

Ontario Commission  
Human Rights ontarienne des  
Commission droits de la personne



**TEACHING HUMAN RIGHTS**  
**IN ONTARIO**

**An Educational Package  
for Ontario Schools**

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## PREFACE

I am pleased to present a newly updated edition of the Ontario Human Rights Commission's *Teaching Human Rights in Ontario* School Package.

This teaching package is a key component of the Commission's activities in the education sector. First introduced in 1995, the package focuses on the *Human Rights Code* and the processes involved in dealing with complaints. Since its introduction, this practical teaching aid has been in constant demand. Ongoing requests for the package support my deep conviction as a former teacher that the classroom provides an ideal environment in which to teach the valued concepts of equality, justice and fairness.

Equally important, is the need for teachers and administrators to reinforce as well as model these principles and concepts. For this reason, the Commission has updated this kit to incorporate latest developments in case law and policy as well as respond to feedback from teachers to include more case studies.

In this new package, you will find information on the Commission's new *Policy and Guidelines on Disability and the Duty to Accommodate* and the addition of "same-sex partnership status" as a new ground under the *Code*. More information about the issues covered in this package is available on the Commission's Web site ([www.ohrc.on.ca](http://www.ohrc.on.ca)), which will be used to provide updated material in the future.

Clearly, the future of any society lies in the hands of the young people of that society. By educating young people early on in life about the importance of advancing good citizenship through mutual respect and appreciation for our Province's diversity, I firmly believe that we can realize the climate of understanding envisioned in the Preamble to the *Code*, in which the dignity, worth, and rights of each person are respected.



Keith C. Norton, Q.C., B.A., LL.B.  
Chief Commissioner

## PREFACE TO THE FIRST EDITION

The Ontario *Human Rights Code* has one singular aim—to create a climate of understanding in which the dignity, worth, and rights of all people are respected.

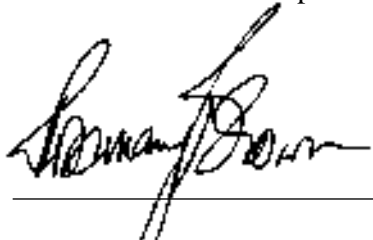
The province's human rights legislation embodies its public policy commitment to protect rights and provide opportunities for its citizens without discrimination. Laws alone, however, cannot guarantee the development of harmonious relations among groups of people, and a climate of understanding and mutual respect will not grow on its own initiative. Making that goal a reality calls for constant and careful nurturing and encouragement through a combination of strong legislation, active community programs and, above all, education.

A critical participant in the effort to combat prejudice and discrimination in society is its educational institutions; not only because the attitudes and values to which young people are exposed in school influence their future conduct, but also because, although it is the implicit right of citizens to act upon their "rights," they must know what those rights are before they will be able to do so.

The school room and school yard provide natural and appropriate opportunities for students to learn about recognizing and respecting the rights of others, both through formal instruction and through personal experience. On the other hand, when careful thought is not given to human rights in schools, students can just as easily learn to disrespect and devalue one another's differences and diversity.

Living in a country which increasingly reflects the human diversity of the global village, and whose prosperity depends on the harmony and unity of its mosaic, no student should graduate from a Canadian school without having engaged in serious classroom dialogue and study of the concepts and principles of human rights, and about how these can be practically applied.

I am therefore particularly pleased to introduce the following program to the teachers and students of Ontario, with the hope that the users of this package will appreciate and share our belief in the tremendous importance of the information it contains.



Rosemary Brown, P.C.  
Chief Commissioner  
Ontario Human Rights Commission

## INTRODUCTION

The Ontario *Human Rights Code* (the *Code*) is one of the most important pieces of legislation governing our lives here in Ontario. The Ontario Human Rights Commission (OHRC) has developed this teacher's package to facilitate discussion with your students about the rights and responsibilities that flow from the *Code*. It explains how to access these human rights protections and identifies who is responsible for protecting everyone's rights.

Human rights legislation deals with discrimination in particular areas of our lives. Discrimination results from prejudice, stereotyping and misuse of power, whether it be intentional or unintentional. The Ontario *Human Rights Code* provides a legal mechanism to prevent or stop discrimination and provides remedies for victims of discrimination. This package contains information and activities to help students learn the difference between permissible behaviours and illegal behaviours.

### PURPOSE

The purpose of this educational resource package is to introduce students to the provisions of the Ontario *Human Rights Code* and the role of the Ontario Human Rights Commission. Information is included about the grounds under which Ontarians are protected from discrimination and the social areas in which discriminatory behaviour is illegal under the *Code*. You will find in the succeeding pages a series of activities to help you teach these concepts. While the package is designed for the activities to be used in the order they appear, many teachers will prefer to select individual exercises based on the needs of their class.

*Teaching Human Rights in Ontario* is primarily intended for secondary school teachers of law courses and cooperative education programs. However, this resource package can also be used in other courses at the high school level with little or no modification. Teachers in Grades 8 and 9 should be selective with the materials and use the parts of the package that are appropriate for their students. It is hoped that instructors in adult "English as a Second Language" classes will find the materials useful as well.

### LEARNING OUTCOMES

Upon completing the activities in this package, students will:

- increase their awareness of the Ontario *Human Rights Code* and the work of the Commission;
- identify the grounds and social areas covered by the *Code*;
- be able to explain what constitutes discrimination;
- be able to explain how the *Code* protects individuals and groups from discrimination and harassment; and
- know their rights and responsibilities under the law, how to protect those rights and how to help others who experience discrimination or harassment.

## A NOTE ABOUT LANGUAGE

This package is written in language appropriate for secondary school students. Words or phrases that are particularly important for interpreting and understanding the Ontario *Human Rights Code* are defined in boxes on the Fact Sheets (Students' Handouts) and in the Glossary (Teacher's References, pages 48-64).

## REAL-LIFE CASES

Most cases used in this resource are based on actual complaints dealt with by provincial human rights boards of inquiry and/or the courts. To obtain more information on these cases, consult "Case Study references" on page 37.

## TEACHER'S REFERENCES AND STUDENTS' HANDOUTS

We have consolidated everything that you will be handing out to students in the Students' Handouts section at the end of this package. (This includes the Human Rights Quiz, five Fact Sheets and twelve Case Studies.) Instructions for the use of these are provided in this document. Along with the "Glossary," there are also seven "Backgrounders" in the Teacher's References section that will provide additional information to help you with the exercises. You should read them prior to attempting to teach the material. You may also find it useful to hand these out for students' information. All material may be freely photocopied for classroom use.

## CLASSROOM ACTIVITIES

To help you teach this package, the first section (Teacher's Package) includes instructions and additional background information about each topic. No timelines are given for the activities. Each teacher will need to use his or her best judgement as to how much time to set aside for each part of the package. It is recommended that **AT LEAST** four to five hours be spent on the activities selected by the teacher.



## **ACKNOWLEDGEMENTS**

The Ontario Human Rights Commission would like to thank the many individuals who gave freely of their time and expertise to the development of the first edition of this publication.

In particular, many thanks to the Advisory Committee for their valuable input. The members of the Advisory Committee representing teachers, the Ministry of Education and Training, and the Ontario Human Rights Commission were:

Denese Belchetz and Paul Raymond, Ministry of Education and Training (Central Region)  
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Valerie Dugale and Wayne Fairhead, consultants of Precedent Resource Group, designed most of the exercises and wrote the initial drafts with the direction and assistance of the Advisory Committee.

Many individuals reviewed the manuscript for its accuracy and its viability as a teaching tool. Several others took time during an extremely busy period during the school year to test the package in the classroom and give constructive feedback. It would not have been possible to complete this publication without their assistance and we offer our sincere appreciation.

NOTES

**TEACHING HUMAN RIGHTS**

**IN ONTARIO**

**Teacher's Package**



## WHAT IS THE PURPOSE OF THE ONTARIO *HUMAN RIGHTS CODE*? (THE PREAMBLE)

The Ontario *Human Rights Code* was proclaimed in order to provide comprehensive human rights legislation to protect the rights of individuals.

The intent (or “spirit”) of the *Code* is defined in a section at the beginning of the document entitled the “Preamble.” This is a statement which describes what is meant to be achieved by the legislation. It helps define the meaning of the term “equality.” When we are unsure how to interpret a section of the *Code*, the Preamble is often referred to for guidance. It sets out the basic assumptions underlying this important legislation. If appropriate for the needs of your class, photocopy Backgrounder #1, page 51: “Preamble to the Ontario *Human Rights Code*,” and distribute it to your students or post it in a visible place in the classroom.

The Preamble states that we recognize that all people:

- have human rights that cannot be infringed upon or dismissed;
- have individual dignity and worth;
- are entitled to equal rights and opportunities without discrimination; and,
- need a climate of understanding and mutual respect, so that everyone feels a part of society and can contribute fully to it.

While the principles of the Preamble remain constant, the way we interpret these principles has continued to evolve in step with changes to social policy. The inclusion in 1981 of sexual harassment as a violation of the *Code* and the addition of disability and sexual orientation as prohibited grounds of discrimination in the 1980s, are examples of how the *Code* has changed.

The purpose of human rights legislation is to remedy the situation for the person or group discriminated against and to prevent further discrimination. It is not meant to punish the individual or company that has discriminated.

The Ontario *Human Rights Code* provides for civil remedies, not criminal penalties. Individuals or companies found to have discriminated are not sent to jail but can be required to compensate a complainant or make major changes in the way they conduct their affairs.

Focus on these main points with your students and tell them that you are going to start your study of the scope and intent of the *Code* by discussing the topic of discrimination.

## ACTIVITY #1: EXPLORING THE CONCEPT OF DISCRIMINATION

This activity will give students a chance to explore the concept of discrimination and gain an appreciation of its complexity.

Have students work in small groups. Tell them that as a class they are going to come up with a definition of discrimination and that you want each group to develop their own definition. (At this point, they should not have seen the definition in the glossary.) Remind them that they should think about the points raised in the Preamble. They should also consider such questions as: What are stereotyping and prejudice and what are the differences between these concepts and the concept of discrimination? What does “fairness” mean? What is the effect of discrimination on a person?

Have the students record their ideas on chart paper. When they are finished, have each group present their definition to the class. When all groups have presented, select those ideas that are common and use them to develop a consensus definition of the term. Compare their definition to the one in the Glossary (page 48).

Introduce or highlight the concept that “discrimination” can sometimes result from treating people the same and that occasionally we are required to treat people differently to achieve equality of results. For more information about this, refer to the definitions of “equal treatment” (page 49) and “adverse impact” (page 48) and Backgrounder #6: What is Equality: (pages 61–62).

Next, have students brainstorm a list of “Who is discriminated against?” You can do this either as a large group (with yourself or a student as facilitator) or in small groups. Be sure to record the answers. When you have listed all the answers, ask students to categorize their answers. For example, “Jamaicans,” “Black people” and “South Asian people” could be grouped in a category called “racial minorities.” “Lesbians,” “bisexuals” and “gay men” could be grouped together in a category called “sexual orientation.” Post these lists and the class definition of discrimination where everyone can clearly see them.

Finally, have students discuss in their groups some specific ways in which people are discriminated against. As before, have them record their ideas on chart paper and then compare their lists with the other students. Build a class list with input from each group.

Summarize this activity before moving on to another topic.

## ACTIVITY #2: THE HUMAN RIGHTS QUIZ

Distribute the Human Rights Quiz (Students’ Handouts, pages 67–68) to your students. Tell them that the Quiz looks at some situations in which the Ontario *Human Rights Code* may have been violated. Have them work individually or in groups of two or three.

When they have finished the Quiz, the students will want to discuss their answers immediately. It is recommended that you wait and discuss the answers in the order suggested here. Your students will have a more complete understanding of the concepts involved when they have completed Activities 3, 4 and 5. (Answers to the Quiz can be found on pages 16–19.)

### ACTIVITY #3: THE SCOPE OF THE ONTARIO *HUMAN RIGHTS CODE*

Tell students that they will now learn where and how the Ontario *Human Rights Code* prohibits discrimination. First, review the Preamble (Backgrounder #1, page 51) and ask them to keep in mind how the various parts of the *Code* you will be dealing with reflect its “intent” as expressed in the Preamble.

Distribute copies of Fact Sheet #1: “Scope of the *Code*” (Students’ Handouts, pages 69–70). Students may work either individually or in small groups. Have them read the information and encourage them to ask questions to ensure comprehension.

Post chart paper with the following headings around the room:

- “Areas of discrimination,”
- “Prohibited grounds of discrimination,”
- “Exceptions to the prohibited grounds of discrimination,” and
- “Other points.”

When they finish reading, have them complete the charts in their own words. Ask them to underline or circle key words or phrases. Review what they have written on the charts to help clarify their individual and collective understanding of the information.

### ACTIVITY #4: TYPES OF DISCRIMINATION: PREPARATION

In this activity, students will work in small groups in a cooperative learning process called a “jigsaw.”<sup>1</sup> If your class already has a “home group” structure, the following activity will flow naturally from these groupings.

To form appropriate home groups, place students in groups of five. In these home groups, have them review the examples of discrimination that they discussed earlier. Remind them of the principles stated in the Preamble and the areas and grounds of discrimination protected by the Ontario *Human Rights Code*. Ask them if they can think of any other examples to add to their lists.

You may want to have each group record its ideas on chart paper and report back to the class before moving into the jigsaw activity.

1. “Jigsaw” is a cooperative learning activity designed for use in the classroom.  
For more information about this teaching strategy, see Coelho, E., *Jigsaw Plus*, Unionville, 1991.

## ACTIVITY #5: TYPES OF DISCRIMINATION: USING THE FACT SHEETS

For this activity, make sure that the students have access to dictionaries as they may need to look up the meaning of some words. Give each group a set of Fact Sheets 2 through 6 (Students' Handouts, pages 71–75) that describe types of discrimination: direct discrimination, harassment, sexual harassment, poisoned environment, constructive discrimination and systemic discrimination. Tell them that the *Code* deals with all of these categories of discrimination.

Each student should take one Fact Sheet. Then the home groups should split up into five new groups. Each individual joins a new “exploration group” comprised of the others who have the same Fact Sheet. (For example, one exploration group consists of everyone who received Fact Sheet #3: “Harassment.”)

Allow students in the exploration groups time to read and discuss the information on their Fact Sheet. They may read the information aloud or silently, depending on their reading abilities, ESL requirements, other learning ability factors, and the room set-up.

Have the groups answer the following questions about the type of discrimination on their Fact Sheet:

1. What are the key words you need to understand when discussing this type of discrimination?
2. Can you give examples from real-life situations to illustrate this type of discrimination?
3. What effect could/would this type of discrimination have on someone?
4. How do you think this kind of treatment would make someone feel?

You may wish to develop other questions that will challenge the group and stimulate discussion.

After thorough discussion in these groups, have students return to their home groups. Each should then define his or her assigned type of discrimination and lead a discussion of the related situation and questions. Throughout this activity, you should act as the facilitator or coach among the groups.

## ACTIVITY #6: DEBRIEFING THE ANSWERS TO THE HUMAN RIGHTS QUIZ

If time allows, have students re-do the “Human Rights Quiz” and compare their answers with those from their first attempt. Discuss their answers to the Quiz, providing information as required to ensure that everyone understands the concepts illustrated in each situation. Discussion of each situation appears below. You may wish to read or have students read from these discussions.

Ensure that the Preamble (Backgrounder #1, page 51) and the charts listing the social areas and prohibited grounds covered by the *Code* are posted where they can be referred to.



**1. A store manager has refused to hire Anthony as a clerk because he was convicted of reckless driving in the past.**

Yes, the manager has violated Anthony's human rights. The *Code* covers employment (area) and prohibits discrimination in hiring based on one's having a record of offences (ground).

The *Code* says that "every person has a right to equal treatment with respect to employment without discrimination because of ... record of offences." In other words, an employer cannot discriminate against someone convicted of a provincial offence or who has been pardoned for a federal offence. But each situation must be judged on its own merit.

In this scenario, Anthony's offence is unrelated to the duties he would have to perform in order to be able to do the job. However, if the job were to involve driving a car for delivery and no other employee could be given that duty, then the manager might be able to show the Commission that he had a good reason for deciding not to hire Anthony. Or, if he had had a conviction for theft, then the manager could likely prove that the store would be at financial risk to have Anthony work with cash. In either case, the manager would have to prove that driving the car or taking cash were *bona fide* job requirements and that no one else could reasonably be assigned the duties.

**2. Rink attendants jeer at the young women's hockey team, give the team less than its allotted ice time and allow pin-up pictures of women to hang in the dressing rooms. Naomi and her friends have complained to the manager, who has done nothing.**

Yes, the rink attendants and manager have violated the young women's rights. The *Code* covers facilities (area) and prohibits discrimination on the basis of gender or sex (ground).

The *Code* says that "every person has a right to equal treatment with respect to services, goods and facilities without discrimination because of ... sex." First of all, by not receiving their allotted ice time, Naomi and her team are not being treated equally.

What about the jeering, pin-ups and manager's comment that they should not be playing hockey? Taken together, these actions create a poisoned environment that is threatening and demeaning to women. Such a poisoned environment takes away the rights of women to participate without discrimination in the community facility.

What do you think should be done? Both the manager and the rink attendants should be made aware of their responsibilities under the *Code*. They must give the women their full share of ice time, stop the jeering and remove the pin-ups. As well, measures should be taken by management to make the facilities more receptive to both genders.

**3. A property manager has refused to rent a room to Don, a high school student living on public assistance, saying that he does not rent to "welfare kids."**

Yes, the property manager has violated Don's rights. The *Code* covers discrimination in the area of accommodation (housing), prohibiting it on both the grounds of age and receipt of public assistance.

The *Code* says that “every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination.” In addition, no one can be discriminated against simply because he or she receives social assistance.

In this case, the property manager based his decision on a subjective opinion. If Don felt he had been discriminated against, the Ontario Human Rights Commission would still have investigated the case—even if the property manager had not made the comment about “welfare kids.” An investigator can often prove that discrimination has occurred because of comments or actions made by the respondent.

**4. Restaurant staff have asked Cassandra and several Black friends to leave the premises after an argument and a food fight took place with a group of White students.**

“Maybe” is the correct answer for this scenario. Assuming that the White students participated equally in the fight, Cassandra and her friends’ rights may have been violated. This would depend on whether or not the White students were also asked to leave. The *Code* says that “every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of ... race.” If the staff asked only the Black students to leave, they would be treating Cassandra and her friends differently. This is an example of direct discrimination.

Would it be true to say that neither group has been discriminated against if the staff has asked both groups to leave? The service provider does have the right to ask anyone to leave the premises for being unruly or disruptive to business. So, by asking both groups to leave, he or she would be protecting the business and preventing further disturbance to other customers.

However simple this scenario might appear at first glance, it requires a great deal of analysis to understand what happened and what should be done. For example, what if the White students had been harassing Cassandra and her friends prior to the fight? The *Code* says that the provider of a service also has the responsibility to ensure that all of its customers are free from discrimination while on the premises. Staff would then be correct in asking only the White students to leave (See Teacher’s References: Backgrounder #6, page 61).

**5. Maureen and Sean, who have organized a school fundraiser for AIDS research, are facing verbal and written harassment from students, both on and off school property. The school is aware of this harassment but has done nothing to prevent it.**

Yes, the students have violated Maureen and Sean’s human rights. And so has the teacher and the school.

Do we know whether Maureen is a lesbian and Sean is a gay man? No, we don’t.

If they are not, is there a prohibited ground? Yes, there is. Regardless of their sexual orientation, the other students are discriminating against them because of their “perceived” sexual orientation and/or association with a group protected under the *Code* (sexual orientation).

Is there an obligation for the teacher to act? Yes, under the *Code* the teacher is contributing to the discrimination if he or she knows about it and doesn't do something.

The students have discriminated against Maureen and Sean because of their participation in a school activity associated with AIDS, a condition wrongly identified by some people as a "gay disease." In addition, the derogatory cartoons in the classroom create a poisoned environment for Maureen and Sean. As a service provider, a school is required to ensure that everyone is treated equally, without discrimination and harassment.

If Maureen is lesbian and Sean is gay, why might they hesitate to complain to school officials or lodge a complaint with the Ontario Human Rights Commission? By taking such action, they might think they would have to publicly disclose their sexual orientation. They would not have to however, because the Commission would still take the complaint based on their association with gays or lesbians, or that they were "perceived" to be lesbian or gay.

Sexual orientation was added to the *Code* as a prohibited ground in 1986. Yet, of all the grounds, the Commission consistently receives the fewest number of complaints in this category. Because of homophobia, many gay men, lesbians and bisexuals feel they must conceal their sexual identity to avoid rejection, ostracism and possibly violence from friends, family, work colleagues and others around them.

**6. The owner of an optician's office has refused to give Michelle a job as a part-time receptionist because she feels Michelle's accent is too difficult for her customers to understand.**

Maybe there has been a violation of the *Code*. If it could be objectively shown that Michelle did not satisfy a *bona fide* occupational requirement that she be understood by customers, she was not discriminated against. However, we all have accents. Does her accent truly affect her ability to communicate effectively or is this an excuse by the owner not to hire her because of her ancestry/ethnicity/place of origin? If Michelle lodged a complaint, an investigation would probe whether the owner's decision was purely subjective or had some objective basis, such as the results of an objective test of Michelle's communication ability. What if the owner argued that customers would not like to deal with Michelle because of her accent? Customer preference is not recognized by the *Code* as a defence for discriminatory acts.

**7. Theatre staff have told Michael, who requires the use of a wheelchair, that he must either transfer into a standard theatre seat or watch the movie from the only space available for his wheelchair—in front of the first row of seats.**

Yes, the theatre has discriminated in the provision of services on the ground of Michael's disability.

This scenario is based on a case heard by the Saskatchewan Court of Appeal in 1985 (*Huck v. Canadian Odeon Theatres Ltd.*) which established that treating people the same does not necessarily mean treating them equally. The theatre argued that it provided Michael with the same services as all other patrons—a ticket and a seat—and had no intention of discriminating against him.

However, Michael’s lawyers argued that, unlike other patrons, he could not take any seat in the theatre, because his disability was such that he could not transfer out of his wheelchair. The area offered to him in front of the front row of seats was restricted and inferior to the range of seating offered to other theatregoers. In its judgement, the Court found that even though the theatre management did not intend to discriminate, its actions had had a discriminatory effect on Michael.

Many actions or seemingly “neutral requirements” are not intentionally discriminatory. That is why human rights legislation, such as the *Code*, is concerned with equality of results and not the intent of the respondent. As a result of this decision, theatres all over the country now offer a variety of spaces throughout for people with wheelchairs.

## ACTIVITY #7: USING THE CASE STUDIES

Two alternative methods are recommended when dealing with the Case Studies in the Students’ Handouts, pages 76–87. The first method involves a forum discussion of each of the Case Studies, while the second has students role-play a Board of Inquiry hearing of each case. Using both methods is highly recommended, as students will learn more when both strategies are used.

### FORUM ACTIVITY

Divide the class into groups of four or five. Give each group a separate Case Study for discussion and analysis. Each group should read its Case Study carefully and then discuss the questions that follow. If students have other questions, these should be noted and answered. Each group should select one member of the group as their representative during the feedback session.

Set up a forum or fishbowl structure through which group representatives can report to the class. To do this, arrange chairs in a circle (one for each representative), plus one for a group discussion facilitator (you or a student). Include one empty chair, where others will sit when they wish to ask questions or challenge statements raised by the reporting students. The rest of the class should sit outside the circle of representatives.

Each representative should report on her or his Case Study by explaining the scenario and sharing the group’s answers to the questions.

To challenge statements and/or raise other questions, a student must sit in the empty chair, make the point and then vacate the chair.

As each group reports its findings, provide input using relevant information from the “Guide to the Case Studies” on pages 21–32.

## BOARD OF INQUIRY ROLE PLAY

Instead of the forum activity, you can create a board of inquiry scenario for each Case Study. A board of inquiry usually consists of one person who judges the human rights complaint. A final decision by a board can force a person or company that discriminates to pay for any losses that have been suffered, and make the company change the way it operates to make sure that this discrimination does not continue. A board of inquiry decision is a legal one and, as such, can be appealed to a higher court. For more information about this process, see Backgrounder #5: “The Board of Inquiry” (Teacher’s References, page 60).

Have students, in groups of seven or eight, select one of the Case Studies and prepare arguments for and against the alleged violation. In their groups, they will choose their parts: complainant(s) (the person who lodged the complaint); respondent(s) (the person that the complaint is against); lawyer(s) for the respondent, lawyer(s) for the Ontario Human Rights Commission, and lawyer(s) for the complainant; witnesses for the complainant and respondent; and the Chair of the Board of Inquiry (who conducts the hearing).

When each group has prepared its case, set up a “hearing room” in your classroom. Everyone should have a role in each case as it is acted out. Encourage everyone to try as many roles as possible.

Compare the students’ conclusions with the actual findings in the following “Guide to the Case Studies.”

## GUIDE TO THE CASE STUDIES

### CASE STUDY A: DARLENE

This scenario is based on an actual case before a Board of Inquiry, known as *Noffke v. McClaskin Hot House*.

Was the Ontario *Human Rights Code* violated? Yes, it was. Darlene’s employer sexually harassed her. He repeatedly touched her. He said he was sick of his wife and needed satisfaction from another woman. And he asked her to come to his apartment to have sex with him.

When Darlene first became uncomfortable with the owner’s behaviour, why didn’t she say something? Perhaps it was because she was too frightened, too shy, didn’t know how to stop it, or didn’t want to lose her job.

Would Darlene have to say anything to the owner for him to know he was violating the *Code*? No. The *Code* recognizes that people usually harass others because they think they can get away with it, as in Darlene’s case. That is why the definition of harassment includes the words “... ought reasonably to be known...” Even her withdrawal from his touching was enough to let the owner know his actions were unwelcome. We can make someone know that an action is unwelcome through our body language, such as turning away, or by communicating verbally and telling them so.

Was Darlene's termination a factor in assessing whether her rights were violated? Yes. The owner violated the *Code* on a second count by terminating her after she rejected his sexual advances. This is called "reprisal." Why else would he terminate her when she was performing her job well and it was the busiest time of the year for his business? It is a violation of the *Code* when a person in a position of authority penalizes or threatens an employee for not complying with a sexual demand.

In its finding, the Board ordered the owner to pay Darlene \$2,750 for mental anguish and \$240 for lost wages. It also ordered the owner to post a copy of the *Code* at his business site and, for a two-year period, to inform the Commission any time he terminated a female employee.

Having a separate provision for sexual harassment in the *Code* recognizes that the majority of harassment complaints are sexual in nature and commonly committed by people in positions of authority.

Sexual harassment is not, however, limited only to male-female situations. It can also occur between two men, two women or woman to man.

### CASE STUDY B: PARAMVIR

This was an actual case known as *Pandori v. Peel Board of Education*.

Would the *Code* take precedence over the *Education Act*? Yes. The Board of Inquiry has ruled that education is a service under the *Code*, referring to section 47 of the *Code* which provides primacy over the *Education Act*. A board of education can exercise its rights under the *Education Act* as long as those rights do not violate the *Code* or the *Canadian Charter of Rights and Freedoms*.

Does the weapons policy discriminate against Khalsa Sikhs? Yes. On its face, the weapons policy violates their rights. Although they can attend school, they will not be able to fulfil one of the important requirements of their religion. However, to demand that a person choose between school or a job and his/her religion, constitutes discrimination. Sikh organizations in Canada and high Sikh authorities from India verified the complainant's argument that the kirpan must be made of iron or steel and worn at all times.

Was the policy discriminatory? Can the Board of Education prove that providing Sikhs with the right to practise their religion (that is, to wear the kirpan) would cause the school undue hardship? Would it pose a substantial risk to student safety?

The main issues on which the Board of Inquiry based its decision were as follows:

- There was no evidence that Khalsa Sikhs had ever misused a kirpan in any Canadian school.
- The kirpan's similarity to a weapon (particularly when secured and worn under clothing) was irrelevant. While others might well steal a kirpan to use as a weapon, a person bent on aggression could easily obtain other weapon-like objects on school premises, such as screwdrivers, knives, forks and baseball bats.

In its decision, the Board of Inquiry ruled that sacrificing the rights of Sikhs in order to control non-Sikhs, who might be violent, was unacceptable, given the other measures available to curtail violence in schools.

It found that the respondent had not proven undue hardship and ordered the Board of Education to withdraw the amendment regarding the wearing of the kirpan. Khalsa Sikhs would be entitled to wear real kirpans to school.

To meet the concerns of both parties, the Board of Inquiry stated that kirpans would have to be of reasonable size, worn under clothing and secured so that removing the kirpan would be difficult. Principals would also have the right to suspend the wearing of a kirpan if it were to be misused by its wearer.

### CASE STUDY C: DAN

Did the shift manager have good reason for firing Dan? No, probably he didn't. It would be difficult for the manager to show that it was Dan who caused the equipment failure, as he had already left for his break. It was not clear if the other employee had partial or total responsibility for the problem.

Dan believed he was fired because he was a Black person. What additional factors would be taken into consideration in a human rights investigation? The owner promised Dan he would be trained on the equipment by the shift manager. Yet the manager only gave him a few minutes of instruction. Why? Is it possible that the manager did not want to work with him? Is that why the owner was reluctant to hire Dan in the first place?

The shift manager was overheard to say that blacks were responsible for increased violence in the community. Could Dan reasonably expect to get equal treatment from a supervisor with that kind of attitude? The shift manager also contributed to the harassment and poisoned environment by sharing racist jokes with Dan's co-workers.

Furthermore, some co-workers ignored and isolated Dan, possibly contributing to the harassment. This and the poisoned environment constituted discrimination.

An investigation would try to determine if Dan's firing was, at least in part, due to racial discrimination on the part of the shift manager. In effect, if a Board of Inquiry finds that discrimination plays even a part in a decision by an employer, then the employer has violated the *Code*.

### CASE STUDY D: TAMMY

This case, *Youth Bowling Council v. McLeod*, was heard by a Board of Inquiry and was then appealed to Divisional Court in 1990. The Divisional Court decision was subsequently endorsed by the Ontario Court of Appeal.

Could Tammy perform the essential requirement of bowling, and should this have been a factor in determining whether a violation had occurred?

The Court agreed that manual control and release of the ball (that is, the physical activity in delivering the ball) were the essential requirements of bowling. Tammy required the ramp to release the ball and thus could not perform the essential requirement.

Since Tammy could not perform the essential requirement without her ramp, did the Council have an obligation to accommodate her? The Board of Inquiry had said, “Yes, it did.” In effect, the rule that the ball must be manually controlled has an adverse impact on many people with disabilities, such as Tammy or those not having full use of a hand or arm.

The *Code* says that an organization must accommodate a person with a disability who cannot meet essential requirements, unless it can prove undue hardship.

Would it cause undue hardship to accommodate Tammy in competitions? The Court said “no” for several reasons. Allowing Tammy to use her ramp would not give her an unfair advantage over other bowlers. As the tests proved, Tammy had no competitive advantage over others. While the Council said that skills should be common to all competitors, it did not account for other differences, such as height, weight or maturity which also affect one’s ability to bowl.

The Court rejected the argument that special devices could be used in recreational bowling but not in competitive bowling.

Was it fair to welcome persons with disabilities in recreational bowling but not in competition, particularly when such persons would have no proven competitive advantage? As the Board had pointed out, all participants strive to win, whether they are in recreational or competitive settings and everyone should have the opportunity to participate in both settings.

In conclusion, it was decided that Tammy had been discriminated against on the basis of her disability. The Court ordered the Council to allow Tammy to use the ramp in competitions. This effectively permits all bowlers with disabilities to use special equipment as long as such equipment does not mechanically add force or speed to the ball.

### **CASE STUDY E: KAREN**

This scenario is based on *Youmans v. Lily Cups*, which went before a Board of Inquiry but was settled prior to the completion of hearings. As such, discrimination was not confirmed. For teaching purposes, the following is based on the perspective of discrimination having occurred.

What kind of discrimination did Karen face? She alleges that she faced two kinds: first, that she was harassed by her supervisors because of her sex; second, that the denial of career advancement and the supervisor’s interference in her personal life essentially violated her right to freedom from discrimination in the workplace.

What other factors would lead us to believe that she or other women may have been discriminated against? There were very different rules and conditions governing men and women when they started to work and during their employment at the company. The difference in pay for “service persons” (where only men started) and “packers” (where women started) was really pay based on gender (since a woman could not start as a service person).



Is there any reason that men should be hired as service persons and women as packers? No, there is no *bona fide* reason to treat them differently.

The impact of this potential inequality is serious if women want to advance in a company. They would lose the seniority they gained while they had worked as packers when they obtained a higher-level job, and, on that basis, they would lose out to men who would not have been around as long.

What about the mechanical aptitude test? Some evidence suggests that women do not generally perform as well as men on this kind of test. In fact, it has been found that many of these tests are biased against protected groups, such as women or racial minorities, because of the way such tests are structured.

Was the test a *bona fide* requirement for more senior positions? No, it was not. The test had very little relationship to the performance of any of the jobs at the company where Karen worked. This is an example of a neutral requirement that had an adverse effect on women and therefore discriminated against them. It constitutes constructive discrimination (see Fact Sheet #5, Students' Handouts, page 74).

What did the statistics say about the representation of women in the company's workforce? Women were well represented in the bottom ranks of the company but not in more senior positions.

All of these factors could point to systemic discrimination against women. Unequal treatment, harassment and constructive discrimination are all part of the practices that keep women from advancing in society.

What must be done to ensure that women receive equal treatment as well as equal opportunity at this company? First, the company eliminated differences in pay by creating a single entry-level position for both men and women. It also created plant-wide seniority for all positions, including packers, and stopped using the mechanical aptitude test.

Given the company's long-term systemic practices, would these actions stop discrimination and make up for the lost opportunity that women had suffered? The settlement recognized that special measures were needed in the short term to remedy the effects of discrimination and to ensure equality of results for women.

Thus, the respondent, without admitting they had discriminated against Karen, agreed to:

- promote women into senior-level positions until their representation is the same as the percentage of women working in entry-level positions (about 50 percent), and
- create a pool of female employees interested in advancement and provide them with training to obtain the necessary skills for those positions.

In this way, women would achieve more equal representation at senior levels. Furthermore, female employees would become aware of their rights and opportunities for advancement.

In other words, the company will create a climate of equal opportunity for all of its employees through active encouragement of, and commitment to, female employees.

## CASE STUDY F: RITA

How should the teacher have handled Rita’s concern about the class presentation?

As school curriculum areas become more reflective of diversity issues, this type of situation should cease to arise. The students showed a very ethnocentric view of the events surrounding Columbus’s voyage. Obviously, the experience of the settlement of North America was not the same for the Aboriginal people as it was for those who came here from Europe.

Asking Rita to present the “Aboriginal point of view” was extremely unfair. It assumed that Rita could speak for all Aboriginal people—an action that stereotypes Aboriginal persons.

When the teacher first gave the assignment, or later, when Rita raised her objection, the teacher could have prevented the situation by either:

- asking the class to discuss the 1492 events from the point of view of both Columbus and of the Aboriginal people living in the Americas;
- and/or identifying similar situations in history and asking students to examine the perspectives of both “invader” and “invaded.”

Either of these alternatives would have avoided singling Rita out and making her feel different because of her Aboriginal heritage. By setting Rita apart from the others, the teacher set the stage for the student harassment that followed.

How should the principal deal with the situation? It is the obligation of the school to maintain an educational environment free from harassment and discrimination. The principal should take the matter very seriously and ensure that everyone knows the school does not tolerate this type of behaviour. If the principal disciplines the offenders, she may create an even worse situation for Rita, as they may feel she is the cause of their punishment. Rita might then be confronted by taunts for being a troublemaker, in addition to the racism she has already experienced.

The principal should consider having an educational session to discuss diversity issues with all students and staff. The school should adopt a positive approach to help everyone develop more favourable attitudes toward Aboriginal cultures. This can be accomplished by assigning readings, showing videos, inviting guest speakers, etc.

If Rita’s harassment continues, then the principal or teacher may need to take disciplinary action.

### CASE STUDY G: CINDY

This scenario is based on *Cameron v. Nel-Gor Castle Nursing Home*, which went before a Board of Inquiry and then was appealed to Divisional Court.

On what basis did the employers make their assessment of Cindy's physical ability? Did they have reasonable grounds to believe that Cindy could not do the job?

It appears that the administrator and director had honest opinions, based on their medical and nursing home experience. Their opinion, however, contradicted both Cindy's physician's assessment and her own belief. Having performed similar tasks before, Cindy felt she was able to meet the requirements.

Their assumption that Cindy could not handle the essential duties of the job was based on the subjective "impression" that Cindy could not lift patients.

The administrator neither contacted Cindy's physician nor asked Cindy to take a test to demonstrate that she could perform the essential duties of the job.

The Board of Inquiry found that an "impression" is subjective in nature and that the respondent must establish an objective basis, through facts or evidence, that Cindy's alleged disability would preclude her from meeting the essential requirements of the job.

While the employers made their decision in good faith without intent to discriminate, the effect of their actions on Cindy was, nevertheless, discriminatory.

### CASE STUDY H: JAN

This Case Study is based on *Waterman v. National Life Assurance Company of Canada* (No. 2). In presenting the case to the Board of Inquiry, the Commission looked at three issues: that there was a poisoned work environment in the office; that the delay in giving Jan a full-time job was due to her sexual orientation; and that she was terminated because of her sexual orientation.

**Poisoned environment:** The Commission argued that the following conditions contributed to a poisoned work environment in Jan's office: the comments made by the company president (calling her "Mister" and comments about her cologne and style of dress, etc.); the pressure to conform and "hide her sexual orientation;" the pressure to avoid other gay and lesbian co-workers; and the persistent negative rumours amongst her co-workers. The Board Chair found that "poisoned environment" was not relevant in this case. It was noted that Jan had not included this allegation in her original complaint and, although she was upset by the incidents referred to above, she did not testify that there was a hostile environment at the company. Furthermore, the decision states that Jan's desire to work full-time at the company contradicted the Commission's assertion that the environment at the company was poisoned. (You might wish to ask students whether they agree with this decision.)

**Delay in hiring:** The Board found that Jan was discriminated against in this respect and that it was her openness about her sexuality that caused her full-time employment to be delayed. People at the company wanted her to conceal her sexual orientation; however, it was up to the company and its managers to make sure that Jan was free to work in an atmosphere free of this kind of discrimination, and they had not done it. The *Code* ensures that every person has the right to work, reside and do business without being required to hide his or her sexual orientation and we all have a responsibility to uphold that right. Company officials are given a special responsibility in section 45(1) of the *Code*.

**Termination because of sexual orientation:** The Board of Inquiry also found that Jan's sexual orientation was a factor in the decision to fire her. It held the president, Jan's supervisor and the company liable for a breach of the *Code* in connection with her termination. The president of the company was found liable because his expressed views on sexual orientation were likely a contributing factor in the supervisor's decision to fire Jan. Her supervisor was liable because Jan's sexual orientation was a factor in his decision to fire her. Finally, the company was liable as both the president and supervisor were company officials and, as such, were acting on behalf of the company.

Although Jan's becoming upset and leaving the office might have influenced her supervisor's decision to fire her, it was not considered by the Board to be sufficient reason for termination and thus was not a factor in the Board's final decision.

Jan did not find a job with another insurance company until six months later. As a remedy for her lost earnings from the date she was fired until she got a job at another insurance company, the company was ordered to pay Jan \$14,750 plus interest of \$7,640. In addition, the Board ordered that the company, the president and her supervisor should each pay \$1,000 (totalling \$3,000) to Jan for general damages, as compensation for injury to her dignity and for public humiliation.

### CASE STUDY I: TAWNEY

This case is known as *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* and is frequently referred to as "*Meiorin*" or the "B.C. Firefighter Case". Even though the case was originally dealt with as a grievance, it is still a "human rights" case as many provinces have labour legislation giving arbitrators the responsibility of applying human rights laws in relevant cases. (For Ontario, see the *Labour Relations Act, 1995*, s. 48(12)(j)). Ultimately this case was decided at the Supreme Court of Canada giving it the status of precedence in Ontario.

Evidence accepted at the hearings showed that, owing to physiological differences, most women have a lower aerobic capacity than most men. Even with training, most women would not be able to increase their aerobic capacity to the level required by the aerobic standard adopted by the Government in this case, although training can enable most men to meet it. Evidence was also heard that 65% to 70% of male applicants pass the tests on their initial attempt, while only 35% of female applicants are successful. This was accepted as evidence of

discrimination based strictly on gender as these conditions resulted in significantly fewer women than men being employed in the particular Attack Crew that Tawney worked on.

The Government explained at the hearings that it had done extensive research in determining the threshold levels for passing the tests. However, it was unable to convince the Court that the required aerobic capacity was really necessary for either men or women to effectively perform the work of a forest firefighter. On the contrary, because Tawney had in the past performed her work well, without apparent risk to herself, her colleagues or the public, it appeared that the test was invalid. This shows that, while physical fitness may still be a job requirement, that particular test could not adequately measure a person's ability to perform the duties of a forest firefighter.

It was suggested that to permit Tawney to stay in her position might result in "reverse discrimination", i.e., setting a lower standard for women than for men would discriminate against those men who couldn't meet a men's standard but were nevertheless capable of meeting the women's standard. The Court disagreed with this logic. It held that equality means to be treated according to one's own merits, capabilities and circumstances. True equality requires that differences be accommodated; that equal treatment may require that people sometimes be treated differently. A lower aerobic standard capable of identifying women able to perform the job safely and efficiently does not necessarily imply discrimination against men.

The Court decided that the aerobic standard discriminated against women. In its defence, the Government then had to show that the standard was necessary for the safe and effective performance of the essential duties of the job of forest firefighter. This it failed to do.

As a result, Tawney was given her job back and the Government was given the task of finding some other non-discriminatory way of testing firefighters to assess their physical fitness as a condition of holding their job.

## CASE STUDY J: RÉJEANNE

This is a very significant human rights decision for Ontario even though it took place in another province. Each province has its own human rights commission responsible for promoting and enforcing human rights legislation within that province. Decisions handed down in one province can potentially give guidance to other provinces when considering similar cases. Decisions that are made at the level of the Supreme Court will normally be precedent setting in all jurisdictions within Canada.

In the case of Réjeanne, the provincial Human Rights Tribunal dismissed the complaint based on the City's argument that they were entitled to choose candidates who were in better health. The Tribunal further stated that, since Réjeanne did not appear to have any limitations as a result of her condition, she could not make a complaint based on "handicap" under the *Charter of Human Rights and Freedoms* (Quebec's human rights legislation).

On Réjeanne's behalf, the Commission appealed the dismissal by the Tribunal to the Quebec Court of Appeal. Both the Court of Appeal and, subsequently, the Supreme Court of Canada overturned the Tribunal decision and ruled in Réjeanne's favour. The reasoning behind

the Court's decision reflects an emerging view of discrimination that is also seen in other recent decisions. Discrimination because of disability, and other grounds as well, may be based as much on perceptions, myths and stereotypes, as on the existence of any real limitations on a person's abilities. (See *Backgrounder #7: Understanding Discrimination in a Social Context – "Social Construction of Disadvantage"* page 63)

"Handicap" or disability, the Court said, is not defined by the *Charter*. However, the Court also noted that, consistent with the intent of human rights legislation, the concept of "handicap" should be interpreted broadly when considering what will be accepted as a complaint. It further stated that Canadian courts have begun to consider not only the objective basis for certain exclusionary practices (*i.e.*, whether the person actually has a disability), but also the subjective and erroneous perceptions held by employers, landlords, etc., regarding the existence of a person's actual limitations. Thus, the terms "handicap" and "disability" may include either a real disability or one that is only perceived to exist. What really matters is how the person experiences and is affected by the distinction, preference or exclusion not the precise nature of the handicap, nor its cause or origin. These are seen as being immaterial. In addition, the court pointed out that the *Canadian Charter of Rights and Freedoms* also prohibits discrimination based on the possibility that an individual may develop a handicap in the future.

Having found that the City had discriminated against Réjeanne on the basis of handicap, the Court referred the cases back to the Tribunal to determine a remedy. Réjeanne was awarded \$102,075.67, an amount that included lost salary and interest as well as \$5000 damages for injury to her self-esteem. In addition, the City of Montreal was ordered to offer her sufficient hours of work so she could complete her probation period within twelve months. This would then allow her to seek full-time employment.

### CASE STUDY K: ALIA AND AHMED

This situation is one based on a case called *Eldridge v. British Columbia (Attorney General)*.

The result of this hearing was a unanimous decision by the Supreme Court of Canada. In its decision, Court required the Government of British Columbia to ensure that sign language interpreters are provided where necessary for effective communication in the delivery of medical services. Not providing such interpretation violates the rights of deaf individuals who cannot adequately access health care services without the aid of an interpreter. The court said that the health care system is required to accommodate the needs of deaf people under the equality provisions in the *Charter of Rights and Freedoms*.

The *Eldridge* ruling has wide-ranging consequences. The decision went beyond guaranteeing interpreters for deaf persons in medical situations when necessary. It stated that governments have a legal obligation to provide equal access to public services for all people, including those with disabilities. Within reasonable limits, persons with disabilities should not be prevented from using government services like health care, education and training, or social services that are available to everyone else. Services should be designed so that they are fully accessible and, where there are barriers that prevent full participation by every member of the community, they must be removed.

The government argued that providing sign language interpreters on a continuous basis was too expensive and caused it “undue hardship”. Undue hardship means that the cost of providing accommodation for someone with a disability negatively affects the nature of the business or service. But in this case, the Ministry of Health could give no evidence that providing sign language interpretation would result in a serious threat to government resources. In fact, the total budget of the Ministry would hardly be impacted by the cost of the small number of interpreters needed to maintain the service. In the case of a smaller business, however, the defence of “undue hardship” might still be used.

### CASE STUDY L: RAY

A complaint was made against Scott and his printing company when he refused to do a printing job for Ray as a representative of the Canadian Lesbian and Gay Archives (CLGA). This complaint was in the area of services and on the ground of sexual orientation. The case is based on one known as *Brillinger v. Brockie*.

This situation illustrates a particularly difficult problem that can come up when dealing with human rights. In cases like this, the rights of one person appear to be in conflict with the rights of another. The *Charter of Rights and Freedoms* guarantees all Canadians the right to freedom of religion and freedom of thought, belief, opinion and expression. But, in Section 1, it places a limit on the exercise of such freedoms making it “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” The Ontario *Human Rights Code* guarantees all of us freedom from discrimination based on our religion (creed) and our sexual orientation.

It is important to analyze situations like this very carefully. At first glance, it would seem that Scott’s rights to his *Charter* freedoms are being overridden and he is being denied the right to practice his religion as he sees fit. In its consideration of the complaint, the Board of Inquiry chose to look separately at whether Scott had actually discriminated against Ray and CLGA and at what the remedy should be, if any. In its first decision, the Board said that Scott had discriminated against Ray and CLGA as the service was denied because of the ground of sexual orientation.

The Board then turned its attention to the issue of what the remedy should be. Keep in mind that the object of the *Code* is to provide a remedy in order to compensate for the discrimination, not to punish the discriminator. The respondents argued that imposing a remedy under the *Human Rights Code* would breach Scott’s constitutional right to freedom of conscience and religion. At the hearing, Scott testified that he tried to live his life according to his religious principles, one of which was against homosexuality. Providing printing services to a lesbian and gay organization would, therefore, be in direct opposition to his beliefs.

The Ontario Human Rights Commission and the complainants agreed that imposing a remedial order requiring Scott to do business with CLGA would infringe Scott's right to freedom of religion. But the Commission said that this infringement was justifiable as a reasonable limit on that right under Section 1 of the *Canadian Charter of Rights and Freedoms*. It then became necessary to balance the competing rights of Ray and the Archives to be free from discrimination based on sexual orientation, with Scott's freedom of conscience and religion as guaranteed by the *Charter*.

The printing company, operating as a business in Ontario, has a responsibility to abide by the *Code*. It therefore carries a public responsibility to protect its customers and potential customers against discrimination based on sexual orientation and all the other grounds when it offers its services. Writing about the apparent conflict of rights in the case, the Board Chair made the following conclusions:

While it may be difficult to see any "balance" in an imposition of a penalty against [Scott] and [the printing company], in fact nothing ... will prevent [Scott] from continuing to hold, and practise, his religious beliefs. [Scott] remains free to hold his religious beliefs and to practise them in his home, and in his [religious] community. He is free to espouse those beliefs and to educate others as to them. He remains free to try to persuade elected representatives, through his involvement in the democratic process, that the *Code* protections currently granted to the lesbian and gay community, are wrong.

What he is not free to do, when he enters the public marketplace and offers services to the public in Ontario, is to practise those beliefs in a manner that discriminates against lesbians and gays by denying them a service available to everyone else. He must respect the publicly-arrived-at community standards embodied in the *Code*. My order does not restrict [Scott's] right to believe as he does, just the manner in which he may practise those beliefs.

The Board of Inquiry ordered Scott and the printing company to provide the printing services that they offer to the general public to lesbians, gay men and their organizations. The Board of Inquiry also ordered the respondents to pay \$5,000 to the complainants for the damage to dignity and self-respect caused by the discrimination.

The purpose of the *Code* prohibition against discrimination in the delivery of services is to eradicate discrimination on the basis of sexual orientation. In her conclusion, the Board Chair made the following observation: "while great achievements have been made, invisibility of, and discrimination against the lesbian and gay community continues to impact on the ability of lesbians and gays to function fully and openly in contemporary society."



## ACROSS THE CURRICULUM: IDEAS FOR OTHER ACTIVITIES

The preceding activities are provided specifically for teachers of law or co-operative education classes. However, activities can be extended for use in other courses, such as the role-play technique in dramatic arts classes.

Ideas for other curriculum areas are included in the following pages. Where appropriate, additional references have been provided, but many of the resources are already in this package. For example, to do role-plays during dramatic arts activities, use the Case Studies in the Students' Handouts, pages 76–87.

### ENGLISH

Have the class research language that has been used to define human rights since the mid 1950s. How has it changed? Have new words and expressions been created? Have the meanings of words altered over time?

Organize a debate on the merits of freedom of speech and belief versus the right to protection from discrimination. This activity must be approached with great caution. It is important that both sides of the discussion be given equal consideration and that the feelings and rights of everyone be treated with the utmost care and sensitivity.

Have the group discuss the question: Where do the rights of the individual end and those of the group begin? Should this boundary change in certain cases? Encourage students to read one or more books related to human rights, such as Joy Kogawa's *Obasan* or Timothy Findlay's *Not Wanted on the Voyage*.

Have students keep a journal where they can reflect on the human rights issues covered in this package.

Encourage students to write poems, plays or short stories about incidents involving human rights issues that either they, their friends or their families have encountered. They may expand this activity by starting a class or school human rights newsletter.

### DRAMATIC ARTS

Students can research and develop an improvisation based on an actual human rights case. Case summaries in this package include:

- *Brillinger v. Brockie*
- *BC (Public Service Employee Relations Commission) v. BC Government and Service Employees Union (Meiorin)*
- *Cameron v. Nel-Gor Castle Nursing Home*
- *Eldridge v. British Columbia (Attorney General)*
- *Huck v. Canadian Odeon Theatres*
- *Noffke v. McClaskin Hot House*
- *Pandori v. Peel Board of Education*

- *Québec and Mercier v. City of Montréal*
- *Youth Bowling Council of Ontario v. McLeod*
- *Youmans v. Lily Cups*
- *Waterman v. The National Life Assurance Company of Canada*

Have senior-level students create a contemporary, interactive dramatic presentation to help their peers and younger students learn about the different types of discrimination and why the Ontario *Human Rights Code* exists.

Students might compare Canada's human rights legislation to similar legislation in other countries. This activity will probably require a good deal of research. They can create a title for the final piece and present it at a school or class drama festival. You might consider video-taping the production.

## FAMILY STUDIES

Students could chart the demographic histories of various racial and ethnic groups in Ontario, such as Aboriginal Canadians, Black people and Chinese. They might also look at shifts in Ontario's multicultural population since 1945. Do our social institutions acknowledge and reflect our cultural diversity?

How has society's understanding of the concept of family changed, and what effect is this having on human rights?

What social changes have come about since more women have entered the workforce?

Why do we need special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve equal opportunity? The class may present debates, simulated interviews and videos advertising the benefits of such programs.

## HISTORY

Have students review the *Canadian Charter of Rights and Freedoms* and the Constitution of the United States with respect to the rights guaranteed to those living in each country. They could then develop a list of rights and protections outlined in each and discuss the advantages and disadvantages of each system.

Students could research the reasons for the development of the United Nations' *Universal Declaration of Human Rights* and explore its value to Canadian society since its introduction. More information can be obtained at the Franklin and Eleanor Roosevelt Institute's Web site at <http://www.udhr.org/index.htm>.

Pose the following questions:

Why has the human rights movement developed since the 1940s?

What happened in society during that time?

What do you think is different when you compare society today and society in the 1950s?

## MEDIA LITERACY

Have students monitor the media for its coverage of human rights issues. Keep a journal for a one-week period noting what gets coverage on radio or television. Save clippings from the local newspapers. What is the “spin” that the reporter takes? Does it take a pro human rights position?

Have them review some local newspaper classified ads. Do broadcast and print advertisements reflect the principles of human rights as they understand them? They could create a survey with appropriate questions and find out what others think.

What is the relationship between propaganda and the rights and freedoms of individuals and groups? How is this debate expressed in the news media? For more information on this topic, see the Web site: <http://www.media-awareness.ca>

## MUSIC

Encourage your students to collect songs and music inspired by the human rights movement. Bring in your own collection and listen to the music selections with the class. How many Canadian compositions relate to this topic?

Have students write lyrics and compose music for an original song that expresses their beliefs about human rights.

## VISUAL ARTS

Symbols are powerful tools. Can students identify local, national and international symbols connected with human rights? As a class, group or individual project, ask them to create a visual interpretation of the meaning of human rights.

# HUMAN RIGHTS ACTIVITIES IN YOUR SCHOOL

Encourage students to start a club or association in the school to deal with social issues.

The following objectives could be incorporated into the club's mission statement:

- to raise awareness of local, national and international issues concerning human rights, and
- to take a pro-active role in stopping and preventing harassment and discrimination within the school and community environment.

All school boards in Ontario are now required to develop and implement policies on anti-racism and ethnocultural equity. Find out what your school is doing and how you can become involved.

Consider researching issues of gender, disability, sexual orientation, racial, ethnic and cultural equality in the school and community. If your Board of Education has consultants who work in the areas of anti-discrimination and equal opportunity, they can provide support for such initiatives.

To explore international human rights issues, consider setting up an Amnesty International chapter in the school. Contact a local chapter of the Association for more information. For more information about Amnesty International Canada, visit their Web site at <http://www.amnesty.ca/>.

## RAISING AWARENESS

Many activities can help build awareness of human rights issues. Students might organize:

- assemblies that feature short theatrical productions, debates or readings on human rights issues;
- poster or essay contests;
- visits from community associations that represent groups protected by the *Code*; and,
- conferences on human rights issues for peers and/or students in younger grades.

Have a “Human Rights Award” in your school. The award will recognize the individual or group from the school who makes a significant contribution to educating others about human rights and the effects of discrimination.

Coordinate these and similar activities with special human rights events that happen in Canada each year. They include:

- International Human Rights Day (December 10),
- International Women’s Day (March 8), and
- International Day for the Elimination of Racial Discrimination (March 21).

International Human Rights Day commemorates the anniversary of the signing of the United Nations’ *Universal Declaration of Human Rights* on December 10, 1948.

Other annual events include Black History Month (February), Heritage Day (usually the third week in February), the anniversary of the establishment of the Ontario *Human Rights Code* (June 15), Lesbian and Gay Pride Day (June), and National Access Awareness Week for persons with disabilities (May/June).

## DEALING WITH DISCRIMINATION

All school boards are required to develop and implement anti-racist and ethnocultural equity policies. In addition to drafting these policies, some Ontario schools have set up an internal complaints process. This ensures that schools deal with complaints promptly and in a way that respects the rights of both those who complain and those who are complained against. To obtain more information, visit the Ontario Human Rights Commission’s Web site (<http://www.ohrc.on.ca>) and view the publication *Developing Procedures to Resolve Human Rights Complaints within your Organization*.

## CASE STUDY REFERENCES

Most decisions on the human rights cases cited in this resource can be found in the *Canadian Human Rights Reporter*, which is available in several reference and law libraries. Visit their Web site at <http://www.cdn-hr-reporter.ca>. Specific references are given below:

- *Brillinger v. Brockie (No. 3)*(2000), 37 C.H.R.R. D/15 (Ontario Board of Inquiry).
- *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union* (1999), 35 C.H.R.R. D/257 (Supreme Court of Canada).
- *Cameron v. Nel-Gor Castle Nursing Home (1984)*, 5 C.H.R.R. D/2170 (Ontario Board of Inquiry).
- *Eldridge v. British Columbia (Attorney General)* (1997) 3 S.C.R. 624.  
(see <http://www.lexum.umontreal.ca/csc-scc/en/index.html>)
- *Huck v. Canadian Odeon Theatres Ltd.* (1985), 6 C.H.R.R. D/2682 (Saskatchewan Court of Appeal).
- *Huck v. Canadian Odeon Theatres Ltd.* (1981), 2 C.H.R.R. D/521 (Saskatchewan Board of Inquiry).
- *McLeod v. Youth Bowling Council of Ontario* (1988), 9 C.H.R.R. D/5371 (Ontario Board of Inquiry).
- *Noffke v. McClaskin Hot House* (1989), 11 C.H.R.R. D/407 (Ontario Board of Inquiry).
- *Pandori v. Peel Board of Education* (1990), 12 C.H.R.R. D/364 (Ontario Board of Inquiry).
- *Peel Board of Education v. Ontario (Human Rights Commission)* (1990), 12 C.H.R.R. D/91 (Ontario Supreme Court).
- *Peel Board of Education v. Ontario (Human Rights Commission)* and Pandori (1991), 14 C.H.R.R. D/403 (Ontario Divisional Court).
- *Québec (Commission des droits de la personne et des droits de la jeunesse) et Mercier v. Montréal (Ville)* (2000), 37 C.H.R.R. D/271 (Supreme Court of Canada)
- *Youmans v. Lily Cups* (1990), 13 C.H.R.R. D/395 (Ontario Board of Inquiry).
- *Youth Bowling Council of Ontario v. McLeod* (1990), 14 C.H.R.R. D/120 (Ontario Divisional Court).
- *Waterman v. National Life Assurance Co. of Canada (No. 2)* (1993), 18 C.H.R.R. D/176 (Ontario Board of Inquiry).

## HUMAN RIGHTS RESOURCES

The following resources focus on human rights. For information on specific types of discrimination related to groups protected by the Ontario *Human Rights Code*, see “Other Information Sources” on page 39.

### REFERENCE BOOKS

- Abella, Judge R., *Report of the Commission on Equality in Employment*, Ottawa, 1985.
- Aggarwal, A.P., *Sexual Harassment in the Workplace*, 2nd ed., Butterworths, Toronto, 1992.
- Aggarwal, A.P., *Sexual Harassment: A Guide for Understanding and Prevention*, Butterworths, Toronto, 1992.
- Bayefsky, A., & Eberts, M. (eds.), *Equality Rights and the Canadian Charter of Rights and Freedoms*, Carswell, Toronto, 1985.
- Brodsky, G., and Day, S., *Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?*, Canadian Advisory Council on the Status of Women, Ottawa, 1989.
- Cholewinski, R.I. (ed.), *Human Rights in Canada: Into the 1990s and Beyond*, University of Ottawa, Ottawa, 1990.
- Gall, G. (ed.), *Civil Liberties in Canada: Entering the 1980s*, Butterworths, Toronto, 1982.
- Grosman, B.A., and Martin, J.R., *Discrimination in Employment in Ontario*, Canada Law Book Inc., Aurora, 1994.
- Keene, J., *Human Rights in Ontario*, 2nd ed., Carswell, Toronto, 1992.
- Sheppard, C., *Study Paper on Litigating the Relationship Between Equity and Equality*, Ontario Law Reform Commission, Toronto, 1993.
- Tarnopolsky, W.S., and Pentney, W.F., *Discrimination and the Law*, 2nd ed., Carswell, Toronto, 1993.
- *A Guide to the Charter for Equality-Seeking Groups*, Canadian Council on Social Development, Court Challenges Program, Ottawa, 1987.

### AUDIOVISUAL AIDS

The Ontario Human Rights Commission has a *Guide to Video Resources Available in Ontario* on its Web site. There are many videos listed there that would be useful as learning tools in the classroom.

You can visit the *Guide* at <http://www.ohrc.on.ca/english/education/video-guide-2000.pdf>

## OTHER INFORMATION SOURCES

### CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (CHRC) enforces the *Canadian Human Rights Act* which governs the federal government and federally-regulated companies like banks, railways and airlines. Included in its mandate are the federal Employment Equity and Pay Equity programs.

The following CHRC materials may be requested by phone, mail or on the Internet:  
(<http://www.chrc-ccdp.ca>):

- Annual Reports (1996-2000)
- Anti-Harassment Policies for the Workplace
- Barrier-Free Employers
- *Canadian Human Rights Act*—Office Consolidation
- *Canadian Human Rights Act: A Guide*
- Human Rights and the Canadian Human Rights Commission (booklet)
- Filing a Complaint with the Canadian Human Rights Commission
- Employment Equity—Fair Play at Work
- Equal Dollars Make Good Sense
- Guide to Screening and Selection in Employment
- Harassment and the *Canadian Human Rights Act*
- Harassment: What it is and what to do about it
- Multilingual (36 languages) summary of the Act and work of the CHRC
- Posters:
  - Equality...We All Have a Hand in It
  - Real People—Understanding Disabilities—Understanding Ourselves
  - Stop the Hatred
- Human Rights Certificate suitable for recognizing special contributions to human rights in the school

For further information contact:

#### **The Canadian Human Rights Commission**

14th floor, Tower A  
Place de Ville, 320 Queen Street,  
Ottawa, ON K1A 1E1  
Tel.: (613) 995-1151  
TDD: (613) 996-5211  
Fax: (613) 996-9661  
Web site: <http://www.chrc-ccdp.ca/>

## CANADIAN HUMAN RIGHTS REPORTER (C.H.R.R.)

This publication prints the full text of most human rights decisions from all jurisdictions in Canada, in two or three volumes per year. Decisions handed down by Boards of Inquiry and Courts often break new ground in interpreting anti-discrimination law and equality rights in cases involving issues such as harassment, race discrimination, affirmative action, disability, maternity and pension benefits, sexual orientation and mandatory retirement. C.H.R.R. is available in most public reference libraries and law libraries. Subscription rate: \$250.00 per volume.

For more information contact:

### **Canadian Human Rights Reporter**

1662 West 75th Avenue

Vancouver, B.C. V6P 6G2

Tel.: (604) 266-5322

Web site: <http://www.cdn-hr-reporter.ca>

## LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA

A national volunteer association dedicated to combating racism and bigotry, the League for Human Rights accomplishes its goals through educational programs, community action and the provision of legal advice and action.

In addition to sponsoring the Canadian Student Human Rights Achievement Awards, the League's educational initiatives include public service announcements, multicultural anti-racism workshops and seminars, public speaking engagements, a resource library, publications, public awareness campaigns, workplace equity issues, Holocaust education and human rights awards for the news media.

For more information, contact:

### **The League For Human Rights, B'nai Brith Canada**

15 Hove Street, Downsview, Ontario M3H 4Y8

Tel.: (416) 633-6224

Web site: <http://www.bnaibrith.ca/league/league.htm>

## MINISTRY OF CITIZENSHIP: GATEWAY TO DIVERSITY

For information on specific groups protected under the Ontario *Human Rights Code*, contact the Ministry of Citizenship:

**E-mail:** [gtinfo@mczcr.gov.on.ca](mailto:gtinfo@mczcr.gov.on.ca)

**Web site:** <http://www.equalopportunity.on.ca/>

### **Telephone Information/Referral Line:**

416-325-4957 from the 416/905 local calling area; or 1-888-325-4957 toll-free in Ontario.

**Telephone:** 416-325-6253 from the 416/905 local calling area;

or contact through the Bell Canada Relay Service at voice number 416-325-6253.

Collect calls will be accepted.



**TTY:** 416-326-0148 from the 416/905 local calling area; or  
1-888-335-6611 toll-free in Ontario.

**Write:**

Equal Opportunity and Disability Partnerships Unit  
Ministry of Citizenship  
3rd Floor, 400 University Avenue  
Toronto, Ontario, Canada  
M7A 2R9

**ONTARIO HUMAN RIGHTS COMMISSION**

180 Dundas Street West, 8th floor  
**Toronto**, Ontario M7A 2R9  
Tel.: (416) 326-9511 or  
Toll free: 1-800-387-9080  
TTY: (416) 314-6526  
TTY (toll free) 1-800-308-5561  
Web site: <http://www.ohrc.on.ca/>  
E-mail: [info@ohrc.on.ca](mailto:info@ohrc.on.ca)

**PUBLICATIONS OF THE ONTARIO HUMAN RIGHTS COMMISSION  
AVAILABLE ON THE WEB SITE**

Web site: <http://www.ohrc.on.ca/english/publications/index.shtml>

**PLAIN LANGUAGE DOCUMENTS**

Female Genital Mutilation: Questions and Answers (available in English/French,  
Arabic/Somali, Swahili/Amharic) (8/99)  
Guide to the Human Rights Code (5/99)  
Guide to Mediation Services (5/97)  
Hiring? A Human Rights Guide (3/99)  
Human Rights at Work (9/99)  
Human Rights in Ontario (available in English/French; Bengali/Urdu; Hindi/Punjabi;  
Gujarati/Tamil) (7/00)  
If You Have a Human Rights Complaint – A Complainant's Guide (5/97)  
If You Receive a Human Rights Complaint – A Respondent's Guide (9/99)  
Pregnancy – Before, During and After: Know Your Rights (5/99)  
Protecting Religious Rights (1/00)  
Racial Slurs and Harassment and Racial Jokes (6/96)  
Sexual Harassment and Other Comments or Actions About a Person's Sex (11/96)

## **POLICIES AND GUIDELINES**

- Guidelines on Special Programs (11/97)
- Policy and Guidelines on Disability and the Duty to Accommodate (11/00)
- Policy on Creed and The Accommodation of Religious Observances (10/96)
- Policy on Discrimination and Harassment Because of Gender Identity (3/00)
- Policy on Discrimination and Harassment Because of Sexual Orientation (1/00)
- Policy on Discrimination and Language (6/96)
- Policy on Discrimination Because of Pregnancy (5/99)
- Policy on Drug and Alcohol Testing (9/00)
- Policy on Employment-Related Medical Information (6/96)
- Policy on Female Genital Mutilation (FGM) (11/00)
- Policy on Height and Weight Requirements (6/96)
- Policy on HIV/AIDS Related Discrimination (11/96)
- Policy on Racial Slurs & Harassment & Racial Jokes (6/96)
- Policy on Requiring a Driver's License as a Condition of Employment (5/96)
- Policy on Scholarships and Awards (7/97)
- Policy on Sexual Harassment & Inappropriate Gender-Related Comment and Conduct (9/96)

## **OTHER PUBLICATIONS**

- Advertising Guidelines the Ontario *Human Rights Code*
- Annual Reports
- Discussion Paper On Accessible Transit Services In Ontario (2001)
- Developing Procedures to Resolve Human Rights Complaints Within your Organization (6/96)
- Time for Action – Advancing Human Rights for Older Ontarians

## TEACHER EVALUATION

*Dear Teacher:*

*To assist us in assessing the usefulness of this package and to enable us to design future materials relevant to your needs, please complete this form and return it to:*

**“Teaching Human Rights in Ontario”**

Public Policy and Public Education Branch

Ontario Human Rights Commission

180 Dundas Street West, 8th floor

Toronto, Ontario M7A 2R9

*Please give us information about the students with whom you used this package:*

School and School Board: \_\_\_\_\_

Location: \_\_\_\_\_

Course Name: \_\_\_\_\_

Age and/or grade level: \_\_\_\_\_

How did you obtain this package? \_\_\_\_\_

1. Before using this package, how much did you know about the Ontario *Human Rights Code* and the Ontario Human Rights Commission?

nothing                       some                       a great deal

2. Considering the design of the package as well as the content, how easy was it to use with your students?

very easy                       moderately difficult                       very difficult

3. How effective were the package/exercises/handouts in helping students to understand their rights and responsibilities under the *Code* and the Commission's role in protecting and enforcing those rights?

quite effective                       somewhat effective                       not effective

4. What exercises or handouts did you find particularly helpful?

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5. What exercises or handouts did you find least helpful?

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6. What type of information or material would you find most useful in the future?

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7. Any comments on the package as a whole?

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If you have developed any materials in this area (exercises, case studies, etc.) and would be prepared to share them with your colleagues, we would like to know about it. Please send a copy along with relevant instructions for using them to the above address. The Commission will be developing a bank of instructional material and will make them available to those interested.

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ Postal Code \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

*Thank you for your assistance.*

## KEEP IN TOUCH

Human rights legislation will continue to evolve. The Ontario Human Rights Commission would like to ensure that you are kept updated as much as possible on changes or developments which would significantly impact on the content of this teaching resource. To ensure that your name is on our mailing list, please send in a copy of the attached information form.

### **OHRC SCHOOL MAILING LIST**

Please ensure that my name is on the Ontario Human Rights Commission school mailing list, in order to receive any updated information on the Ontario *Human Rights Code*.

***Please Print***

Name: \_\_\_\_\_

Department: \_\_\_\_\_

School: \_\_\_\_\_

Street Address: \_\_\_\_\_

Town/City: \_\_\_\_\_

Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

***Please Mail To:***

**OHRC School Mailing List**

Public Policy and Public Education Branch

Ontario Human Rights Commission

180 Dundas Street West, 8th floor

Toronto, Ontario M7A 2R9

NOTES

**TEACHING HUMAN RIGHTS**

**IN ONTARIO**

**Teacher's References**

## GLOSSARY

**accommodation** (in employment, services)—to eliminate non-essential job requirements and to adapt or adjust existing job requirements or conditions, in order to enable a person to carry out the essential duties of an activity or job.

An employer must, for example, make the workplace physically accessible or otherwise enable its employees to perform the essential job duties, unless such accommodation would cause undue hardship. (See: “undue hardship” in this Glossary.) For a blind employee, accommodation could mean providing a voice synthesizer on a computer; for other protected groups, it could mean altering a dress code or changing shift work to accommodate employees’ individual religious practices.

**accommodation** (in housing)—the place where you live or want to live.

**adverse impact**—discrimination which arises when an employer, service provider or property manager for genuine business reasons adopts a rule or standard which appears to be neutral, and which will apply equally to all, but which has a discriminatory effect on a particular group protected by the *Code*. It is discriminatory in that it imposes, because of some special characteristic of that group, obligations, penalties or restrictive conditions not imposed on other members of society.

**bias**—an inaccurate and limited way of perceiving a group. Negative bias towards members of a group can be expressed through language, published materials and other communications and practices.

**bona fide** (job requirements)—requirements sincerely believed necessary for the job (that is, established in good faith) and, in an objective sense, reasonably necessary to assure the safe, efficient and economical performance of the job.

**constructive discrimination**—occurs when a seemingly neutral requirement has an adverse impact on a group protected under the Ontario *Human Rights Code*. For instance, a rule requiring all employees to be available to work seven days a week will disallow those employees whose religious belief requires that they abstain from work on particular holy days.

**direct discrimination**—refers to an act of discrimination which is overt. A refusal to provide service to someone based upon his or her membership in one of the protected groups would be direct discrimination.

**disability**—Under the Ontario *Human Rights Code*, this is any:

- degree of physical disability or disfigurement caused by injury, illness or birth defect;
- learning disability or any dysfunction in the ability to understand or use symbols or speech;
- developmental disability;
- psychiatric disability; or
- injury or disability for which the person claimed or received benefits under the *Workplace Safety and Insurance Act, 1997*.



**discrimination**—any practice or behaviour, whether intentional or not, which has a negative effect on an individual or group because of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap (disability), or other analogous ground. Discrimination may arise as a result of direct differential treatment or it may result from the unequal effect of treating individuals and groups in the same way. Either way, if the effect of the behaviour on the individual is to withhold or limit full, equal and meaningful access to goods, services, facilities, employment, housing accommodation, etc. available to other members of society, it is discrimination.

**equal treatment**—treatment that brings about an equality of results and that may, in some instances, require different treatment. For example, to give all employees equal treatment in entering a building, it may be necessary to provide a ramp for an employee who requires the use of a wheelchair.

**essential duties**—those duties and requirements essential for the performance of the job. For example, if a person applies for a position as a lawyer, it may not be “essential” that she or he operate a photocopier. However, if that person applies for a job in a copy shop, that duty may be “essential.” If an employee cannot perform the essential duties of the job, the employer must make efforts to accommodate the employee, short of undue hardship.

**gender identity**—refers to those characteristics that are linked to an individual’s intrinsic sense of self that is based on attributes reflected in the person’s psychological, behavioural and/or cognitive state. Gender identity may also refer to one’s intrinsic sense of manhood or womanhood. It is different from, and does not determine, one’s sexual orientation. For more information see the Commission’s policy statement on its Web site (*Policy on Discrimination and Harassment because of Gender Identity*).

**handicap**—(See: “disability.”) The *Code* uses the term “handicap”; however, “disability” is the commonly accepted term.

**harassment**—engaging in a course of vexatious (annoying or provoking) comment or conduct that is—or ought reasonably to be—known to be unwelcome, and related to one of the protected grounds in the *Code*.

**homophobia**—irrational fear and negative attitudes, feelings and beliefs about homosexuality. Homophobia can range from hatred and extreme fear of gay men or lesbians to feelings of disquiet or discomfort.

**neutral requirement**—a requirement that, on the surface, appears to be unbiased.

**prejudice**—an opinion or judgement based on irrelevant considerations or inadequate knowledge, especially an unfavourable opinion or judgement.

**poisoned environment**—deals with how we treat one another. It occurs when comments or actions create real or perceived inequality in terms or conditions of employment, accommodation, service provision, contracts and membership in vocational associations for persons or groups protected under the *Code*. For example, if at work someone says “a woman’s place is in the home,” this could poison the environment for women who work or may want to work there.

**racism**—a system of implicit or explicit beliefs, assumptions and actions that may be based upon an ideology of inherent superiority of one racial or ethnic group over another, and by which individuals or groups of people exercise power that abuses or disadvantages others on the basis of skin colour and racial or ethnic heritage.

**sexual harassment**—occurs when a person receives unwelcome sexual attention from another person, whose comments or conduct are known or should reasonably be known to be offensive, inappropriate, intimidating, hostile, or unwelcome. Sexual harassment includes situations where a person in a position of authority (a supervisor or teacher, for example) shows unwelcome sexual attention to an employee or student, and where reprisal occurs or is threatened if the sexual attention is rejected.

**same sex partnership status**— the status of living with a person of the same sex in a conjugal relationship.

**sexual solicitation**—an invitation to participate in some form of sexual activity. It could include requests to “go out.”

**special programs** – initiatives (in employment, services or accommodation) designed to relieve hardship or economic disadvantage, to assist members of disadvantaged groups to achieve equal opportunity and to eliminate discrimination under the *Code*. An example of a special program would be a landlord choosing to rent apartments only to seniors. Special programs are allowed under Section 14 of the *Code*.

**stereotype**—an oversimplified, false or generalized portrayal of a group of people.

**systemic discrimination**—discrimination that forms part of a system’s operating procedures, such as employment policies and practices that can include any of the following: direct discrimination, harassment or constructive discrimination. For example, height and weight requirements for specific jobs in police and fire departments discriminated against women and certain races of people whose norms for height and weight are less than those of the dominant male groups on which the requirements are based.

**undue hardship** (to the employer)—when accommodating the needs of an individual or a protected group (such as people with disabilities) would alter the essential nature of the enterprise, substantially affect the economic viability of the enterprise, or produce a substantial health and safety risk that outweighs the benefit of accommodating that group or individual worker. The employer has the burden of proving that accommodating an employee would cause undue hardship for the business.

## BACKGROUND #1:

## PREAMBLE TO THE ONTARIO *HUMAN RIGHTS CODE*

**W**HEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

**A**ND WHEREAS it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province

## BACKGROUND #2:

### HUMAN RIGHTS: THE HISTORICAL CONTEXT

Much of Canada's human rights legislation has developed in the 20th century. The *Constitution of the United States* deals in large part with human rights; however, the *British North America (BNA) Act* did not address the issue at all. It focused instead on the division of powers between the federal government and the provinces and territories.

In the early part of this century, Canadian women were not legally defined as “persons” under the BNA Act and therefore could not sit in the Senate. In 1929, after years of court battles by Emily Murphy, Nellie McClung and others, the British Privy Council decided that women were in fact persons under the Act and, in 1930, Cairine Wilson became Canada's first woman senator.

One of Canada's most famous human rights cases, *Christie v. York* (1940), clearly emphasized the lack of human rights laws in this country. Mr. Christie and several friends had gone to the Montreal Forum to view a hockey game. In the bar at intermission, Mr. Christie was refused service because he was a man of colour. He went to court over the issue and the judge awarded him \$200 for loss of dignity and worth. However, the business community appealed the ruling on the basis that under current legislation they were allowed the freedom to serve anyone they chose. The higher court agreed and overturned the original judgement, making it clear that there was no law to protect Mr. Christie's rights.

#### **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

Following World War II and as a direct result of the human rights atrocities perpetrated by the Nazis, the United Nations was formed to protect human rights and stabilize international relations between countries. Its Charter made specific reference to protection of human rights. This was later expanded in the *Universal Declaration of Human Rights* signed by U.N. member states on December 10, 1948.

The Declaration is a common standard of conduct for all people and nations which rises above differing ideologies and philosophies to ensure certain fundamental human rights. In summary, it recognizes that:

- “the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,”
- “human rights should be protected by the rule of law,”
- “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The Declaration has influenced the development of human rights in Canada. It is referred to in several of the provincial human rights acts (including that of Ontario) that were passed within thirty years of the U.N. Declaration.

At the federal level, the government enshrined the principle of equality in the *Bill of Rights* in 1964. This was followed by the enactment of the *Canadian Human Rights Act* in 1976, and the *Canadian Charter of Rights and Freedoms* in 1982.

## HUMAN RIGHTS IN ONTARIO

In the 1940s and 1950s, it was not uncommon for people to be discriminated against in housing, employment and education. For example, one could often find restrictive agreements on property deeds such as “Land not to be sold to Jews or persons of objectionable nationality.” In fact, such a restriction was struck down in a 1945 court case in which the judge cited the U.N. *Charter* to support his decision.

It was not until near the end of the Second World War that modern human rights legislation developed. The Ontario *Racial Discrimination Act* was proclaimed in 1944. It prohibited the publication or displaying of symbols which expressed racial or religious discrimination. A number of individual laws were passed in the 1950s as racial and ethnic groups began to challenge restrictive social practices. These specific laws were clearly defined and reasonably attainable. Developments included:

- (1951) – *Fair Employment Practices Act* which prohibited discrimination based on race and religion in employment;
- (1954) – *Fair Accommodation Practices Act* which prohibited discrimination in public places on racial, religious or ethnic grounds;
- (1958) – *Ontario Anti-Discrimination Commission Act* which created a commission to administer the above acts and develop educational programs; and
- (1961) – amendment to the *Fair Accommodation Practices Act* which prohibited discrimination in rental accommodation.

Both the development of these laws and increasing social pressure led politicians to realize that comprehensive human rights legislation needed to be put into place to protect the rights of individuals.

The Ontario *Human Rights Code* was proclaimed in 1962. The *Code* incorporated the laws listed above and ensured that they would be enforced through the establishment of the Ontario Human Rights Commission. The *Code* has been revised several times since then to broaden its protection of individuals.

## BACKGROUND #3:

### HUMAN RIGHTS LEGISLATION IN CANADA

The Federal Government and all Canadian provinces and territories have human rights laws with agencies to enforce their legislation. However, not all offer the same human rights protections. For example, not all provinces protect people on the basis of their sexual orientation or political beliefs.

#### THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

All human rights legislation must follow the *Canadian Charter of Rights and Freedoms*, passed in 1982. Section 15(1) of the *Charter* states: “Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination...”

An individual can only use the *Charter* to challenge a governmental decision, action or law (such as the *Ontario Code*) on the grounds that it does not offer the protection to individuals provided by the *Charter*.

An example of a successful challenge of the *Ontario Code* occurred in 1992 in a case known as *Leshner v. Ontario*. The *Code* defined “marital status” as limited to persons “of the opposite sex.” This was found to violate Section 15(1) of the *Charter*. A Board of Inquiry ruling directed that, in future, the definition of “marital status” omit the words “of the opposite sex.”

#### MINORITY LANGUAGE EDUCATIONAL RIGHTS

The *Charter* also provides that Canadian citizens whose first language learned and still understood is that of the English or French minority population in which they reside, or who were educated in the primary grades in English or French in Canada and reside in a province where that language is a minority, have the right (where numbers warrant) to have their children receive primary and secondary school instruction in their language and in minority language educational facilities. In Ontario, the *Education Act* further guarantees that minority language education will be provided regardless of whether numbers warrant or not.

In Canada, francophones have frequently experienced prejudice and discrimination in the workplace, in school, and in their communities. Generally, human rights legislation has not offered protection explicitly based on language. Quebec and the Yukon Territory are the only Canadian jurisdictions specifically identifying language as a prohibited ground of discrimination in employment. The Ontario Human Rights Commission has accepted language-based complaints under the related grounds of “ancestry,” “ethnic origin” and “place of origin.”

### THE CANADIAN HUMAN RIGHTS ACT

The *Canadian Human Rights Act* was passed in 1976. While its intent is similar to provincial legislation, its jurisdiction covers services, agencies and organizations regulated by the federal government, including those in the banking, communications and transportation sectors and crown corporations (such as the Canadian Broadcasting Corporation). It provides protection against discrimination on many of the same grounds as the Ontario *Code*.

The *Canadian Human Rights Act* is enforced by the Canadian Human Rights Commission, which has offices in all regions of the country.

### THE ONTARIO HUMAN RIGHTS CODE

The Ontario *Human Rights Code* has primacy over all other legislation in Ontario unless that legislation specifically states that the *Code* does not apply. For example, if a requirement in the *Education Act* governing Ontario public schools is found to discriminate against individuals or groups protected under the *Code*, the *Code* would prevail if it could not objectively be proven that the requirement was necessary and would cause undue hardship if removed from the Act. The same would be true of conflicting requirements under the Occupational Health and Safety Act. An example of where the *Code* does not apply is when persons with certain disabilities (such as uncontrolled seizures) are prohibited from driving under the *Highway Traffic Act*.

The Ontario Human Rights Commission was the first human rights enforcement agency in Canada. Established in 1962, it is the largest such organization and handles more complaints than any other provincial, territorial or federal human rights body in Canada.

### THE NATURE OF HUMAN RIGHTS LEGISLATION

The main intent of human rights legislation is to remedy the situation for the person or group discriminated against and prevent further discrimination—the intent is not to punish the individual or company who has discriminated.

The Ontario *Human Rights Code* provides for civil remedies, not criminal penalties. Persons or companies found to have discriminated are not sent to jail but can be made to compensate a complainant or make changes in the way they conduct their affairs.

One major difference between human rights legislation and criminal law lies in the different standards of proof applied to evidence at a board of inquiry. In criminal law, allegations must be proven beyond a reasonable doubt; whereas, the standard of proof under the *Code*, as in civil law, is on the balance of probabilities. In other words, did the discrimination more likely occur than not? The Commission, which has carriage of the complaint at a board of inquiry, has the responsibility to prove the allegations. Once discrimination has been proven to have occurred, then the respondent must prove that there is a bona fide reason behind the actions and that to make accommodation would result in undue hardship.

## BACKGROUND #4:

### HUMAN RIGHTS IN ONTARIO

#### “HUMAN RIGHTS IS EVERYBODY’S RESPONSIBILITY”

In Ontario, we all have a responsibility to make sure that discrimination forbidden by the *Code* does not occur. Human rights legislation will only be effective when people take an active role in ensuring equality and preventing discrimination. All of us who live in Ontario must:

- avoid discriminating against or harassing others;
- address discrimination when we see, or are the victim of, discriminatory treatment;
- report incidents of discrimination, either to school authorities or to the Ontario Human Rights Commission, and urge others who are the victims of discrimination to do so as well; and
- learn about human rights and teach them to others, thus ensuring that people know their rights and responsibilities under the *Code*.

#### THE ONTARIO HUMAN RIGHTS COMMISSION

The Ontario Human Rights Commission is the agency directly responsible for administering the *Human Rights Code* in Ontario. The Commission has four basic goals:

- to prevent discrimination through public education and the development of public policy,
- to investigate complaints of discrimination and harassment,
- to try to conciliate between the parties in complaints and help them to reach a settlement, and
- to look into situations where subtle or indirect discrimination may exist.

The Commission reports to the Minister of Citizenship and is headed by a Chief Commissioner. Several other commissioners (no fewer than seven, in all), appointed by the Lieutenant Governor from the general public, meet regularly to direct human rights policy in Ontario, review cases and decide when complaints should be referred to the Board of Inquiry (See Teacher’s References: Backgrounder #5, page 60).

Commission staff include mediators who work with the parties to settle complaints, investigators who search out evidence, policy analysts who develop and interpret human rights policy in the province, and lawyers who argue cases on behalf of the Commission at boards of inquiry. The Commission promotes knowledge of the *Code* throughout the province and also distributes publications explaining the various rights protected by the *Code*. A list of these publications may be found on page 41.



## THE COMPLAINT PROCESS

The Commission receives about 2,000 complaints every year, in addition to over 100,000 inquiries from the public. Anyone who believes that she or he may have been discriminated against can contact the Commission. A Commission representative will determine if the complaint falls under the jurisdiction of the *Code*. A person must contact the Commission within six months of the occurrence of the alleged discrimination.

The public first makes contact through the Commission's Inquiry Services Unit by calling the Commission's Inquiry Line at 1-800-387-9080. Inquiry Service Representatives are trained to receive inquiries from members of the public. They assess whether the issues raised by an individual are within the mandate of the *Code* or whether the matter needs to be referred to another organization or agency of the government.

The Commission has an automated telephone system that allows callers easy access to an Inquiry Service Representative, a staff directory for the staff in the Mediation and Investigation Offices, general automated information about the Commission's services and how to file a human rights complaint.

Should a caller have a human rights issue and wish to file a complaint, an intake questionnaire and package are sent to the individual usually on the same day or within 24 hours. The individual is asked to complete the questionnaire and return it to the Commission office. The information in the questionnaire assists the Commission in drafting a legally sound complaint under the *Code*.

## INTAKE SERVICES

Following the receipt of intake questionnaires, Intake Services assesses whether the issues raised are within the mandate of the Ontario Human Rights Commission, interviews the complainant where necessary, drafts legally sound complaints and has the complaints signed by the complainant and served upon the persons or organizations responsible for the alleged discrimination (referred to as the respondents).

In order to have a complaint filed under the *Human Rights Code*, a person must have a ground protected under the *Code* and a social area. For an explanation of the grounds and social areas protected by the *Code*, please see the Fact Sheet #1: Scope of the *Code* page 69.

Once a complaint is drafted, signed by the complainant and received by the Commission, the complaint is filed. Once filed, it is served upon the respondent(s) who are asked to formally respond to the allegations.

## SECTION 34 APPLICATION

Section 34 is the section of the *Code* that provides the Commission with the discretion, in certain limited circumstances, to not deal with a complaint. These are:

- 34(1)(a) – where there is another legislative act that can more appropriately deal with the issues raised in the complaint;
- 34(1)(b) – where the complaint is trivial, frivolous, vexatious or made in bad faith;

- 34(1)(c) – when the complaint is not within the jurisdiction of the Commission; and,
- 34(1)(d) – when the complaint was filed more than six months from the last incident of alleged discrimination, and it appears the delay was not incurred in good faith and there is evidence of substantial prejudice to the parties because of the delay.

Before a case proceeds through to mediation and/or investigation services, any Section 34 issues that may exist must be dealt with. A request not to deal with a case because it fits one of the parts of Section 34 may be initiated by the respondent or by the staff of the Commission. If a request is made the Commission must process the request. This requires an analysis to see if the Section 34 provisions are applicable to that complaint, the disclosure of the case report to the parties and, finally, a decision by the Commissioners of whether or not to deal with the case.

## MEDIATION SERVICES

Mediation services were introduced to the OHRC's complaint process in May 1997. Mediation is voluntary and confidential in the Commission's complaint process. It is offered to parties once a complaint is filed and the Commission has received the respondent's response to the complaint. Mediation provides the parties to a complaint with an opportunity to discuss the issues and generate options to resolve the issues early in the process. It is intended to empower the parties to craft their own resolution and remedies to the complaint with the assistance of a mediation officer who facilitates the discussions between the parties.

Mediation is generally offered within 90 days from the date the complaint was received and signed. Mediation occurs in about 70% of complaints with a settlement rate of between 65% and 75%.

## INVESTIGATION SERVICES

The Commission has the power and authority to investigate complaints under Section 33 of the *Code*. Investigations under the *Human Rights Code* usually involve reviewing documentation relevant to the complaint, interviewing witnesses that have information relevant to the complaint, and discovering anything else that may be relevant in determining whether discrimination was a factor in the circumstances brought forward by the complainant. Complaints are referred to Investigation Services in the following circumstances:

- The parties do not agree to participate in mediation services;
- Mediation does not result in settlement;
- The application of Section 34 results in a "deal with" outcome;
- Mediation is not appropriate due to considerable public interest issues evident in a complaint.

Following the investigation of a complaint, the human rights Investigation Officer discloses the findings to both sides and could attempt to resolve the complaint through conciliation, a process that is like mediation. Should the complaint not be able to be resolved between the parties, the Investigation Officer will prepare a case analysis. This summarizes the evidence, applies a human rights interpretation to the case and makes a recommendation as to whether

or not the Commissioners should refer the complaint to the Board of Inquiry. The parties are given the opportunity to respond to the Investigation Officer's case analysis. Their submissions will also be presented to the Commission for consideration when it makes its decision.

Next, the case analysis and submissions, if any, are presented to the Commissioners for consideration. As mentioned above, Commissioners are a group of people appointed by the Lieutenant Governor of the Province to oversee the Commission and to make decisions about cases with which the Commission has dealt. They meet on a regular basis to review cases to determine if they should be referred to the Board of Inquiry (Human Rights) or not. Approximately four percent of the total number of cases closed each year by the Commission are referred to the Board of Inquiry.

The Commissioners will decide not to deal with the complaint if they believe that there is not enough evidence to prove that there was any discrimination. The complainant then has 15 days to appeal a decision to dismiss the complaint by requesting, in writing, that the Commissioners reconsider their decision based on persuasive reasons as to why they should do so. If the Commissioners do not change their minds, this decision is final.

Although established under the *Code*, boards of inquiry are independent and function separately from the Commission. About seven percent of cases go to a board of inquiry, which usually consists of one person who has been appointed by the Board of Inquiry (Human Rights), Ministry of Citizenship.

If the Board of Inquiry finds that discrimination has occurred, it can order a number of possible solutions. The complainant's full rights to equality must be honoured. As well, respondents can be ordered to pay the complainant for any losses suffered in pay or benefits or for mental anguish (up to \$10,000 for the latter).

An organization can be ordered to undertake special programs designed to relieve hardship or economic disadvantage experienced by an individual or a group or to assist disadvantaged groups to achieve or attempt to achieve equal opportunity in the organization. They can also be required to provide human rights and anti-discrimination training for employees, develop comprehensive anti-discrimination or anti-harassment policies or undertake other such remedies.

Any Board of Inquiry decision can be appealed to the Divisional Court of the Ontario Court of Justice and ultimately, to the Supreme Court of Canada.

## BACKGROUND #5:

### THE BOARD OF INQUIRY

The Ontario *Human Rights Code* provides that those complaints that cannot be resolved after investigation by the Ontario Human Rights Commission may be referred to the Board of Inquiry (Human Rights) (BOI) to hear the complaint. A qualified person selected to adjudicate the case is called the “Board Chairperson.” The BOI is independent from the Human Rights Commission and it is similar in format to a trial in a court of law.

Once hearings commence, the Commission has responsibility under the *Code* to present evidence in support of the complaint at the hearing. This takes place because it is the responsibility of the Commission to ensure that the intent of the *Code* to prevent discrimination or harassment is upheld. The person making the complaint (the “complainant”) may also bring his/her own lawyer to the hearing. The person or organization named in the complaint as responsible for the alleged contravention of the *Code*, is the personal or corporate “respondent.” All parties are given full opportunity to present their evidence and to make submissions at the hearing. Respondents are usually represented by a lawyer. Witnesses are examined and cross-examined by representatives of the complainant(s), the respondent(s) and the Commission.

The length of Board hearings varies greatly, with the average being approximately four days. They are held in hearing rooms throughout Ontario. A hearing room may be a regular court room or a meeting room in a hotel. The proceedings are quasi-judicial in nature. As such, parties to the hearing are asked to swear or affirm their evidence and the evidence is transcribed by a court reporter. Hearings are open to the public and the media at the discretion of the presiding Board Chairperson.

Following the conclusion of the hearings, the *Code* requires that the decision be issued within 30 days. The decision is then distributed to all parties. They are also sent to a number of reference, legal and public libraries throughout Ontario. Most decisions are also published in the *Canadian Human Rights Reporter*.

Any party (complainant, respondent or Commission) can appeal a BOI decision to Divisional Court within 30 days of the date of decision. Following subsequent decisions, appeals can be made up to and including the Supreme Court of Canada.

## BACKGROUND #6:

## WHAT IS EQUALITY?

The notion of a legal right to equality and how we create a society in which all have equal rights requires that we challenge our ways of thinking about “equality.” It is important, first of all, to realize that “equality” is not a static concept but an evolving one which the courts continue to define and reinterpret.

The traditional approach to understanding equality is based on the idea that it can be achieved by providing identical treatment to all individuals, regardless of their actual circumstances. If people are similar and you treat them the same, you cannot be said to have discriminated even though the result may in fact add to the disadvantage experienced by members of particular groups.

This notion of equality has many shortcomings. By failing to recognize that people have different needs as a result of their physical or mental abilities, race, ethnicity, creed, gender, sexual orientation, etc., it ignores the unequal effects that identical treatment can sometimes produce. Treating all people the same without regard to their histories of exclusion or restricted access to resources and opportunities perpetuates group-based inequalities and compounds the experience of disadvantage.

For example, if a business requires that all its employees be available to work Monday to Saturday, those persons whose faith requires that they do not work on Saturdays may be excluded from employment in that business. A residence or business that can be accessed only by stairs denies entry to those of us who have certain physical disabilities. Similarly, an organization that provides information solely in print form excludes blind persons or those with certain types of learning disabilities from access to that information.

Current approaches to the idea of equality stress the necessity of looking beyond the forms of treatment to the context of people’s circumstances, including their historical experiences. Important aspects of this context are the social, economic, political and legal realities affecting the individual or group—realities which have both historical and contemporary components. Differences in the context could mean that, in some cases, *same treatment* will lead to *unequal results* while *different treatment* will sometimes be required to accomplish an *equality of results*. Achieving a more substantive or meaningful equality of results requires that the “different-ness” of their realities be acknowledged, as well as accommodated, in our laws and in the policies and practices of our social and business institutions.

It follows that the attainment of true equality will necessitate changing rules and practices that appear to be neutral but that have a disproportionately negative effect on groups of people protected by the *Code* (see adverse impact, Teacher’s References: Glossary, page 48). In fact, changing these rules and practices is required by the *Code* unless one can show that the cost of the change would be too great (having also considered external sources of funding that may be

available), or that there will be a substantial health or safety risk involved (undue hardship—see Teacher’s References: Glossary, Page 50). Regardless of whether or not the employer intended to discriminate, she or he, for example, must make alternative arrangements for the individual who cannot work on Saturday for religious reasons, unless to do so would cause undue hardship. Owners of public buildings with elevated entrances or multiple stories must build ramps or install elevators to allow persons with a physical disability the same access available to others, unless to do so would cause undue hardship. Similarly, publications must be provided on computer disk, in Braille, large print or on audiotape depending on the needs of the “reader.”

It is recognized in the *Code* that in order to achieve equality of results for disadvantaged groups it is sometimes necessary to adopt special programs to assist historically disadvantaged individuals and groups to overcome discriminatory practices that have become ingrained in our institutions and organizations. Section 14 of the *Code* allows for the implementation of special programs designed to relieve hardship and economic disadvantage or to achieve equality of results in society as envisioned by the Preamble to the *Code* (see Teacher’s References: Backgrounder #1, page 51).

## BACKGROUND #7:

## UNDERSTANDING DISCRIMINATION IN A SOCIAL CONTEXT – “SOCIAL CONSTRUCTION OF DISADVANTAGE”

*More often than not, disadvantage arises from the way in which society treats particular individuals, rather than from any characteristic inherent in those individuals.<sup>2</sup>*

This statement by Supreme Court of Canada Justice J. LaForest, illustrates the key element of a new approach being taken by human rights case law and policy in understanding the dynamic of discrimination. Some years ago, the principle was established that the effect or impact of discrimination on a person is of more importance to determining the presence of discrimination than whether or not there might have been any malice or intent to discriminate on the part of the discriminator. Many courts have begun to look at the myths, stereotypes and perceptions that exist in the minds and attitudes of people that cause them to exclude others based on certain characteristics such as race, disability, gender, age or religion.

For instance, the Supreme Court of Canada has recently shed new light on the approach to be taken in understanding disability. In *Mercier*,<sup>3</sup> a case arising in Quebec (and featured as a case study in this package), the Supreme Court made it clear that disability must be interpreted to include its subjective component, since discrimination may be based as much on other people's perceptions, myths and stereotypes, as on the existence of any actual functional limitations in the individual.

In the *Mercier* case, the complainants were denied employment or dismissed when it was discovered that they had certain medical conditions, even though their conditions might not have resulted in any functional limitations. The employers argued that since the conditions did not have any impact on their ability to do their jobs, they could not be “disabilities” under Quebec's human rights law. The Supreme Court of Canada disagreed.

The Supreme Court chose not to focus on whether the person actually had a disability or whether that disability actually impeded the complainants from doing their jobs. Instead, it chose to look at the situation from a socio-political dimension that emphasizes human dignity, respect and the right to equality. Thus, a disability may be the result of a physical limitation, an ailment, a perceived limitation or a combination of all these factors. But the focus is on the *effects* of the distinction, preference or exclusion experienced by the person and not on proof of physical limitations or the presence of an ailment.

2. *Egan v. Canada*, [1995] 2 S.C.R. 513 at 551-2 (25 May 1995) on-line: Supreme Court of Canada <<http://www.lexum.umontreal.ca/csc-ccc/en/index.html>>.

3. *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Québec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 (3 May 2000),].

Another Supreme Court of Canada decision<sup>4</sup> has since confirmed that “social handicapping”, *i.e.*, society’s response to a real or perceived disability, should be the main consideration when determining whether discrimination has occurred.

The lesson to be learned from this is that we must be extremely careful to test out the assumptions we make about people, whether they are applying for a job, a place to live or whether they are simply wishing to purchase a good or access a service. Is a person’s “failure to qualify” a result of actual limitations that they may have or is it society that imposes artificial limitations based on unfounded stereotypes or ignorance, or fails to prevent, remove or accommodate real or perceived differences? More scrutiny and awareness by courts, human rights commissions, government and civil society in general will help to clarify and address this notion.

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4. *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 S.C.C. 28 (18 May 2000)



**TEACHING HUMAN RIGHTS**

**IN ONTARIO**

**Students' Handouts**



## HUMAN RIGHTS QUIZ

How well do you know your rights? Read the following situations and answer the questions by circling "Yes," "No," or "Maybe."

1. Anthony, who is 18 years old, has applied for a job as a clerk in a sporting goods store. The store manager is impressed with Anthony's maturity and ability and says that he would like to hire him, subject to reference checks. Later, the manager calls Anthony to say that he will not be hired. On checking his references with a former employer, the manager found out that Anthony was convicted of reckless driving several times when he was younger. Has the store manager violated Anthony's human rights by refusing to hire him?

Yes

No

Maybe

2. Naomi and several of her friends play in a women's hockey league at the local community centre. Whenever they play, the male rink attendants never give them their full allotted ice time. The attendants jeer every time one of the young women falls and there are often pin-up pictures of women in the dressing rooms. Naomi has complained but the manager has done nothing, saying that women should "stick to figure skating" and "leave hockey to boys." Have the rink attendants violated the young women's human rights?

Yes

No

Maybe

3. After years of fighting, Don's parents are getting a divorce. Things are so tense that Don feels he must live on his own if he is to successfully complete his school year. He has been a good student and stayed out of trouble. At 16, he has qualified for social assistance and has put in an application at a rooming house near his school. The property manager refuses to rent Don a room, saying that he does not rent to "welfare kids." Has the property manager violated Don's human rights?

Yes

No

Maybe

4. Cassandra and several Black friends have gone to a local restaurant after school. They are laughing and carrying on like others in the restaurant. Things start to get out of hand between their group and several White students sitting at another table. Food is thrown and the groups exchange angry remarks. When the restaurant staff ask Cassandra and her friends to leave the restaurant, they feel angry and discriminated against. Have the restaurant staff violated the group's human rights?

Yes

No

Maybe

5. Last week, Maureen and her friend Sean organized a school group to raise funds for AIDS research. Yesterday, they both found crudely-drawn cartoons making fun of gays and lesbians on their desks. Last night, several students shouting anti-gay comments verbally attacked them on the street opposite the school yard. Their teacher saw the cartoons and has heard rumours of the verbal attack, but feels that nothing can be done because the attack took place off the school premises. Neither student has complained to school officials. Have the students violated Maureen and Sean's human rights?

Yes

No

Maybe

6. A local optician's office has an opening for a part-time receptionist. The position requires excellent communication skills, as the person will answer customers' telephone calls and receive patients who enter the clinic. Michelle, who was born and raised in Quebec City, has applied for the job. The owner does not hire her, because she feels customers may not understand Michelle because of her accent. Has the owner violated Michelle's human rights?

Yes

No

Maybe

7. Last Saturday, Michael and his friends attended a movie theatre they had never been to before. The theatre staff told Michael, who requires a motorized wheelchair because he has muscular dystrophy, that he would either have to transfer into a theatre seat or watch the movie from the only area available for the wheelchair—in front of the first row of seats. When he complained about this arrangement, the theatre staff told him he was entitled to the same service as everyone else—a ticket and a seat to watch the movie. Have the movie theatre staff violated Michael's human rights?

Yes

No

Maybe

## FACT SHEET #1:

## SCOPE OF THE CODE

The Ontario *Human Rights Code* provides protection from discrimination in five areas of our lives. It states that every person has a right to freedom from discrimination in the following social areas:

- **services, goods and facilities**—including schools, hospitals, shops, restaurants, sports and recreation organizations and facilities
- **occupancy of accommodation**—the place where you live or want to live, whether you rent or own the premises
- **contracts**—whether written or oral agreements
- **employment**—including advertisements, application forms and job interviews as well as work assignment, training, and promotions
- **membership in vocational associations and trade unions**—such as the Ontario Secondary School Teachers' Federation or United Steelworkers

Canada is a country where freedom of expression is a right. However, by allowing the expression of discriminatory behaviours and beliefs, we risk abusing the rights of others. Human rights legislation protects those rights in essential areas of our lives.

## PROHIBITED GROUNDS OF DISCRIMINATION

The *Code* recognizes that discrimination occurs most often because of a person's membership in a particular group in society. If, in any of the five social areas above, a person faces discrimination on any of these grounds, then she or he is protected by the *Code*. These are the sixteen prohibited grounds for discrimination:

- **race**—common descent or external features such as skin colour, hair texture, facial characteristics
- **ancestry**—family descent
- **place of origin**—country or region
- **colour**—associated with race
- **ethnic origin**—social, cultural or religious practices drawn from a common past
- **citizenship**—membership in a state or nation
- **creed**—religion or faith
- **sex**—discrimination can be sexual in nature, or because of gender or pregnancy. This also includes the right to breastfeed in public areas or in the workplace. Sex also includes the notion of gender identity.

- **sexual orientation**—includes lesbian, gay, bisexual or heterosexual
- **handicap**—physical disability or disfigurement caused by injury, illness or birth defect (includes diabetes, epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment and reliance on a guide dog, wheelchair or other remedial device); learning disability or any dysfunction in the ability to understand or use symbols or speech, developmental disability, psychiatric disability or an injury or **disability** for which benefits were claimed or received under the *Workplace Safety and Insurance Act, 1997*
- **age**—18-65 years (employment); 16+ years (accommodation); 18+ years (all other areas)
- **marital status**—including cohabitation, widowhood, separation
- **family status**—the parent/child relationship
- **same sex partnership status**—the status of living with a person of the same sex in a conjugal relationship outside marriage.
- **record of offences**—provincial offences or pardoned federal offences (in employment)
- **receipt of public assistance**—in housing only

### EXCEPTIONS TO THE PROHIBITED GROUNDS

There are some exceptions to these prohibited grounds in the area of employment, such as:

- an organization that serves a group protected by the *Code*, such as religious, educational or social institutions serving ethnic groups, people with disabilities, religious groups, etc., may choose to employ only members of that group;
- an employer may choose to hire or not hire, or to promote or not promote his or her own spouse, child or parent or the spouse, child or parent of an employee;
- an employer may discriminate on the basis of age, sex, record of offences or marital status if these are genuine requirements of the job. For example, a shelter for battered women may choose to hire only women as counsellors; a club may only hire male attendants to work in the men's locker room; or a child care facility may refuse to hire someone convicted of child molesting on the ground that the hiring would pose a safety risk to the children. In such instances, the employer must consider whether any accommodation can be made to enable that person to work in the position.

## FACT SHEET #2:

## HARASSMENT

Protected groups have the explicit right to freedom from harassment in housing accommodation and employment. The Code defines harassment as “engaging in a course of vexatious [annoying or provoking] comment or conduct which is known or ought reasonably to be known to be unwelcome.”

The most important word in the definition is “unwelcome.” We do not have the right to impose our words or actions on someone if they are not wanted. It does not matter if the person has done this intentionally or unintentionally.

Some people may be shy or afraid to respond to unwelcome comments or actions. That is why the Code includes the words “ought reasonably to be known to be unwelcome.”

For example, everyone is expected to know that racial or ethnic slurs or jokes are unwelcome—the speaker should not need to be told that the comment is unwelcome. However, sometimes it is necessary to point out that certain behaviours are causing discomfort.

“Engaging in a course of” means that a comment or action would probably have to occur more than once for it to be considered harassment. However, an employer need only make a comment such as “People like you have no business here” once to a person of colour or a woman, for the employee to believe that he or she will not get equal treatment. Comments like these create a poisoned environment for members of that group as well as others.

The principles of harassment (while not explicitly stated in the Code) also apply in the area of services. For instance, if students harass others because of their race, sex, sexual orientation, disability, religion etc., this could be grounds for a complaint. Education is a “service” to which all are equally entitled.

## FACT SHEET #3:

### SEXUAL HARASSMENT

Every employee has the right to be free from sexual harassment from other employees, supervisors and customers. Tenants also have a right to freedom from harassment on the basis of sex by the property owner, property owner's agent, or another tenant.

Sexual harassment occurs when someone receives unwelcome sexual attention and the person making the comments or showing such conduct knows or should reasonably know that the comments or behaviour are offensive, inappropriate, intimidating or hostile.

The *Code* is also violated when anyone receives a sexual solicitation from a supervisor or other person in a position of authority, if he or she knows or ought reasonably to know it is unwelcome. It is also a violation when a supervisor threatens or penalizes an employee for not complying with the sexual demands.

The *Code* prohibits sexual harassment of students by other students, teachers by students and students by teachers as unequal treatment on the basis of sex.

**sexual solicitation** — an invitation to participate in some form of sexual activity. It could include requests to go out.



## FACT SHEET #4:

## POISONED ENVIRONMENT

A poisoned environment is created by comments or conduct that ridicule or insult a person or group protected under the *Code*. It violates their right to equal treatment with respect to services, goods and facilities, accommodation and employment. It is also produced when such actions or comments are not directed specifically at individuals. For example, insulting jokes, slurs or cartoons about gays and lesbians or racial groups, or pin-up photos that demean women, all contribute to a poisoned environment for members of those groups.

A poisoned environment can also be created for individuals at whom the insults are not necessarily directed. For example, a heterosexual male may be offended by homophobic jokes because some of his friends may be lesbian, gay or bisexual. Or a person belonging to a racial minority may believe because of insults that he or she will not be treated fairly.

It must be clearly evident that such behaviour is making people feel uncomfortable in a school or work situation. A single incident may or may not be enough to create a poisoned environment. Other factors, such as the seriousness of the behaviour, the relative positions of the persons involved (employer to employee, landlord to tenant, etc.), and/or the impact upon the individual's access (perceived or real) to equal treatment without discrimination would need to be considered.

The *Code* asserts that it is the responsibility of the employer to ensure that a poisoned environment does not exist in the workplace. Similarly, it is the responsibility of the teacher and administration as the authority in the school to ensure that a poisoned environment does not exist for students.

**equal treatment**—treatment that brings about an equality of results and that may, in some instances, require different treatment. For example, to give all employees equal treatment in entering a building, it may be necessary to provide a ramp for an employee who requires the use of a wheelchair.

## FACT SHEET #5:

### CONSTRUCTIVE DISCRIMINATION

Constructive discrimination occurs when a seemingly neutral requirement has a discriminatory effect (or adverse impact) when applied to a group protected under the *Code*. For example, a requirement that all employees work on Saturdays could discriminate against those who must worship on that day as part of their religious practice. Or a height or weight requirement could in general exclude women and some ethnic or racial minorities from employment positions.

In these cases, in order to avoid a finding of constructive discrimination, the employer or organization would need to prove that:

- the job requirement is bona fide, that is, sincerely believed to be necessary, and in an objective sense, necessary for safety, efficiency or economy; and that
- the person from a protected group cannot be accommodated without undue hardship to the employer. That is, it would alter the essential nature of the activity or business, affect its economic viability or pose a substantial health or safety risk.

**neutral requirement**—a requirement that, on the surface, appears to be unbiased.

**adverse impact**—having a harmful result. Sometimes treating everyone the same will have negative effect on some but not others.

**accommodation** (in employment)—to adapt, adjust or eliminate existing job requirements or conditions, to enable a person or group to carry out the essential duties of an activity or job.

## FACT SHEET #6:

## SYSTEMIC DISCRIMINATION

Systemic discrimination is discrimination that is part of the operating procedures of many organizations, whether a business, service organization or social institution, such as a school, hospital, government office, law court, etc. It can involve various forms of discrimination present in the practices of an organization, some of which may be invisible. It has the effect of denying whole groups of people their rights or excluding them from participation. For example:

- Racism or prejudice by those in positions of authority may violate the rights of members of certain groups, such as when an organization hires or promotes only White males.
- Biases against groups may mean that they are treated differently. For example, an organization hires only women in clerical positions and only men in sales positions.
- A school may discriminate against people with disabilities in a way that is systemic. For example, there may be no ramps and automatic doors, no accommodating washrooms, no special learning aids or testing procedures, all of which bar people with disabilities from access to the learning opportunities offered.

The Ontario *Human Rights Code* allows special programs to relieve disadvantage or achieve equal opportunity in order to counter the effects of systemic discrimination. Such programs include measures to remove barriers that discriminate against groups and ensure that disadvantaged groups have the same advantages that others take for granted.

**bias**—an inaccurate and limited way of perceiving a group. Negative bias towards members of a group can be expressed through language, published materials and other communications and practices.

## CASE STUDY A: DARLENE

As part of a government program, Darlene, a grade 12 graduate, obtained a job with a local garden nursery. She was to assist Mr. M., the owner, in tending plants and shrubs, placing orders and serving customers.

Mr. M.'s first review of Darlene's work showed that Darlene was performing all duties of her job exceedingly well. It was obvious that Darlene liked the work.

Over the next three months, Mr. M's behaviour toward Darlene began to change. As they worked, he would often put his hands on her shoulders and hips or lean over closer to her. At these times, she would quickly draw away from him. He then began to make offhand remarks about how he was sick of his wife and that he needed "satisfaction" from another woman.

Darlene did not encourage the comments or actions, nor did she say anything against them; however, she was becoming increasingly uncomfortable with the situation and tried to avoid the owner as much as possible. One day Mr. M. asked her for a kiss. When she refused, he said "I know what's wrong with you. You're scared you're going to like it." A few days later, Mr. M. suggested that she come to his apartment to have sex with him. Darlene firmly refused, saying that she was seriously involved with her boyfriend. On several other occasions, the owner tried to get Darlene to come to his apartment.

In June, Mr. M. terminated Darlene's employment, saying he had no work for her, even though June is the busiest month of the year for the nursery.

### QUESTIONS FOR GROUP DISCUSSION

1. Did the nursery owner violate the *Human Rights Code*? If so, how?
2. When Darlene first became uncomfortable with the nursery owner's behaviour, why wouldn't she have said something?
3. In this situation, would Darlene have had to say anything to the nursery owner for him to know that he might be violating the *Code*?
4. Is Darlene's termination a factor when assessing whether her rights were violated?

## CASE STUDY B: PARAMVIR

In response to increased violence in its schools, a local Board of Education adopted a policy prohibiting carrying weapons on school grounds. The following spring, the school administration learned that Paramvir, a Khalsa Sikh, was wearing a kirpan in school. The school wanted to implement its “no weapons” policy.

Of the estimated 250,000 Sikhs living in Canada, more than 10 per cent are Khalsa Sikhs—they have gone through the Amrit ceremony, a ceremony symbolizing spiritual commitment. One of the duties of the Khalsa Sikh is to carry, at all times on his or her person, a kirpan, an article of faith symbolizing a spiritual commitment to law and morality, justice and order. A kirpan is a steel knife, encased and secured in a sheath, and generally worn out-of-sight under normal clothing.

After prolonged discussions with Paramvir’s family and Sikh organizations, the Board of Education amended its weapons policy to include kirpans. It forbade Sikh students to wear the kirpan to school—they could only wear a symbolic representation of the kirpan, provided it did not involve a metal blade that could be used as a weapon.

A Sikh teacher and the Ontario Human Rights Commission took the case to a Board of Inquiry. In summary, the Commission argued that Sikh religious practices dictate that the kirpan must be made of iron or steel and worn at all times, otherwise the Khalsa would break their holy vows. Also, it was shown that, while the kirpan has the appearance of a weapon, it has never been used in Canada as a weapon. Furthermore, the Commission argued that other school boards did not have a policy restricting kirpans.

For its part, the Board of Education argued that:

- education was not a service covered by the Ontario *Human Rights Code* but was instead under the jurisdiction of the Education Act;
- the kirpan posed a risk as it looked like, and could be used as, a weapon; and
- others could perceive the kirpan as an invitation to violence.

On the basis of the evidence provided, the Board of Inquiry made its decision.

### QUESTIONS FOR GROUP DISCUSSION

1. Does the *Code* prevail over the Education Act?
2. Did the weapons policy discriminate against Khalsa Sikhs? How?
3. Was the policy reasonable? Suggest some ways the Board of Education could accommodate Khalsa Sikhs without undue hardship—for example, posing a safety risk?

## CASE STUDY C: DAN

After months of searching for a weekend job, Dan, who is a Black person, finally got an interview with the owner of a busy car wash and gas station. The owner seemed reluctant to hire him, but Dan managed to win him over. The owner gave him the job, saying that he would be working on a weekend shift with seven other young men, all students from the local area. The shift manager would train him on the car wash equipment.

On Dan's first day, the shift manager gave him only a few minutes of instruction on the equipment. Dan watched what the other men were doing, but when he asked questions, they were not very helpful.

Over the next few weekends, Dan concentrated on his work but because of certain events, he increasingly began to stay by himself. A few co-workers invited him to join their little group for lunch or breaks, but others consistently cracked ethnic and racial jokes, often within hearing of the shift manager. One day Dan overheard the manager say that blacks were responsible for increased violence in the community. This statement encouraged some co-workers, who had previously eaten lunch with Dan, to tell a couple of jokes about Black people. When they glanced at him as they told their jokes, he got up and walked away.

One busy Saturday afternoon, a whole section of the car wash equipment broke down because someone had allowed the system to become overheated. Dan had worked on that section until his break, when a co-worker took over. The system had broken down at some point after that.

The shift manager was furious and accused Dan of negligence. Dan replied that he believed the system was fine when he left for his break. Although Dan continued to insist that the equipment failure was not his fault, the shift manager fired him. Dan believed he was discriminated against because he is a Black person, while his co-workers and managers are White.

### QUESTIONS FOR GROUP DISCUSSION

1. Did the shift manager have good reason for firing Dan? Why?
2. What factors would a human rights investigation take into consideration?

## CASE STUDY D: TAMMY

By age 11, Tammy had bowled for five years in the local recreation league. She and several others qualified to enter a province-wide competition sponsored by the Youth Bowling Council.

Because she has cerebral palsy, Tammy needs to use a wheelchair and has limited movement and coordination. To enable her to bowl, her father built a wooden ramp, the top of which rests in Tammy's lap. She lines up the ramp towards the bowling pins and lets the ball roll down the ramp.

Just before the competition, the Council ruled that Tammy was ineligible to participate. While the Council's rules allowed persons with disabilities to use special equipment to assist them in recreational bowling (provided the equipment did not add force or speed to the ball), they prohibited the use of such equipment in competitions.

A Board of Inquiry and later the Supreme Court of Ontario heard a complaint filed on behalf of Tammy and the Ontario Human Rights Commission. The Youth Bowling Council argued that Tammy could not perform the essential feature of bowling—manual release of the ball. Thus, the Council argued, it had not violated her rights under the *Code*, because Tammy was incapable of the essential requirement of bowling. Also, the Council contended that the use of special devices would make competition between the bowlers unfair, because the skills assessed would not be common to all competitors.

Tammy's lawyers argued that in fact Tammy was bowling—she was using the ball to knock down pins. Also, the Youth Bowling Council had a duty to accommodate her under the *Code* by allowing her to use the ramp. Speed and accuracy tests showed that Tammy did not gain any advantage over other bowlers. Her ball speed was too low for maximum results and her accuracy no better than average.

On appeal, the Court heard all the evidence and made its decision.

### QUESTIONS FOR GROUP DISCUSSION

1. Could Tammy perform the essential requirement of bowling? Should this argument have been a factor in determining whether a violation occurred?
2. Should the Council have to accommodate Tammy (For example, should they allow her to bowl in competitions with the ramp?)
3. Would the Council experience undue hardship if it accommodated her in competitions? Would it change the sport too much? Give your reasons.

## CASE STUDY E: KAREN

Karen had joined a manufacturing company that sold goods such as styrofoam cups to retail and industrial customers. Hoping to build a career, she entered the company as a packer.

After a time, Karen learned from female co-workers that when women joined the company, they were hired as “packers.” Men were hired as “service persons” and earned more than the women.

Later she learned that if she wanted to advance in the company, she would have to become a “service person.” This meant that, under the union rules, she would lose the seniority she gained while working as a packer. Because of her lost seniority she could be laid off before men who joined the company at the same time as her and she would be recalled from any lay-off after them. The loss of seniority would also mean that she would fare less favourably than them in competitions for higher-paying jobs.

In addition, the company required her to complete a mechanical aptitude test in order to become a service person or be promoted. She heard that at least a third of the test involved the use of different tools, none of which are actually used in the service position.

Karen noted that only two women had advanced into the 40 higher positions available in the plant, despite the fact that there were an equal number of men and women working in the entry-level positions.

When Karen went to her supervisors to discuss her interest in advancement, they refused to help her. In the following weeks, they denied her overtime work and refused her request for a shift transfer. Her supervisor believed that women should stay at home and not work. He also tried to stop her from taking telephone calls from a boyfriend who worked on another shift, even though the calls were made on her breaks.

Karen filed a complaint against the company for discrimination.

### QUESTIONS FOR GROUP DISCUSSION

1. Did Karen face discrimination? If so, what type?
2. What factors would be taken into account to determine if there were other violations of the *Code*?
3. What would need to be done to ensure that women had equal opportunity at this company?



## CASE STUDY F: RITA

Rita and her family moved to the city from a remote community in the middle of the school year. Within a week, Rita was registered at the local high school and began attending classes. She travelled to and from school by school bus.

After two weeks at the new school, Rita was just beginning to settle into her classes. However, she was somewhat nervous about her history course. After her first class, the teacher made it clear that Rita had a lot of “catching up” to do, if she were to pass the course.

The following week, some students gave a presentation on Columbus’s voyage in 1492 to the “New World.” There was lively discussion, and readings and prints were circulated depicting Columbus’s arrival in various territories. There were several references made about the “Indians and savages” that the colonists “had to defeat” to settle the New World.

As a member of the Cree Band, Rita was dismayed by the way the teacher portrayed Aboriginal persons in the presentation. She approached her teacher before class the next day to discuss the issue. As the class began, the teacher announced that Rita had concerns with the Columbus presentation. She then turned to Rita and asked her to give her version of the “Columbus discovery” from an Aboriginal point of view.

Caught off guard, Rita haltingly made several points, then sat down quickly when several of the students began to snicker. Later that day on the bus ride home, some of the other students jeered at her, saying if she didn’t like history the way it was taught, then she should drop out. She turned away and ignored them. The next day, the jeering continued in the hallway. When she went to her locker at lunch, someone had scrawled the words “gone hunting” on her locker door. Again, she ignored the curious students around her.

Rita told her parents about the incidents. They then called the principal, who said she would give “hell” to the offenders. She also suggested that Rita should make more of an effort to fit in and get along with others.

### QUESTIONS FOR GROUP DISCUSSION

1. How should the teacher have handled Rita’s concern over the Columbus presentation?
2. Should the principal deal with the situation in a different way?

## CASE STUDY G: CINDY

Cindy, aged 19, had applied for a position at a nursing home as a nursing aide. She had previously worked part-time as a kindergarten teacher's aide and had also cared for children with mental and physical disabilities during her high school years. During her initial interview, the assistant administrator told Cindy she was an ideal candidate and that she probably would be hired.

She was given a pre-employment medical examination for her family physician to complete. He confirmed that she could meet the requirement of being able to lift patients.

At a second meeting, the interviewer reviewed the completed medical form and noticed Cindy's hand. During the initial interview, the assistant administrator had not observed her left hand, on which the index, middle and ring fingers were considerably shorter than those on most hands. Following this, the interviewer and another nursing director spent much time discussing Cindy's disability and the job requirements. Even though they both wanted very much to hire Cindy, they believed that she would not be able to cope with the gripping or clasping that is required to lift patients.

Although Cindy said that she could perform the duties and had performed similar tasks in her previous job with children with disabilities, she was not hired.

### QUESTIONS FOR GROUP DISCUSSION

1. Did the interviewer have reasonable grounds to believe that Cindy could not do the job?
2. On what basis did the interviewers make their assessment that Cindy could not meet a *bona fide* job requirement?
3. What do you think the interviewer and the nursing director should have decided? What are your reasons?

## CASE STUDY H: JAN

Jan worked in an office of a large insurance company. Jan was a lesbian and very open about her sexual orientation, frequently associating with other people in the office who were known or rumoured to be gay or lesbian. At the time, Jan was having a relationship with a woman who worked in the same department.

Jan had been a temporary contract employee for some time but had made it clear to company officials that she wanted a full-time job. She was told that, because the company had recently been sold, there was a freeze on hiring and she couldn't be hired. Jan noticed, though, that full-time staff were being hired in other departments. As a result, she believed she was not hired to a full-time position because of her sexual orientation.

While the company employed other lesbian and gay persons, comments made to Jan led her to believe that they were expected to play down their sexual orientation while at work. She was told not to associate with other lesbians and gay men and to be "less obvious" in her dress and in her behaviour.

The company president had on occasion referred to Jan as "Mister" and had made sarcastic remarks in front of other employees about her cologne and her style of dress. There were many negative rumours around the office concerning Jan, her partner, and other employees thought to be lesbian or gay.

One day, Jan's supervisor called her into his office and gave her a letter offering her a full-time job. While they were discussing the offer, he told Jan that her partner would have to move to another department as it was the practice of the company not to have people in personal and family relationships working in the same department. At this, Jan became upset and left the office.

The next day Jan delivered a letter to her supervisor in which she stated that she accepted the position, but that, since her partner did not wish to move to another department, she could not accept this condition. Instead, she offered to sign an agreement stating that she and her partner would continue to maintain separate residences and not socialize or act preferentially toward each other while at work. If her supervisor was not agreeable to this, Jan offered to resign.

Finding these conditions unacceptable, Jan's supervisor withdrew the job offer and fired her.

### QUESTIONS FOR GROUP DISCUSSION

1. In what ways do you think Jan might have experienced discrimination in her employment?
2. What reasons do you think Jan's supervisor would give for firing Jan? What do you think of these reasons?
3. What remedy do you think Jan should receive as a result of being discriminated against?

## CASE STUDY I: TAWNEY

Tawney worked as a forest firefighter for the Province of British Columbia and was a member of the Initial Attack Forest Firefighting crew for a small area in the forests of British Columbia. The job of that crew was to attack and suppress forest fires while they were small and could be easily contained. Her supervisors found her work to be satisfactory and there was no reason to question her continuing ability to do the work safely and effectively.

After she had been successfully doing this job for three years, the Government adopted a new series of fitness tests for forest firefighters. The tests were developed in response to a Coroner's Inquest Report that recommended that only physically fit employees be assigned as front-line forest firefighters for safety reasons. The tests required that forest firefighters weigh less than 200 lbs. (with their equipment) and complete a run, an upright rowing exercise, and a pump carrying/hose dragging exercise within stipulated times.

The running test was designed to test the forest firefighters' aerobic fitness. Subjects were required to run 2.5 kilometres in 11 minutes. After four attempts, Tawney failed to meet the aerobic standard, running the distance in 11 minutes and 49.4 seconds instead of the required 11 minutes. As a result, she was laid off.

Stating that the test unfairly discriminated against women, Tawney's union brought a grievance on her behalf.

### QUESTIONS FOR GROUP DISCUSSION

1. Do you think that different standards should have been adopted for men and for women?
2. Do you think the test was a fair way of measuring a firefighter's ability to do the job?
3. If Tawney was passed, even though her running time was below what was required, would that result in "reverse discrimination" for the men who couldn't pass the evaluation?

**CASE STUDY J: RÉJEANNE**

Réjeanne lived in the City of Montreal. Her career goal was to become a horticulturalist. In pursuit of this goal, she had successfully passed a college course and had completed an apprenticeship as a gardener with the city's Botanical Gardens. When a suitable opening came up to work as a horticulturalist with the City, she immediately sent in her application.

Being fully qualified for the position, Réjeanne was invited for an interview. She successfully passed the interview; however, she was also required to undergo a physical check-up to confirm her suitability for the job. This check-up revealed that she had a slight curvature of the spine called scoliosis. Réjeanne was surprised to learn this, as she had never experienced any symptoms from this relatively common condition. In fact, she had never experienced any pain, nor had she suffered any limitation on her activities as a result of her condition. A subsequent evaluation showed that Réjeanne was able to perform all the duties of a gardener-horticulturalist in complete safety to her and others and that there was no necessity to limit her duties.

When it became aware of Réjeanne's condition, the City made a decision to hire another candidate who would be less of a risk for back problems and therefore unlikely to incur increased health care costs later on. The City rationalized its decision saying that it had the right and even the responsibility to employ individuals who would pose the least potential cost to taxpayers.

Believing that the City had rejected her application for the position because of a handicap, Réjeanne made a complaint to the Commission des droits de la personne et des droits de la jeunesse (The Quebec Human Rights Commission). The case was referred to a Tribunal for a decision.

In its argument before the Tribunal, the Commission alleged that the respondent acted in a discriminatory manner that deprived the complainant of unemployment insurance benefits, caused her a high level of stress and deeply humiliated her. The City responded that because Réjeanne had no functional limitations, it could not be said that she had a disability under Quebec's *Charter of Human Rights and Freedoms*.

**QUESTIONS FOR GROUP DISCUSSION**

1. Why do you think that the City should or shouldn't have hired Réjeanne?
2. If it is possible that Réjeanne will develop back problems, do you think that the City did the right thing by not hiring her?
3. Do you think society's view towards persons with disabilities has a positive or negative impact on the barriers they face?

## CASE STUDY K: ALIA AND AHMED

There are many people in Ontario who are deaf, deafened or hard-of hearing. For some, sign language might be their first language or preferred means of communication and their inability in English will seriously impede their ability to communicate unless aided by interpretation. For these Ontarians, effective communication and getting fair access to services and employment is very difficult.

Alia and Ahmed are parents who were both born deaf. They were expecting twins and would usually provide their own sign language interpreters for their medical visits. Unless an interpreter was present, communicating information was often frustrating for them. Furthermore, it was clear that any miscommunication about medical information could be dangerous.

When Alia went into labour at eight months into her pregnancy, she and her husband found themselves at the hospital without the aid of an interpreter. Neither the attending doctor nor the nurses were able to effectively communicate with the parents who found this isolation difficult and frightening. After the babies were born, they were immediately taken away from the delivery room and put under observation in another area of the hospital. One nurse wrote on a piece of paper that the children were “fine”; otherwise, no one gave any details about the twins’ condition to either Alia or Ahmed.

In their complaint, Alia and Ahmed alleged that the hospital was providing unequal services because it wasn’t accommodating their needs as deaf individuals. The hospital replied that it was too difficult to bring in interpreters on such short notice, and that it was too expensive to keep interpreters on call twenty four hours a day.

### QUESTIONS FOR GROUP DISCUSSION

1. How would you feel if you were in the same situation as Alia or Ahmed?
2. Whose responsibility is it to provide sign language interpreters in public service sectors?
3. How would this complaint be covered under the *Code*?
4. Do you think it’s unreasonable for deaf people to expect interpreters to be available in emergency situations? What about in other non-emergency situations?

**CASE STUDY L: RAY**

Ray was the President of an organization called the Canadian Lesbian and Gay Archives (CLGA). The Archives is a corporation whose mandate is to acquire, preserve, organize and give public access to information, records and artifacts by and about lesbians and gay men in Canada. The purpose of CLGA is to celebrate the lives of lesbians and gay men and to ensure that their records and histories are not lost or willfully erased. CLGA helps lesbians and gay men live “free, proud and positive lives”.

As the President of CLGA, Ray approached Scott, who was the President and chief salesperson of a printing company, to obtain a quote for printing business cards, letterhead and envelopes for CLGA.

At first, Scott was willing to provide the quote and carry out the service until he learned that Ray was requesting it on behalf of a lesbian and gay organization. Scott then refused. He told Ray that he was a religious person and that he had the deeply held conviction that homosexuality is wrong and he would not work with an organization that promoted the issues of gays and lesbians. He gave Ray the names and numbers of several other printers in the same town that he could try to get the work done. As a result of this refusal to do this job, CLGA was required to spend extra time trying to find another printer and it took a lot longer to complete the work.

Ray made a complaint against Scott and his printing company to the Ontario Human Rights Commission on behalf of himself and CLGA. His complaint was based on his belief that he had been denied service on the ground of sexual orientation. The complaint was investigated by the Commission and referred to the Board of Inquiry.

**QUESTIONS FOR GROUP DISCUSSION**

1. What rights are involved in this case? Whose rights, if any, do you think should take precedence?
2. If you pick one, how do you think that the rights of the other should be protected?
3. What will happen to the purpose of the *Code* if rights claimed by certain groups results in violations of the rights of others?