy files. It would be possible to set up a simple database using a spreadsheet program such as Excel. However, if you anticipate working with a relatively large number of cases, and you want to track caseload statistics, it would be best to invest in a more sophisticated statistical program, such as SPSS. If your organization has many ongoing human rights files, you may even consider purchasing case management software designed for small legal firms. A number of different software packages are available. Unfortunately, they can be quite expensive.

Tickler Systems: When a complaint has been filed with the NWT Human Rights Commission, deadlines become significant. As discussed earlier, you will have specific timelines for responding to documents from the Commission or the respondent, or when you are appealing a decision. To ensure that you do not miss any of those deadlines, it is valuable to set up a "tickler" system which will remind you of when responses, appeals, etc. are due. A tickler system can be as simple as a sheet of paper that is posted in an obvious place and has space for the case name, the action to be completed and the deadline. Many organizations set up a "tickler calendar". The tickler sheet should be updated whenever you receive correspondence from the Commission or the respondent that includes a particular timeline for response.

CHAPTER 4

GATHERING EVIDENCE

Your client will only be able to successfully challenge the discrimination if there is **evidence** to support his/her allegation. You and the client will need to develop a plan to get the necessary evidence assembled. Ideally, you will want to gather evidence that directly confirms the discriminatory action or inaction. Where this is not possible, it could also be helpful to have evidence that there was no valid, non-discriminatory reason for the particular action/inaction with respect to your client, or that the landlord or employer lied to your client. Here are some examples of evidence that may support a claim of discrimination related to housing:

- ❖ If the landlord told the individual that the apartment was rented and ads for the apartment continue to appear, have the person keep those ads as possible proof that the landlord lied about the availability of the apartment. However, sometimes ads are booked in advance or continue to run even when there is no apartment available, so the individual should verify the availability of the apartment by having someone else telephone the landlord.
- ❖ When submitting a completed application form, if possible get a photocopy before handing it in. If for example, the person feels that he/she was denied because of receipt of social assistance and the form includes information necessary to conduct a credit check (and the person has a good credit record), shows good landlord references, and social assistance as the source of income, the application form may be evidence of discrimination. Similarly, if the person thought he/she was denied because of having children, an application form that asks for the ages of all prospective occupants could be evidence of discrimination (as discussed earlier, it may be discriminatory in and of itself). Application forms are also useful to prove **when** the individual applied for the apartment.
- ❖ If a landlord says an application was refused because of credit problems, a credit report obtained from the credit bureau showing a good credit rating will be useful in challenging the landlord's credibility.
- ❖ Get a witness statement from another person (as credible a witness as possible) who has "tested" the situation. There are a variety of ways to set up a "test". One way is to have another person who

has the same characteristics as your client (e.g. children) telephone the housing provider after your client has been denied to see if the discrimination will be repeated. Or alternatively, you or your client can get someone with different characteristics to see if he/she can get the housing provider to offer the apartment or gather evidence to support the claim of discrimination (e.g.: "I am so glad that you are not on welfare, I don't like to rent to people like that.").

Sometimes it is as easy as having someone call, ask about the availability of the apartment and then ask the landlord about his/her tenant selection policies. For example:

Witness: "I'm calling to see if the one-bedroom apartment you advertised in "For Rent" is still available."

Landlord: "Yes it is."

Witness: "Would you rent to a family with one child?"

Landlord: "This apartment is only for a single person or a couple."

Staff or volunteers from community-based organizations can be ideal "testers" as they will generally be seen to be credible witnesses.

CHAPTER 5

NEGOTIATING WITH RESPONDENTS

If your client still wants to take the job, or rent the apartment, or wants the landlord's or employer's co-operation in accommodating a disability, etc., explain that you will call the respondent to try to resolve the problem. Get as much useful information as you can before you make the call. For example, if your client was turned down for an apartment, ask if he/she has good landlord references and ask about whether there have been any problems with overdue accounts or defaults on rent that may show up in a credit rating. Explain that these are what landlords look for. If your client has a lot of "selling" features, it will be easier to negotiate with the landlord.

Negotiation with a respondent will typically involve telephone conversations, written correspondence and/or the provision of public education and training materials. Below are suggested steps you can follow when contacting a respondent by telephone:

- ❖ Identify yourself and/or your organization and that you are calling on behalf of a specific (named) client. Be prepared for the person to immediately become defensive or deny all knowledge of the situation, as he or she is alerted to liability.
- ❖ Your second step is to explain *Human Rights Act* and who it protects (i.e. the prohibited ground that applies in this situation) from discrimination.
- ❖ It may be necessary at this stage to advise the person that the behaviour or practice engaged in (as you understand it), is contrary to human rights law.

Some respondents will engage in a conversation with you, some will hang up and some will ask for something in writing. You are more likely to engage the person if he/she does not feel attacked or threatened.

If a respondent is willing to speak with you, then take the opportunity to advocate for your client. Different methods will work depending on the situation and you will have to gauge which method is most appropriate. For example (you are not limited to these strategies):

- ❖ "Sell" the client (as discussed above)

- ❖ Be prepared to "myth bust". For example, if you are dealing with a landlord, you can explain that tenants receiving social assistance are actually relatively low risk tenants as they have a stable source of income that will be unlikely to drop dramatically. They know how much they are going to get each month and thus can budget accordingly.
- ❖ Try to get the respondent to think of what it is like to be in your client's position
- ❖ Further explain or even read the relevant portions of the *Human Rights Act*.
- ❖ Sympathize. Let the respondent know that you understand how difficult it is to keep up with all of the different legislation related to his/her business. However, the *Human Rights Act* takes precedence over all other legislation in the territory.
- ❖ Emphasize that it is easy to violate human rights laws without realizing it. The fact that a particular policy or practice may be contrary to the law does not mean that the respondent intended to discriminate.
- ❖ If there are witnesses, make sure the respondent knows this.
- ❖ Explain that it would be in everyone's best interest to avoid a lengthy and expensive human rights complaint

If the respondent hangs up or demands something in writing, take the opportunity to send a stern letter that sets out the relevant provisions of the *Human Rights Act*, how and why the person or their company/organization/agency has contravened them and that he/she and or the company/organization/agency may be the subject of a human rights complaint. Advise in the letter that you can be contacted and that you look forward to resolving the matter without filing a formal complaint. The letter might include a section of a relevant judgment from the NWT Human Rights Adjudication panel, if it is available. If no judgment is available, you may rely on case law from other provinces or territories, which is not binding, but certainly persuasive (A sample letter can be found in Appendix A).

HANDLING DIFFICULT CALLS WITH RESPONDENTS

Type of Problem	Possible Approach
Hostile/yelling at you	Do not take it personally! Remain calm and focused. Do not lose your temper. Write down everything. End the call if the hostility continues and write a letter instead, outlining the relevant case law and the resolution you are seeking.
Refuses to believe that he or she has violated the Act	It often takes something in writing to convince a respondent that what he or she is doing is against the law. Write a letter and attach educational materials on the <i>Human Rights Act</i> . This saves you from having to argue about it over the phone. It also gives the respondent some time to reflect on the issue.
Denies remembering your client	A respondent may claim not to remember your client, even though he/she dealt with your client that very same day. Have your client call the person immediately to refresh his/her memory.
Tries to discredit your client	Respondents may make personal attacks on your client because they feel it somehow justifies their act of discrimination. For example, a building has an adult-only policy and the landlord is attempting to evict a family with a young child. You explain to the landlord that this is discrimination based on family status. In response, the landlord makes remarks about your client being a neglectful parent and that neighbours supposedly wanted to call Children's Aid. It is natural to want to defend your client, but try not to engage in an argument over his/her character. Simply inform the respondent that you are not convinced that what he/she is telling you is true and that, in any case, this information is irrelevant to the issue at hand.

In smaller communities, where there is a greater likelihood that a human rights advocate will actually know the respondent he/she is negotiating with, the strategy will be somewhat different. The respondent will not immediately hang up on you or refuse to return your calls. There will also be a greater likelihood that the respondent is concerned about public/community perceptions of his/her behaviour. These are significant advantages. Advocates will probably want to hold back on the "hard ball" approach to advocacy, and focus on a more gentle - but still persistent - negotiating style.

In a community with a relatively small number of housing providers, service providers, or employers, human rights advocates will quickly

develop a reputation. As a result, it will be important in the early stages of advocacy work to focus on relatively strong cases - though we recognize that this is going to be a controversial piece of advice. You want to make certain when you are advocating with a respondent that the individual you are working on behalf of has compelling evidence to support his/her allegations. Also, make sure that the cases fall under the *Act*. If you say you are going to do something (e.g. help your client file a complaint if the landlord or employer does not change his/her policy), make sure to do it. You want to develop a reputation as an advocate to be reckoned with and as one who stands by his/her word. If you become associated early on with weak cases where there isn't sufficient supporting evidence or where the violation under the *Act* is questionable, or if you become seen as "all talk, no action", you will be marginalized as an advocate and your ability to negotiate with landlords will be harmed. Never threaten something you would not do.

Notwithstanding this, advancing human rights legislation through test case litigation should be a critical part of your work - and frequently, that will mean bringing forward cases that no one thinks will win.

CHAPTER 6

DRAFTING AND FILING A FORMAL HUMAN RIGHTS COMPLAINT

If you are unable to resolve the problem, your next step is to file a human rights complaint on behalf of your client. Of course, you will only do this if he/she approves and is ready to proceed in this direction.

The NWT Commission provides suggestions on how to draft a complaint. These suggestions are part of the human rights Complaint Form. This chapter will supplement the Commission's materials based on CERA's experience in Ontario.

It is also important to note that, currently, Commission staff will sometimes assist claimants in completing the Complaint Form. This can be very helpful. However, as the Commission's caseload increases, this assistance may become less and less frequent. Therefore, it will be important to know how to properly "frame" a complaint and complete the Complaint Form.

In general, complaints should be simple and straightforward and should be prepared as soon as possible after discrimination has occurred, when memories are fresh and - ideally - when it may still be possible to get the apartment, job, service, etc.

THE COMPONENTS OF A COMPLAINT

The first paragraph of the complaint should explain who the claimant is, and should set out the fact that he or she is a member of a protected group under the *Act*. For example, if the claimant was discriminated against because of her family status and sex, it could read: "I am a single mother with two children..." If the claimant was discriminated against because he is receiving income assistance, the first paragraph should mention that the claimant receives income assistance.

The next few paragraphs should **briefly outline in the first person** how the claimant's rights were violated. The complaint does not have to be overly detailed and where exact dates are not available, approximations can be used. It is best to say, for example, "on or about December 16,

2005" or "in approximately mid-April" than to provide an exact date that you cannot prove later. It is also best to put events in chronological order.

If the respondent made a directly discriminatory remark, put that in quotes. For example: The superintendent Jim Green said, "We don't rent to people in wheelchairs because we don't have a ramp."

It is very important that the narrative portion of the complaint, the "story", shows a clear connection between the behaviour of the respondent or his/her agents and the ground/s of discrimination. Include only the facts that are necessary to prove an allegation of discrimination.

Once the description of the claimant and the facts surrounding the allegation of discrimination are complete, it is a good idea to state the section or sections of the *Act* that have been violated. This can be done in the last one or two paragraphs of the complaint. They may read, for example:

I believe that [...respondent's name...] refused to rent to me because I am in receipt of income assistance.

Accordingly, I believe that my right to equal treatment with respect to tenancy without discrimination because of social condition has been infringed contrary to sections 5 and 12 of the *Human Rights Act*, S.N.W.T. 2002, c. 18.

WHO SHOULD BE INCLUDED IN THE COMPLAINT?

Each individual and/or company/organization that was involved in the discrimination should be included in the complaint. For example, if a superintendent who works for a property management company turns down someone's application stating, "We don't rent to families with kids" the claimant should include the superintendent as well as the property management company and the owner of the property in his/her complaint. Companies and organizations are legally responsible for the actions of their staff or agents. Even if the owner of a company has no idea that his/her staff are violating the *Act*, the owner will still be liable. You only have to complete one complaint form if all of the respondents relate to a single fact situation.

Separate complaints should be filed for *each person* alleging discrimination. If a child or someone else who cannot independently file a complaint is involved, the complaint can be filed through a "litigation guardian" (i.e. the child's mother or father or the individual's legal guardian).

Once the complaint is complete, the complainant should review the facts. If they are correct, he/she should sign and date the form. Copies should be made (one for the complainant and one for agent/counsel) and the original should be provided to the Human Rights Commission.

It may also be a good idea to fax the complaint to the Commission and a keep copy of the transmission on file. If necessary, this can be used as proof of when the complaint was filed

(Sample complaints, including a “bad” complaint, can be found in Appendix B).